The London School of Economics and Political Science

Reconstructing Human Rights:
A Pragmatic and Pluralist Inquiry in Global Ethics

Joseph Derald Hoover

Declaration

I certify that the thesis I have presented for examination for the PhD degree of the London School of Economics and Political Science is solely my own work other than where I have clearly indicated that it is the work of others (in which case the extent of any work carried out jointly by me and any other person is clearly identified in it).

Joseph Hoover

Abstract

This work sets out to critically reconstruct human rights as both an ethical ideal and a political practice. I critique conventional moral justifications of human rights and the related role they play in legitimating political authority, arguing that the pluralism and political content of human rights cannot be eliminated. I reconstruct the relationship between ethics and politics through an engagement with pragmatist and pluralist moral theory, which I then develop into a democratising account of human rights by incorporating work on agonistic democracy. The resulting view of human rights is situated and agonistic, seeing the act of claiming human rights as a political act that makes demands on the social order in the name of a particular ethical ideal. Rather than seeing the political act of claiming rights as undermining human rights as universal moral principles, it becomes essential to global ethics as such. The international political aspect of rights is then examined by looking to the drafting of the Universal Declaration of Human Rights in historical context, and contrasting human rights practice as expressed in popular social movements with conventional state-centric and legalist accounts. In the end the defence of human rights that is offered aims to preserve the transformative power of human rights claims, their democratising content, while undermining their totalising tendency, in which a singular conception of humanity provides certain moral principles to legitimate political authority.

Acknowledgements

"I borrowed my life from the works of your life. I have felt your energy in me and seen mine move in you."

-Woody Guthrie, *People I Owe*

Reconstructing Human Rights: A Pragmatic and Pluralist Inquiry in Global Ethics

Analytical Table of Contents

The introduction sets out the major problems addressed in the thesis, which are two-fold. First, the thesis sets out to challenge contemporary approaches to political ethics addressing world politics. The central claim is that most contemporary approaches seek a degree of certainty and determinacy that is not only unattainable but undesirable – as the quest to overcome uncertainty and ambiguity does violence to difference and denies the deep plurality of ethical values. Second, the thesis critically examines human rights as the primary ethical framework for understanding world politics. The central claim is that reconstructing human rights in light of serious criticisms requires an alternative pragmatic and pluralist approach to political ethics.

In this chapter, I critically assess prominent defences of human rights. The central argument is that the quest for final and undeniable foundations for human rights, as moral principles, only ever finds support that collapses in upon itself. This is a first step toward offering a qualified defence, or what I would prefer to call a reconstruction, of human rights that begins from an acceptance of conditions of uncertainty and plurality.

In this chapter I examine the place of human rights in Critical Theory and communitarian accounts of world politics, looking at the work of Andrew Linklater and Michael Walzer. While both traditions attempt to accommodate plurality and more contingent foundations for rights, I argue, that they both depend upon moral ideals to constrain political legitimacy and community in a way that prevents them from fully recognising deep pluralism and contingency in ethics. I conclude by suggesting that the relationship between morality and politics must be reconsidered if a pluralist and pragmatic reconstruction of human rights is to be successful.

In this chapter I examine Isaiah Berlin's value pluralism and argue for an approach to ethics based on a "deep pluralism". I argue that Berlin's pluralism can be considered independently from his own liberal commitments and develop a more critical pluralist ethic by engaging with John Gray's account of agonistic pluralism, which connects Berlin to an alternative tradition of agonistic political theory. I conclude with initial reflections on how a pluralist ethical theory alters human rights as universal political project.

In this chapter I develop John Dewey's situationist ethics and argue that his ethics can be improved by emphasising its resonance with deep pluralism as developed in the previous chapter. Further, I argue that Dewey's democratic ethics can develop a sharper critical edge by engaging with agonistic democratic theory that is explicitly concerned to attend to the exclusions and violence inherent in the promulgation of universal and abstract moral principles.

In this chapter I first engage with the work of William Connolly to develop a situationist and pluralist political ethics of human rights. Further, I argue that Connolly's work offers key insights for understanding the nature of political community and the terms of legitimate authority in our contemporary world, which moves beyond both the nationalist and cosmopolitan visions of democracy. I conclude by offering an initial reconstruction of human rights as a democratising ethos that invokes "humanity" as an ambiguous political identity that enables contestations over the terms of legitimate political authority.

In this brief section, I summarise the account of human rights that emerges from the reconsideration carried out in previous chapters. I then set up the importance of the next two chapters for further developing this account of human rights – emphasising the focus it places on the contestability of humanity as a political identity and the place of rights claims in contests over the terms of legitimate political authority.

Chapter 6 - Ambiguous humanity: revisiting the Universal Declaration of Human Rights   Page 206

In this chapter I examine the drafting of the Universal Declaration of Human Rights. My analysis counters conventional narratives of consensus and imposition that characterise the development of the UN human rights regime. The central argument is intended to demonstrate that the account of human rights as a democratising political ethos developed thus far is plausible. In addition, it seeks to identify elements of a more ambiguous and challenging human rights ethos in the founding text of contemporary human rights.

Chapter 7 - The practice of human rights: reconstructing the political spaces of rights   Page 243

In this chapter I suggest the ways in which reconstructing human rights expands our notion of what is included in human rights practice. This connects human rights to social movements seeking fundamental change in the terms of legitimate political authority and places human rights in a wider global context of democratic contestation. I suggest that human rights are best seen as a political ethos that can enable the ongoing contestation over the nature of political community and the terms of political legitimacy. With this expanded account of human rights in mind, I then offer a final defence of the democratising political ethos articulated throughout the work as both a critique of contemporary human rights and an endorsement of the reconstructed account offered here.

Conclusion - The measure of reconstruction   Page 271

In the conclusion I consider broader implications of the pragmatic and pluralist account of political ethics developed in the work. This perspective is distinguished from existing accounts and furthered by suggesting future avenues of research that are enabled by this perspective.

Introduction

Reconstructing Human Rights

'Now architect, now archaeologist, now a man whose hand is in the past.
Somebody is made to face the changes; somebody is built to last.
What do you know, still living so young?
Tomorrow is no burden; time can be overcome.'

-The Constantines, *Time Can Be Overcome*

I. Beginnings

Beginnings are difficult. Whether it is the first line of a treatise or the first action taken by a social movement, creativity requires sensitivity to the world that surrounds us, and the boldness to move beyond that starting point. It requires us to be both experienced and earnest. And beginnings matter. Whether it is our fundamental philosophical beliefs or the political commitments we carry forward, our starting point delimits the immediate horizon of our ambition – such that the problems we face, the challenges we overcome, the point in the distance we move towards, and the manner in which we travel are determined both by our context and our character. These basic premises are as true for the academic as they are for anyone else engaged in a creative and critical project.

In this work I seek to reconstruct human rights as an ethical and political ideal. The motivation for this work comes out of dissatisfaction with the moral and political thinking generally mobilised to defend human rights, as well as scepticism about the use of human rights to justify the actions of powerful actors in world politics. This dissatisfaction, however, does not result in a complete rejection of human rights as an ideal or a political project. Nonetheless, the standing indictment of human rights is extensive and serious. The most basic critique is that it repackages and reaffirms an ethics and politics of exclusion and superiority[1] – on this reading human rights are a contemporary expression of a tradition of Western universalism that served to justify and enable an imperial politics with moral principles.[2] In its modern form, critics argue, human rights imposes an essentialised conception of humanity upon the world

---

[1] Makau W. Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia, PA: University of Pennsylvania Press, 2002).

[2] Anthony Pagden, "Human Rights, Natural Rights, and Europe's Imperial Legacy," *Political Theory*, Volume, 31, Number 2 (April 2003), 171-199.

at large,[3] while justifying the dominance and exploitative actions of western liberal powers.[4] This is a profound and multi-dimensional critique, which is addressed throughout the work that follows. While I share many of the doubts and damnations that the harshest critics of human rights express, the fundamental question I want to answer is: what can human rights become? I am motivated to ask this question because many of the values that underlie the human rights project – particularly those of moral equality, political participation, and social recognition – are of great importance, even as their affirmation in conventional theories of rights is problematic, they point to real goods that we desire and fight for. Further, human rights have a central place in world politics; they are one of the primary ways that we understand ethical relations in a global context, therefore, as human rights continue to be used by groups and individuals struggling to improve their lives, it is important to understand the limits and possibilities of human rights as a complex political practice. The question of what human rights might become requires both understanding what human rights have been, in their ambiguity and contestability, and what sort of political transformations they might enable as a reconstructed political ethos.

This is a speculative question and requires some qualification. The method of approach in this work is not the one we usually see in philosophical or social scientific work on human rights. I do not begin with a defence of foundational premises; the fundamental question is not: what are human rights? Nor do I set out to study the existing world of human rights enforcement and institutions; the fundamental question is not: are human rights instruments effective in altering the behaviour of actors in world politics? I begin from the premise that human rights exist – as an ethical ideal, a set of political institutions and varied social practices. No amount of philosophical critique will ensure their continued existence or result in their disappearance. Also, no amount of empirical inquiry into existing human rights can

---

[3] Critics argue that the image of human experience that is imposed upon humanity is essentially that of white men. See, Catharine A. Mackinnon, *Are Women Human? And Other International Dialogues* (Cambridge, MA: Harvard University Press, 2006); Brooke A. Ackerly, *Universal Human Rights in a World of Difference* (Cambridge: Cambridge University Press, 2008); and Sonia Tascón and Jim Ife, "Human Rights and Critical Whiteness: Whose Humanity?" *The International Journal of Human Rights*, Volume 12, Number 3 (2008), 307-327.

[4] Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Abingdon: Routledge, 2007); Tony Evans, "International Human Rights Law as Power/Knowledge," *Human Rights Quarterly*, Volume 27, Number 3 (2005), 1046-1068; and Slavoj Žižek, "Against Human Rights," *New Left Review,* Volume 34 (July – August 2005), accessed 3 February 2009, http://www.newleftreview.org/?view=2573.

reveal their value in world politics. Both conventional endeavours are important, and throughout I depend upon such work, but they do not focus on the critical questions of how we evaluate the consequences of human rights and what potential they have to continue to influence and transform world politics. The language and method of reconstruction I deploy are drawn from the work of John Dewey and his view of the purpose of ethical inquiry.

> A fact known does not operate the same as a fact unperceived. When it is known it comes into contact with the flame of desire and the cold bath of antipathy. Knowledge of the conditions that breed incapacity may fit into some desire to maintain others in that state while averting it for one's self. Or it may fall in with a character which finds itself blocked by such facts, and therefore strives to use knowledge of causes to make a change in effects. Morality begins at this point of use of knowledge of natural law, a use varying with the active system of dispositions and desires. Intelligent action is not concerned with the bare consequences of the thing known, but with consequences to be brought into existence by action conditioned on that knowledge.[5]

Not only does a Deweyan method of reconstruction suggest that social inquiry should not stop at facts alone, it is also an active ethical inquiry into existing conditions and the possibility of further action to change the conditions of our experience.

So, while this is a work on human rights, it is also about how we justify human rights, why we find them necessary, and, more broadly, about how we approach political ethics in world politics. Along with these wider issues of how we conduct ethical inquiry, the reconstruction carried out raises key questions of political theory regarding the nature of authority and community in world politics. Human rights, I argue, are a central political and ethical ideal in our contemporary world, and an inquiry into how they function in world politics reveals problematic aspects of human rights as an ideal and their place in political practice. Reconstructing this ideal requires addressing deeply held presumptions about the nature of moral principles and their relationship to the legitimation of authority in world politics. The first part of the work is dedicated to this task. First, I critique the dominant approaches to global ethics, which share a conception of morality as providing certain and absolute principles that, especially in the case of human rights, determine the requirements of

---

[5] John Dewey, *Human Nature and Conduct: An Introduction to Social Psychology* (Amherst, NY: Prometheus Books, 2002), 299.

legitimate political authority. Second, I examine two dominant accounts of the place of human rights in a just political order and critique their dependence upon idealised and static notions of political community and legitimate authority. The second part of the work reconstructs these key relationships – between ethics and politics, and the place of the rights-holding individual and the political community in world politics – in alternative ethical and political terms, which are what I term democratising and which emphasise plurality and contingency in political ethics.

Throughout, I use the terms global ethics and world politics, which are chosen with some care. The inquiry here contributes to the study of politics in specific ways. First, I am concerned with the ethical dimensions of politics, which is more than the attempt to determine normative principles that should guide political action,[6] and includes understanding how we make ethical judgments, the role that ethical values and moral principles have in politics, and how political ethics are developed. The sphere of political ethics that I am concerned with, however, is explicitly global,[7] which is distinguished most simply as the sphere of social life that involves political relationships that exceed the conventional social spheres marked out by the domestic state and the inter-state system. More refined distinctions, I fear, are only possible as the inquiry progresses, but the use of the term global ethics is meant to distinguish the focus here from a personal, domestic or strictly international ethics.[8]

Second, I am concerned to investigate the place of ethical values in world politics, or, the ways in which ethical ideals structure our understanding of legitimate authority, political community and the subjects that have rights and obligations in world politics. I use the term world politics as a way to distinguish the more

---

[6] Daniel McDermott, "Analytical political philosophy," in *Political Theory: Methods and Approaches*, eds. David Leopold and Marc Stears (Oxford: Oxford University Press, 2009), 11-28. While McDermott's contribution quite starkly delimits the boundaries of normative political theory, the book as a whole raises important issues about the role of political theory as a form of evaluative inquiry.

[7] A basic but clear discussion of the distinctiveness and ambiguity of global ethics can be found in Kimberly Hutchings, *Global Ethics: An Introduction* (Cambridge: Polity, 2010), 1-7.

[8] All of these terms are contested in various ways and I would not want to suggest that personal or "private" ethical matters cannot have a global dimension, nor that states and the inter-state system are not key actors and institutions in a global ethics. What I want to emphasise is that the work here does not take these distinctions as given or unproblematic and for that reason the ambiguity of "global ethics" is desirable.

ambiguous object of inquiry here from international or global politics.[9] The first distinction pushes against the notion that we always and already know that the political structures and actors of concern are states, state-officials and their relationships. While the second distinction, between world and global politics, is meant to avoid the presumption that international politics is being transformed into a global (and therefore more consolidated) politics. What I want to preserve is the openness in the idea of world politics, which points beyond a politics of states, and their agents and institutions, without assuming a world of convergence toward increasing global governance, required by an intensifying and expanding process of globalisation.

II. A Quest for Certainty: Rights, Authority and Community

In his work *The Quest for Certainty*, John Dewey attacked a central presumption of moral philosophy, which he intended to unseat, which was the presumption that moral authority finds its justification in principles removed from contestation and change, made secure and near absolute by the techniques of moral theorising.

> If one stops to consider the matter, is there not something strange in the fact that men should consider loyalty to "laws", principles, standards, ideals to be an inherent virtue, accounted unto them for righteousness? It is as if they were making up for some secret sense of weakness by rigidity and intensity of insistent attachment. A moral law, like a law in physics, is not something to swear by and stick to at all hazards; it is a formula of the way to respond when specified conditions present themselves. Its soundness and pertinence are tested by what happens when it is acted upon. Its claim or authority rests finally upon the imperativeness of the situation that has to be dealt with, not upon its own intrinsic nature – as any tool achieves dignity in the measure of the needs served by it.[10]

Chapter 1 pursues this line of critique against contemporary philosophical justifications of human rights. The first claim is that theoretical accounts of human rights are engaged in this quest for certainty when they seek to justify universal moral principles, expressed as individual rights, so that they are rendered incontestable and

---

[9] For a further discussion of how "world politics" functions as a looser and more encompassing term see Kimberly Hutchings, *Time and World Politics: Thinking the Present* (Manchester: Manchester University Press, 2008), 9-10.
[10] John Dewey, *The Quest for Certainty* (London: George Allen & Unwin, 1930), 264-265.

absolute, rationally acceptable and necessarily applicable to all humanity. My contention is that this quest is not only impossible but also undesirable. Yet, the quest for certain moral principles continues with great fervour in the literature on human rights and suggesting an alternative ethical theory for thinking about those rights is difficult. A large part of the difficulty is that human rights play an important role in justifying contemporary political theories, whether communitarian/nationalist or cosmopolitan in character.

The central claim in chapter 2 is that human rights are fundamental to contemporary accounts of legitimate political authority and community. In contemporary human rights thinking, the individual rights holder is thrust into the centre of legitimate sovereignty, as power must serve and protect the fundamental moral rights of the individual member of the political community. This vision of politics, however, is built upon idealisations of the political subject and the political community, which are actually contingent identities and formations, and thus are always at risk of being undermined by plurality or undone by contingency. This critique is developed, in part, from the work of Bonnie Honig, who argues for an understanding of 'rights and law as part of political contest rather than as the instruments of its closure,' and 'that attempts to shut down the agon perpetually fail, that the best (or worst) they do is to displace politics onto other sites and topics, where the struggle of identity and difference, resistance and closure is then repeated.'[11] Like Dewey, Honig provides a starting point for critiquing contemporary accounts of human rights as a cornerstone of contemporary thinking about legitimate political order.

Building on these critiques, the global dimension of human right as universal moral claims and their role in justifying visions of world political order are considered at length. The third claim that is developed in the first two chapters of the thesis is that this quest for certainty of moral principles and political ideals intensifies when we are addressing ethical questions of global scope and authority in world politics. In part this is a response to the diversity and pluralism we find between individuals and communities at the global level, which increases the anxiety at the root of our desire

---

[11] Bonnie Honig, *Political Theory and the Displacement of Politics* (London: Cornell University Press, 1993), 15-16.

for certainty. It is also that world politics is generally analysed in light of two opposed but highly idealised frames; on one hand the nation is the authoritative political community, the independence and sanctity of which provides legitimacy, while on the other, there is presumed to be a universal source of authority, which calls for transformations of world politics, whether towards federations of legitimate states or cosmopolitan institutions of global order.[12] The conclusion of this inquiry into the nature of human rights is that they necessarily presuppose absolute moral principles so far as they are intended to legitimate idealised visions of world politics. This is the case whether we conceive of the human rights holder as a minimal or a substantive political subject, and whether the ideal political community, justified through its protection of human rights, is exclusive and particular, or maximally inclusive and cosmopolitan. Moving beyond this understanding of rights, then, requires both an alternative approach to global ethics that can embrace rather than seek to overcome plurality and contingency, as well as a different understanding of world politics, one not dependent upon idealised political subjects to account for legitimate authority and which does not seek to eliminate contestation of those ideals.

III. Rights as a Democratising Ethos and the Politics of Humanity

Moving from critique to reconstruction, in the second half of the work I engage with the work of a series of thinkers to develop the idea of human rights as a democratising ethos. To begin with, I look at Isaiah Berlin's work on value-pluralism, the basic premise of which is that the values that give content to our moral principles and political practices are plural and incommensurable, rather than singular or ordinal. This account of values contrasts with dominant trends in ethical theory that seek to place some central value in a privileged position when defending human rights – such that human rights protect our autonomy[13] or guarantee our basic needs for sustenance

---

[12] The framing of debates in these terms, between communitarianism and cosmopolitanism, owes much to Chris Brown; see Chris Brown, *International Relations Theory: New Normative Approaches* (Oxford: Columbia University Press, 1992). While I do not use this framing in the work done here, I do build upon work that analyses *why* these dichotomies arise rather than trying to adjudicate between them, in this regard the work of Kimberly Hutchings and Molly Cochran provide a critical starting point. See Kimberly Hutchings, *International Political Theory: Rethinking Ethics in a Global Era* (London: SAGE, 1999) and Molly Cochran, *Normative Theory and International Relations: A Pragmatic Approach* (Cambridge: Cambridge University Press, 1999).
[13] For a contemporary example of this approach to justifying human rights, see James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008).

and security.[14] Further still, Berlin's account of pluralism undermines rationalist attempts to guarantee value through a privileged procedure or form of insight, suggesting that affirming the central importance of any particular value is a political act that involves a form of existential commitment.

While elements of this pluralist sensibility are shared by many contemporary thinkers – including liberal theorist like John Rawls who try to overcome the reality of diversity[15] as well as postmodern thinkers like Jacques Derrida who affirm difference and contestability[16] – I argue that Berlin's work can be developed in a unique way by focusing on its historical and psychological bases. The pluralism I want to develop from Berlin's work, which I term a deep pluralism, denies privilege to any particular ethical value but maintains that we can still distinguish between what is and is not valuable. Yet, the objectivity that values may have does not allow us to authoritatively or finally settle moral disputes – such as what is it about human beings that human rights should protect – instead they provide a basis for understanding ethical commitments and judgments across the differences that divide human beings. This account of the deep pluralism of values provides a different starting point for thinking about human rights and in fact reveals the ambiguity inherent in an appeal to humanity as a singular and determinant moral identity. Where Berlin's account, however, falls short is in offering an account of ethical judgment, a sense of how we make our ethical choices and how those choices play out in our social practices, such as our practices of declaring, fighting for, institutionalising and protecting human rights.

In further reconstructing the ethical basis of human rights I turn to the work of John Dewey, whose ethical theory and account of democracy as a form of social intelligence provide central supports to the reconstruction of human rights I defend. Dewey shared Berlin's scepticism of moralities of certainty, but he provided a more developed account of ethical judgment under conditions of uncertainty and pluralism. Adding to the idea of deep pluralism, Dewey's work suggest that we need to

---

[14] The most famous example of this justification is provided in Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, NJ: Princeton University Press, 1996).
[15] John Rawls, *Political Liberalism* (New York, NY: Columbia University Press, 1993).
[16] Jacques Derrida, *Specters of Marx: The State of the Debt, the Work of Mourning and the New International*, trans. Peggy Kamuf (Abingdon: Routledge, 1994).

understand the social and psychological function of ethics, importantly including the way that ideals function as guides to future action and the way in which rights are social customs that institutionalise political relationships based on accepted ethical claims. This analysis, however, is dynamic and not static. Dewey did not provide a defence of any particular ideal, instead affirming their plurality, nor did he try to articulate the correct set of rights required for a just society, in place of this quest for certainty he pursued the reconstruction of practical reason into what he called critical intelligence.[17]

Dewey's ethics, which I characterise as situationist, begin with the idea that ethical judgments are required by problematic experiences, moments when our customary and habitual ways of acting fail us, when the correctness of our values are in doubt. The important ethical work is done, then, not in abstractions that guarantee certainty, but in the specific situation where judgments and action are required. This account of practical reason relocates the source of ethical authority from the universal and abstract to the specific and practical, resulting in a view of ethics as an always-ongoing process of judgment and action, what Dewey described as the critical application of social intelligence. This is important for thinking about human rights and their place in world politics because the central ideals are opened up as sites of contestation rather than closed down as sites of authority. This reveals that basing a human rights claim on the moral significance of our common human identity not only affirms some particular aspects of what "being human" can mean, but it also responds to a particular situation in which an appeal to a universal and ambiguous status, like humanity, importantly dislocates established political ideals. So, along with opening up a politics of humanity, a pluralist and situationist ethics also reveals that human rights open up, rather than close down, a contest over the basis of legitimate political authority. The basis of legitimate authority is exposed to contestation through human rights because they are rights claims that appeal to a non-exclusive political identity (the human) that anyone can take up and undermine any particular institutionalisation

---

[17] This reorientation in ethics is similar to that found in virtue ethics, particularly as a critique of consequentialist and deontological moral theory, but differs in its positive articulation, which focuses on reforming institutions and habits through a future oriented experimentalism. For a collection of key writing on virtue ethics, see Roger Crisp and Michael Slote, eds., *Virtue Ethics* (Oxford: Oxford University Press, 1997).

of the authoritative political community.[18] This function of human rights, I argue, is democratising because it enables fundamental challenges to idealised conceptions of world politics, including nationalist/communitarian accounts based on the enclosed moral community and cosmopolitan accounts based on a universal individual.

The final thinker I engage with in attempting to reconstruct human rights is William Connolly. I turn to Connolly's work to provide a fuller and more contemporary account of democratic politics. The two key points that come out of an engagement with Connolly are, first, a clearer account of what human rights as a democratising ethos entails, and, second, a reconsideration of the political consequences of pursuing this reconstruction of human rights. In the first case, the democratising ethos of human rights responds to a central concern in Connolly's work to reveal the violence inherent in attempts to eliminate ambiguity and uncertainty from political life. This concern with the disciplinary forces that construct the normal individual or the liberal nation-state as normalising ideas, including the construction of reasonable or limited forms of diversity, runs counter to the inherent ambiguity of humanity as a moral and political identity.[19] Connolly's pluralising ethos, in contrast, responds to this sort of ambiguity with a call to support the virtue of agonistic respect, which makes room for difference without converting it into otherness. Given the power of human rights, as a practical politics, to impose a conception of humanity upon diverse groups, this is a vital reconstruction, one that reorients human rights away from normalisation of identity and toward its ongoing contestation. Along with respect, a democratising account of human rights also requires an awareness of the exclusions generated by the values and identities we affirm in the name of humanity and which are implemented on a world political scale. These virtues are argued to be important basic commitments for the account of human rights defended here.

---

[18] In a similar vein, Bonnie Honig highlights the importance to democracy of founding figures that exist outside of the established community and forms of identity – while the logic I argue for in relation to the productive ambiguity of humanity as a political identity is not tied to foreignness, it does respond to the same difficulty created by the presumed closure of political community. See Bonnie Honig, *Democracy and the Foreigner* (Princeton, NJ: Princeton University Press, 2003).

[19] This project, of bringing agonism to humanism, is in tension with more critical perspectives that conceive of themselves as anti-humanist, finding the appeal to humanity too fully compromised to be worth reclaiming. It is noteworthy that this tension is potentially more productive than an engagement between agonistic humanism and conventional universal humanism, or between anti-humanism and universal humanism – Connolly in particular has developed this tension through his engagements with Friedrich Nietzsche and Michel Foucault. For Foucault's statement of anti-humanism, see Michel Foucault, *The Order of Things: Archaeology of the Human Sciences* (London: Routledge, 2002).

The second contribution I take from Connolly's work is his recent attempts to rethink the basis for legitimate authority. He is critical of both national and cosmopolitan accounts of sovereign authority and defends a form of democracy that does not depend upon an ideal of national communities or a universal individual – instead focusing on the contingent nature of social and political relationships which enable new claims to authority that exceed the nation-state and visions of a singular cosmopolis. In relation to human rights, this implies that we should not hope for or expect a single human rights regime, leading to a more comprehensive global system of cosmopolitan governance, nor should the democratic nation-state be granted exclusive privilege as a sight of authority. A democratising account of human rights would be institutionalised in plural ways, as well as being subject to ongoing contestation, resulting in a diverse human rights public or a human rights assemblage. This idea is further developed in the chapters that follow.

IV. Human Rights: Ethos, History and Practice

The reconstruction of human rights developed in the thesis does not issue in a definitive account of the universal values that justify those rights, nor does it result in a comprehensive list of rights that should be institutionalised at the domestic or international level. Instead, what is developed is a way of thinking about human rights, which are analysed as claims upon fundamental political relationships, defining both the individual and collective political subject, made by appealing to a substantively ambiguous but formally inclusive human identity. Along with this analysis, I defend the idea of human rights as a democratising ethos that calls for respect for difference and an awareness of exclusion and vulnerability, without sacrificing a commitment to the substantive goals of democratic inclusion and respect for individuals. Even this ethos, however, is only a general sensibility and the implication of the reconstruction pursued is that there will be many accounts of human rights that are affirmed. For this reason, human rights will not definitively support any particular vision of legitimacy in world politics, they grant no final or special privilege to nationalist or cosmopolitan orders, which leads to the suggestion that we think of human rights as a plural assemblage rather than a regime or singular movement.

This account of rights is further developed by looking to the history of human rights, with particular attention being paid to the drafting of the Universal Declaration of Human Rights (UDHR). This historical study is intended both to clarify the analysis of rights set out here by attending to the plurality and contestation at what is generally taken to be the founding moment for contemporary human rights and to suggest that critical accounts of human rights have some historical president. This critical position is furthered in the final chapter, where I contrast an account of human rights focused on the use of rights by social movements seeking to democratise political authority and subvert existing forms of community with a those that seek to consolidate authority through human rights that privilege either the international system or a cosmopolitan vision. These are very different accounts of what human rights mean in practice, as one is an account of rights as tools to challenge and reconstruct social life, while the other treats them as values and principles that justify authoritative institutions of governance.

What is further clarified in the final chapter is the different levels of argumentation presented throughout the work: at the base of my reconstruction of human rights is an analysis of how humanity is mobilised as political identity to challenge or privilege particular political orders, in light of that analysis I argue that we should see human rights as a democratising ethos that is characterised by plurality and contestation, but broadly supportive of individuals and groups seeking to challenge existing power and institutions. More controversially, I make the case for an account of human rights that is radically democratic and concerned with transforming social structures in a fundamental way. These elements of the overall argument are related but do not build to a singular statement of human rights or call for an authoritative political transformation. The contribution of the work, I hope, is to provide a comprehensive critique of the place of human rights in world politics, an alternative pluralist and pragmatic approach to global ethics and a reconstruction of human rights that focuses on the ongoing contestation over the meaning of humanity and legitimate forms of political order.

Chapter 1
Human rights and the ethics of uncertainty

'The imperative, like everything absolute, is sterile. Till men give up the search for a general formula of progress they will not know where to look to find it.'
<div align="right">-John Dewey, Human Nature and Conduct</div>

I. Human Rights and the Morality of Certainty

For supporters of human rights, my task must seem unnecessary – if not pernicious. Many who defend human rights see the job of justifying or grounding these rights as either accomplished or unnecessary. At the same time opponents of human rights see the case against human rights as already made and the work of trying to reconstruct them as fruitless.

In answer to both charges, I begin from the assumption that human rights are a fact of the contemporary world and an important feature of world politics. This does not imply that the moral priority of human rights is undeniable. What cannot be denied is that we live in a world where human rights are an idea with real effect, which has been institutionalised at various levels, from workplace policies to international institutions. Given this reality, it is necessary to understand human rights as moral principles. Whether we reject, accept or remain agnostic toward human rights, we must understand them in order evaluate them intelligently. This understanding is all the more important, as human rights have become a fundamental element of global institutions and discourses. Few areas of our social lives fail to generate human rights claims – corporate responsibility, the conduct of war, the protection of the environment, economic development policies, humanitarian intervention, domestic violence, reproductive rights, human trafficking and migration have all been framed in terms of human rights. At the same time, human rights have been used as justification for coercive political actions by many states and have a central place in most international institutions; the use of human rights in the legitimation of military interventions and the emergence of a functioning International Criminal Court (ICC), for example, attest to the effective political power of human rights.

The further reason for engaging with human rights requires more explanation. If one asks ethical questions in the context of world politics, then one is confronted with

questions of moral universalism. Are moral principles universal in scope? Do they apply to all human beings or do social and political borders mediate our obligations? Can (and must) these principles be universally justifiable? Perhaps more importantly, what does a universal justification entail? Answering these questions, as well as examining how we understand both the questions and the answers we find, is central to what it means to evaluate world politics and to suggest principles to guide those politics. Human rights have been the lens through which these questions have been addressed most often and influentially; they are, therefore, central to the study of global ethics.

Again strong opinions exist on both sides, as some writers claim that maintaining a comprehensive and coherent universal perspective is vital. Fred Halliday claimed that 'if we ditch rights we're lost. Rights are the last grand narrative and if we get into the netherworld of relativism and identity politics then we are sunk.'[20] Just as categorically, opponents of human rights universalism deny that grand narratives are possible, and claim that moral judgement is relative to one's particular perspective. Arguing in favour of an anti-essentialist reading of "man" as a social construct, Slavoj Žižek passes judgment on human rights, saying they 'are, as such, a false ideological universality, which masks and legitimises a concrete politics of Western imperialism, military interventions and neo-colonialism.'[21] Given the central place of human rights in understanding moral universalism in global ethics, it seems an idea worth investigating at length if one hopes to understand or develop new ideas in the field.

It is important to ask why justifying human rights has been seen as vital, while – as the sheer number of rival alternatives attests – also being extremely difficult to achieve. Alternatively seen as a challenge and a necessary compliment to the norm of Westphalian sovereignty, human rights share prominence with sovereignty as a fundamental principle of legitimate order in world politics.[22] The optimistic view is

---

[20] Marysia Zalewski et al "Roundtable Discussion: Reflections on the Past, Prospects for the Future in Gender and International Relations," *Millennium Journal of International Studies*, Volume 37, Number 1 (2008), 171.

[21] Slavoj Žižek, "Against Human Rights."

[22] There are a number of accounts of how sovereignty and human rights came to be seen as complementary. See John Charvet and Elisa Kaczynska-Nay, *The Liberal Project and Human Rights: The Theory and Practice of a New World Order* (Cambridge: Cambridge University Press, 2008), 42-59; also Christian Reus-Smit, "Human rights and the social construction of sovereignty," *Review of*

that there is no necessary conflict between these two principles, which relies on the premise that legitimate state power can be held accountable to moral principle.[23] In which case, human rights are vital to the moral acceptability of state power. Yet, recent history is a depressing testament to the inability of human rights institutions to constrain the power of states.[24] Stronger critics of the state would suggest that the protection of human rights requires a more fundamental institutional transformation, undermining state sovereignty in a more radical way.[25] In this case, the protection of human rights provides the justification for, and the goal of, a global political transformation. In either case – limiting the power of the sovereign state or the transformation of the inter-state system – the moral principles that justify such work must be of great and absolute importance, or so the conventional framing suggests. Yet, while the cosmopolitan activist or committed politician may use the presumed moral importance of human rights to motivate institutional change or political reform, a more troubling doubt about the universal principles at the heart of human rights lingers.

Critics of human rights have raised a number of fundamental objections to their suitability as universal moral principles. As was noted above, Žižek accuses human rights of foisting a liberal capitalist ideology onto the rest of the world in order to justify a coercive and oppressive politics. Further critiques include the suggestion that human rights reflect the experience of men, missing the exclusions and distinctive

---

International Studies, Volume 27 (2001), 519-38; and Mervyn Frost, *Ethics in International Relations: A Constitutive Theory of Individuality* (Cambridge: Cambridge University Press, 1996), 137-159.

[23] Tim Dunne and Nicholas J. Wheeler, "Introduction: human rights and the fifty years' crisis," in *Human Rights in Global Politics*, eds. Tim Dunne and Nicholas J. Wheeler (Cambridge: Cambridge University Press, 1999), 1.

[24] The effectiveness of international human rights law to constrain states or improve respect for human has been put into question by empirical studies; see Oona Hathaway, "Do Human Rights Treaties Make a Difference?" *Yale Law Journal*, Volume 111, Number 6 (April 2002), 1935-2042; and Emilie M. Hafner-Burton and Kiyoteru Tsutsui, "Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most," *Journal of Peace Research*, Volume 44, Number 4 (2007), 407-425. For a response to these findings and a broader discussion of recent empirical work on human rights see Ryan Goodman and Derek Jinks, "Measuring the Effects of Human Rights Treaties," *European Journal of International Law*, Volume 14, Number 1 (2003), 171-183; and Emilie M. Hafner-Burton and James Ron, "Seeing Double: Human Rights Impact through Qualitative and Quantitative Eyes," *World Politics*, Volume 61, Number 2 (April 2009), 360-401.

[25] The work of thinkers liked David Held and Daniele Archibugi traces out both why such a transformation is necessary and what it might look like. For recent articulations of their position see David Held, *Cosmopolitanism: Ideals, Realities and Deficits* (Cambridge: Polity, 2010), and Daniele Archibugi, *The Global Commonwealth of Citizens: Toward Cosmopolitan Democracy* (Princeton, NJ: Princeton University Press, 2008).

forms of violence faced by women;[26] and that they are based in a Western understanding of morality and society that presupposes its own superiority and the necessity of rescuing savage others from their own backwardness.[27] Not only does this counter narrative question the universal foundations of rights, it also suggests that human rights enable powerful states engaged in destructive but "ethical" political activity, which is not limited to declared wars and military interventions, but includes more pervasive and less dramatic forms of control and interference.[28] These critiques undermine the political work human rights are expected to do, leading to profound anxiety among supporters of human rights, who struggle to redeem the moral universality of human rights. Given the work human rights are expected to perform, the necessity of defending their status as important and absolute moral principles is clear. In what follows I want to trace out how the quest for moral certainty has been undertaken in attempts to justify human rights.

Chris Brown suggests 'that some idea of natural law must underlie all genuinely universal approaches to human rights.'[29] Using this as a starting point, I want to examine influential attempts to fill in this 'some idea of natural law,' giving specific attention to why the question of human rights and moral universalism is phrased in this way. The idea of natural law, in its most basic form, presumes that there is an objective order to the world, whether metaphysical or natural, that can justify moral principles applicable to all of humanity. And while many defenders of human rights loudly proclaim that their theories only depend upon reasonable and acceptable presumptions, this is a proclamation that I aim to undermine by exposing the quest for certainty inherent in conventional human rights theories. Accomplishing this, however, will require altering Brown's charge, as the commitment to natural law as a specific tradition of political thinking is not as pervasive as he suggests. Natural law is only one form of justification that has been used to support human rights. Brown, however, is right about the logic at work in universal justifications of human right, as

---

[26] Catharine MacKinnon, "Crimes of War, Crimes of Peace," in *On Human Rights: The Oxford Amnesty Lectures 1993*, eds. Stephen Shute and Susan Hurley, (New York, NY: Basic Books, 1994), 83-110.

[27] Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights," *Harvard International Law Journal*, Volume 42, Number 1 (Winter 2001), 201-245.

[28] Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism*, 250-257;and Mutua, *Human Rights: A Political and Cultural Critique*, 44-47.

[29] Chris Brown, "Universal human rights: a critique" in *Human Rights in Global Politics*, 107.

they depend upon an appeal to some universally shared feature of human experience that justifies the limitations placed upon our actions, both individually and socially. Natural law thinking depends upon the identification of some privileged feature of humanity, inherent to human beings and imbued with moral significance. The other major line of universal rights thinking is rationalist in approach, looking to the a priori nature of reason to justify universal moral principles.

The demand for moral principles that legitimate and restrain politics is basic to political theory, but in the context of human rights this is a demand for universal principles of the widest generality. This need for generality brings the problem of universalism into stark relief – finding a universal moral principle for a social world that can seem incomprehensible in its diversity, if possible at all, requires profound sensitivity to difference in tandem with strong principles that apply to everyone. If some universal and essential human feature is lacking, it seems that there is little that can justify the system of human rights that has been built. Equal liberty, the rights bearing individual, the modern state and the legalised social relations built into the notion of liberal rights, which are generally taken to form the conceptual and historical foundation of human rights, are all called into question. Thus, the contemporary imperative is to find or construct a universal justification for human rights that is appropriately sensitive to global difference but preserves the dominant liberal political order.

If my framing of the issue is correct, then it is striking that the dilemma presented by human rights seems to also be the central dilemma of modern ethical and political theory, which is to justify moral principle in a social world where common custom and shared religion are no longer the basis for an account of the good, and in which the power of reason to replace conventional sources of authority is profoundly in doubt.[30] What has gone unexamined is why we need a universal morality – the necessity of moral universalism to human rights is clear enough, but one might be tempted to forget the whole enterprise and resign oneself to the diverse and fractured moral world that we live in. What are human rights intended for that is so important? Minimally, defenders of human rights claim that they set limits on the legitimate

---

[30] Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 2007). See also William E. Connolly, *Political Theory and Modernity* (Oxford: Basil Blackwell, 1988).

actions of states, which, for all the diversity of human cultures, are now the predominant political institutions that human beings live within.[31] Human rights mark off a space where the state cannot legitimately intrude into the lives of its citizens or interfere with other sovereign nations. Yet, this minimal conception goes beyond a *modus vivendi*, as it articulates substantive understandings of the individual, society and legitimate political power. This individualistic and legalistic account of state legitimacy must amount to more than historical contingency if it is to have moral content.[32] Even in a minimalist formulation, human rights depend upon a morality of certainty that grants legitimacy to a given social and political order, in this case a modern liberal order. This returns us to Halliday's claim; the stakes for human rights defenders are high, as they represent a set of baseline moral principles that should mediate the relationships between all human beings, the loss of which seems to threaten the very possibility of making the sorts of moral judgments necessary to act ethically in world politics.

This quest is pursued, however, on a terrain defined by a particular tradition of moral thought that prioritises moral duties that are prior to and divorced from specific circumstances.[33] Moral duty is expressed in universal moral principles applicable regardless of circumstance, which must find their justification in either an essential human nature or the demands of reason, as authoritative conventional justifications have been lost.[34] It is this construction of the modern dilemma that creates the threat of subjectivism and relativism, undermining the possibility of morality as such. The failure to provide an essential or rational foundation for morality must result in world of incommensurable and irrational preferences, in which final justification becomes impossible. This unpalatable conclusion explains the importance given to the idea of moral right, expressed as truth or the condition of truth, in opposition to the good, as the merely conventional or contingently valued. Jürgen Habermas defends universal

---

[31] Jack Donnelly explicitly defends human rights in these terms. See Jack Donnelly, "Human Rights: A New Standard of Civilization?" *International Affairs*, Volume 71, Number 1 (2002), 1-23; and "The Relative Universality of Human Rights," *Human Rights Quarterly* 29 (2007), 281-306.

[32] The lingering minimal universalism in such approaches can be seen by comparing John Rawls and John Gray – though Gray may be guilty of such lingering sentiment as well, the difference in degree illustrates the point. See John Rawls, *The Law of Peoples* (London and Cambridge, MA: Harvard University Press, 1999), and John Gray, *Two Faces of Liberalism* (New York, NY: The New Press, 2000).

[33] Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge, MA: Harvard University Press, 1985): 174-196.

[34] MacIntyre, *After Virtue*, 51-53.

principle in just these terms when he describes it as 'like a knife that makes razor-sharp cuts between evaluative statements and strictly normative ones, between the good and the just.'[35] To maintain this distinction, to keep separate the good and the just, is not only to establish an objective normative order but it is also to locate the ultimate source of moral authority in a space where it cannot be questioned, or can only questioned in the proper way.[36]

The project of establishing the basis for moral right finds distinct expressions in both the essentialist discourse of natural rights and of rationalist a priori rights.[37] In what follows I critique both traditions, but devote more space to the rationalist rights tradition as this line has been more influential in contemporary political theory and, as I will argue, offers a more sophisticated response to the problem of diversity in a post-conventional age. While the accounts of rights offered by these traditions differ, in the conclusion I suggest that the vision that emerges from each of them is one of human rights as a way of mediating between the merely political and the moral. Human rights are intended to mark out where difference is legitimate and where it must be constrained, where it cannot be tolerated. Human rights embody the moral law behind the positive, or merely conventional, law of any given society. Much of the difference in the concept of rights advocated by the theorists I examine is a result of how extensively morality determines the content of the legitimate law, but the basic logic is the same. It is this logic that I attempt to reconstruct in later chapters.

In the rest of this chapter, I substantiate this analysis of human rights by offering an extended critique of contemporary accounts of human rights. My critique of human rights begins with the natural rights tradition, particularly the work of James Griffin and Martha Nussbaum, and then moves to a longer engagement with rationalist theories, which moves from Immanuel Kant to Jürgen Habermas and then to John Rawls. Throughout, I focus on the way these approaches to human rights seek to pre-empt the political by privileging particular values and identities that are then excluded from further contestation. In addition, I point to the ways in which the model of human rights generated by these theories results in political prescriptions that are

---

[35] Jürgen Habermas, *Moral Consciousness and Communicative Action* (Cambridge: Polity, 1992), 104.
[36] Ackerly, *Universal Human Rights in a World of Difference*, 43-69.
[37] The separation between these approaches is not absolute, but the distinction is useful to analyse and critique dominant conceptions of human rights.

unjustifiably limited, that disable our political imagination. In the end, the point of fundamental disagreement is how to respond to the misfit between moral principle and the world, or to the various ways of being and plural values that challenge human rights norms as they are articulated by philosophers and in the institutions of world politics. Rather than trying only to constrain the political, as a realm in which values are contested and exposed to contingency, I suggest that we should rethink the understanding of morality that lies behind human rights in a way that places contestation and contingency at the centre of ethical theory.

A few final comments about my own perspective are necessary before getting to the body of the argument. This is certainly not the first critique of human rights that takes aim at the objectionable assumptions of morality and politics contained within the idea. My own perspective is influenced by many of these, but in particular I want to point to the idea of remainders and the politics of epistemology, which inform my critique. The idea of remainders refers to that which is excluded and devalued when moral principles defining political legitimacy are held to be universal rather than partial. Bernard Williams identified ethical remainders as the values that are ignored in the principled response to moral dilemmas, as a loss of the good that the right cannot properly acknowledge or mourn.[38] Bonnie Honig develops a related political notion of remainders, which highlights the values and identities that are marginalised in order to justify overly abstract conceptions of the just society, suggesting that these loses should be acknowledged and our politics open to ongoing agonistic challenge from different values and ways of being.[39] In both critique and eventual reconstruction, I try to take this concern for remainders seriously, remaining sensitive to what is lost when one moves from critique to positive articulation. The second critical element that I draw upon is the importance of acknowledging the politics of epistemology, well articulated in Brooke Ackerly's work on human rights.[40] In her work, she offers a powerful critique of the theorist's potential blindness when they take an uncritical stance toward their own experience and way of thinking, which compromises the universal ambitions of theories of human rights by limiting the

---

[38] Bernard Williams, *Problems of the Self* (Cambridge: Cambridge University Press, 1973), 172-83.
[39] Honig, *Political Theory and the Displacement of Politics*, 1-17.
[40] Ackerly, 70-90.

contest over values to those whose knowledge practices are presumed to be authoritative.

There are two further critical points that I press throughout this chapter, which reflect the primary contribution I hope to make to the discussion of human rights. A fundamental assumption of modernist moral theories is that moral principles should be complementary, that if there is not a single universal moral law, at the least the demands of morality will be coherent – the presumption Isaiah Berlin identifies as moral monism and which makes it difficult for conventional moral theory to fully acknowledge its own remainders.[41] In response to this assumption, I develop an account of deep pluralism, which suggests that moral values are many and at times incompatible. A second resource I employ is the anti-essentialist pragmatic philosophy of John Dewey, using his perspective in place of approaches to moral philosophy that seek to establish objective standards that are absolute and permanent, instead focusing on the practical role played by moral principles in guiding concrete experience.[42] These points are developed at length in chapters 3 and 4; for now it is only necessary to note that these ideas oppose fundamental assumptions in the type of moral and political theory examined in this chapter.

II. Human Rights and Moral Essentialism: Natural Rights and Well-Being

Griffin and Natural Rights

Historically, the idea of natural rights develops out of natural law thinking, which is part of a broader historical movement in which the human good as defined by the nature of God is replaced by a vision of the good based on reason and laws of nature. While the arguments that define and justify the "naturalness" of these rights changes, the conception of right remains remarkably similar. Natural rights are rights that are held by human beings because they are human beings; these rights are distinctly pre-social and pre-political, and further they entail claims not just on institutions, but also on other individuals.[43] There is certainly an important story to be told regarding the

---

[41] Isaiah Berlin, "The Pursuit of the Ideal," in *The Crooked Timber of Humanity,* ed. Henry Hardy (Princeton, NJ: Princeton University Press, 1990), 1-19.

[42] This basic point of Deweyan pragmatism is stated clearly in John Dewey, *Reconstruction in Philosophy* (Mineola, NY: Dover Publications, 2004), especially 92-123.

[43] Mark C. Murphy, "Natural law, common morality, and particularity," *The Globalization of Ethics,* eds. William M. Sullivan and Will Kymlicka (Cambridge: Cambridge University Press, 2007), 134-138.

development of natural rights from Christian notions of natural law to secular accounts of natural right, but my concern here is with the contemporary legacy of this idea.[44]

From the inception of debates about explicitly institutionalised human rights, the natural rights perspective has served as a check on the ambition of both legislators seeking to define human rights as only those rights granted by state authority and advocates enthusiastically identifying all worthwhile social goals with human rights. A dominant strain of philosophical work on human rights attempts to clarify (or discover) which legal human rights are truly universal moral rights.[45] James Griffin is a contemporary exemplar of this tradition, as he makes clear in his recent book where he suggests that has been no significant development in the basic idea of human rights since the seventeenth and eighteenth centuries, when the idea of natural rights was secularised.[46] In his work he critically examines the UDHR and other United Nations (UN) documents with the intention of showing that contemporary legal discourses of human rights lack justification, requiring some bases for establishing true rights from the merely desirable or praiseworthy.[47] In trying to develop a more philosophically sound argument for human rights, he begins with the concept of human dignity, as this vague idea is the lynch pin in human rights treaties that self-consciously avoid endorsing any particular ethical view.[48]

Griffin wants to give substance to the idea of dignity; he begins by asking, what is special about human beings that can ground human rights. His answer is agency, which he defines in terms of autonomy and liberty. The distinct importance of agency is that it is inherent to humanity and represents what is most distinctly human, and thus must be what we mean by human dignity.[49] Rights in turn make claims upon the actions of others, whether institutional or individual, to enable and protect agency,

---

[44] Pagden, "Human Rights, Natural Rights, and Europe's Imperial Legacy," 173-181.

[45] Charles Beitz, "What Human Rights Mean," *Daedalus*, Volume 132, Number 1 (Winter, 2003), 37.

[46] Griffin, *On Human Rights,* 13.

[47] Ibid., 32-33 and 191-209. See also, James Griffin, "Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights," *Proceedings of the Aristotelian Society*, Volume 101 (2000): 1-28.

[48] Griffin, "Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights," 6.

[49] Griffin, *On Human Rights*, 33-37.

and in this Griffin's account echoes Ronald Dworkin's defence of rights as trumps we play against others to limit what they can do to us.[50]

This defence of both human rights, based on an essentialist account of humanity, is intended to reconnect the human rights discourse with the Enlightenment tradition. In connecting his moral essentialism to the political function of rights as protections for our agency, Griffin defends a conception of human rights that includes social and economic rights, but without expanding the idea of human rights to cover all possible human goods. Some economic and social rights are justified because of the role they play in supporting agency. We need food, shelter and education to live a life in which liberty and autonomy have meaning – but despite expanding the notion of natural rights beyond its conventional association with civil and political rights that preserve negative liberty, a characteristic reductionism is still maintained. The moral claim of a natural right is derived from the essential human capacity for agency, whatever the particular circumstances that give determinate shape to that right. This defence takes little account of attempts to widen the notion of rights beyond a primary concern for liberty and autonomy, and, because of its unapologetic essentialism, provides a contemporary example of the moral logic of classical natural rights thinking.

In response to this exclusive focus on agency, John Tasioulas argues that Griffin misses the point on a number of important rights that are related to agency only in a secondary way. Is a human right against torture really based on the damage it does to autonomy as opposed to the pain it inflicts?[51] Similar questions can be asked about a right to education or economic subsistence, and in each case Griffin's relentless focus on agency seems to marginalise many other important and distinctly human goods.[52]

---

[50] Griffin, "Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights," 22-26. See also, Ronald Dworkin, "Rights as Trumps," in *Theories of Rights*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1984), 153-167. It is important to note that Griffin, however, partially rejects Dworkin's rights functionalism, which means for Griffin that rights may serve as trumps given our contemporary legal order, but this is a result of what he terms "practicalities" which determine how we best actualise the distinctive value of agency preserving human rights. See James Griffin, "Human Rights and the Autonomy of International Law," in *The Philosophy of International Law*, eds. Samantha Besson and John Tasioulas (Oxford: Oxford University Press, 2010), 345-346.

[51] John Tasioulas, "Human Rights, Universality and the Values of Personhood: Retracing Griffin's Steps," *European Journal of Philosophy*, Volume 10, Number 1 (2002), 93. See also, John Tasioulas, "Taking Rights out of Human Rights," *Ethics*, Volume 120, Number 4 (July 2010), 647-678.

[52] Tasioulas, "Human Rights, Universality and the Values of Personhood: Retracing Griffin's Steps," 88-94.

By suggesting that human rights are founded on a variety of human goods, none of which are necessarily primary in the way Griffin suggests, Tasioulas poses the question: why should we privilege autonomy and liberty over other goods? Confirming Tasioulas' argument for a plurality of human goods, Mark Murphy suggests that the natural law tradition acknowledges and can accommodate a core set of human goods that result in an objective and universal account of natural right, but do not require convergence among all de facto moral systems.[53] Yet, what this concession to the variety of ethical life retains is the privilege granted to some pre-social account of universal human goods, which remains problematic. Whether we base natural rights on a single value or a handful of human goods, we are suggesting that there is a common human essence that is not only shared, but exists prior to our social and political lives, which must be enacted through legal rights that serve as a barrier that protects what is most dear to us from the intrusive hands of others.[54]

This view of natural rights is questionable as a justification for moral and political duties, as it assumes that certain core values exert moral force on all people in the same way. It also depends upon the presumption that even if there are many human goods, these goods form a rational and knowable whole – which is to say that the commands of morality are accessible to our reason and do not fundamentally conflict – and if they appear to, then it is because of the limitations of particular women and men and not the possibility of moral knowledge. The essentialist argument depends upon unjustifiable presumptions, upon first principles that define humanity and moral duty, and in this way mimics a morality of faith.[55] While the metaphysical version of this view is unconvincing to most philosophers today, the felt need for secular replacements of the certainty lost to contemporary conditions of scepticism and diversity is great and the search for an escape from uncertainty is pursued with no small degree of intensity.

---

[53] Murphy, "Natural law, common morality, and particularity," 198.

[54] Tasioulas, "Taking Rights out of Human Rights", 655-658. Tasioulas highlights the way Griffin's own work skirts around the issue of defining moral rights, and their relation to human rights, while implicitly depending upon an account of individual moral rights defined by the values of personhood (or by a plurality of values, as Tasioulas suggests), which create duties and give human rights moral force.

[55] Richard Rorty, "Human Rights, Rationality, and Sentimentality," *Truth and Progress: Philosophical Papers, Volume 3* (Cambridge: Cambridge University Press, 1998), 167-185.

One could suggest that communal history and understandings underwrite the objective importance of values like autonomy and liberty, but when we try to define universal human rights this conceit simply cannot hold – either the full weight of human diversity overwhelms the notion of a common human nature that can provide distinct moral goods or we must insist that what reason tells us is valuable for one is valuable for all. Alasdair MacIntyre argues that trying to impose values developed in a particular cultural and historical context upon humanity defines the unanswerable question of modern morality.[56] Arguing that natural rights are a fiction, he describes how they emerged from a 'situation in which substitute artifacts for the concepts of an older and more traditional morality were required, substitutes that had to have a radically innovative character if they were to give even an appearance of performing their new social functions.'[57] The natural rights perspective highlights the reason for our concern with how to reasonably accommodate difference; the lack of belief in a common conception of the good leaves us struggling to rebuild an ordered moral world with only the all too human tool of critical reason at our disposal, a task that haunts both domestic and international political theory. Next I look to defences of human rights based on an alternative essentialism, one focused on human well-being as a minimal form of moral universalism.

Nussbaum and Human Flourishing

An alternative response to this problem of human diversity has been to articulate a conception of the good that is based in human well-being, which is logically similar to but also revises arguments for human rights based on an essential human nature.[58] Where this approach differs is that the idea of well-being is argued to be acceptably universal, as the focus is not on what is essentially valuable in human nature, but on the essential conditions for leading a fulfilling human life. I will focus on the work of Martha Nussbaum, whose fundamental project is to articulate and defend the necessary and universal goods that we need for the enjoyment of any flourishing life. An approach to human rights based on well-being must address the tension between

---

[56] MacIntyre, *After Virtue*, 68-78.

[57] Ibid., 70.

[58] An early and influential defence of human rights based on well-being comes from Henry Shue, who argued that basic needs for security and subsistence provide the necessary foundations for a basic set of human rights – namely the rights to life and minimal economic provision. Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, NJ: Princeton University Press, 1996): 13-34.

the universal and the particular. On one hand universalism can be purchased at too dear a price, if the morally relevant needs are those of basic survival, then almost any political order could be justified so long as murder and starvation were prohibited.[59] As a general problem, minimal accounts of well-being run the risk of evacuating rights of all moral content. On the other hand, where well-being is interpreted as entailing robust duties the opposite problem emerges. Once we conceive of well-being as more than bare survival then the debate over what particular account of well-being to privilege returns.[60] Determining which needs must be met, and to what level of satisfaction, in a just political order will require a more sophisticated account of well-being as a political concept. We find responses to these important questions in Martha Nussbaum's work on human capabilities, which I turn to now.

The goal of Nussbaum's moral theory is to develop a universal and substantive account of human well-being as flourishing, while also allowing that the way in which that flourishing finds expression will be diverse, claiming against sceptics of universalism that

> it is one thing to say that we need local knowledge to understand the problems women face, or to direct our attention to some aspect of human life that middle-class people tend to take for granted. It is quite another matter to claim that certain very general values, such as the dignity of the person, the integrity of the body, basic political rights and liberties, basic economic opportunities, and so forth, are not appropriate norms to be used in assessing women's lives in developing countries.[61]

The overriding moral end is to maximise flourishing, but flourishing takes many forms depending on the broad social context in which we find ourselves and on individual choices. The general account of human flourishing is based on what Nussbaum takes to be a consensus on the human capabilities necessary to any good life. Her account of human capabilities begins from identifying those things that people value as part of a worthwhile human life, and she then goes on to analyse the

---

[59] Charles R. Beitz and Robert E. Goodin, "Introduction: *Basic Rights* and Beyond," *Global Basic Rights*, eds. Charles R. Beitz and Robert E. Goodin (Oxford: Oxford University Press, 2009), 20-21. Also, Thomas Pogge, "Shue on Rights and Duties," *Global Justice*, 113-130.
[60] Beitz and Goodin, "Introduction: *Basic Rights* and Beyond," 23-25.
[61] Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000), 41.

social conditions necessary for the development of our faculties, which then enable us to choose how we further develop our capabilities.[62] It is the full development of our human faculties that is demanded by justice, as these provide the basis for the creative development of our capabilities, through our free choice and action, which is characteristic of a flourishing life.[63]

Her account of human capabilities is partly empirical, as Nussbaum says, 'it is an attempt to summarize empirical findings of a broad and ongoing cross-cultural inquiry.'[64] Yet it is an empirical inquiry into the conditions that make up a universal conception of the good, and for this reason it is evaluative and there are normative limits to the empirical inquiry. Nussbaum takes her list of central capabilities to be a form of overlapping consensus but while it may be the result of cross-cultural investigation, that investigation does not result in a simple factual account of what human beings value. The capabilities approach provides the frame for the question, such that the account of truly human functioning and the imperative to enable flourishing give one reason to reject the moral significance of particular values.[65] So, while Nussbaum is clear there are many ways for human beings to flourish, there are also clear limits to acceptable diversity – she argues that these limits are vital to the protection of individuals as ends in themselves, who should not be sacrificed to the will of others.[66] There is a tension in Nussbaum's work between her Aristotelian influences, which implies a contextual account of the good achieved through the embedded experience of developing our capabilities in community with others, and her Kantian aspirations, which lead her to defend the independence and irreducible moral value of individuals.[67] Her later works document a trend towards a universal and liberal account of the capabilities approach focused on the individual's ability to

---

[62] Nussbaum, *Women and Human Development*, 71-73.

[63] Ibid., 75-80. The list of capabilities that Nussbaum suggest includes: life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; expressing concern for other species; engaging in play; exercising control over one's environment, both political and material.

[64] Nussbaum, *Sex and Social Justice* (Oxford: Oxford University Press, 1999), 40.

[65] Nussbaum, *Women and Human Development*, 76-77.

[66] Nussbaum, "Beyond the Social Contract: Capabilities and Global Justice," *Oxford Development Studies*, Volume 32, Number 1 (March 2004), 3-18.

[67] While Nussbaum rightly identifies the universalist elements of Aristotle's ethical thought, his commitment to an overriding human good, she also clearly rejects the metaphysics that lead him to these conclusions. This is why she must rely on another account of the human good, which she draws from an uneasy alliance between Kant and Marx. See, Nussbaum, *Women and Human Development*, 73-74.

choose her own account of flourishing, which seems to be the necessary development if one is going to defend a robust and universal account of well-being.[68] We can see this move, and its limitations as a defence of moral universalism, by considering how the capabilities approach is applied directly to human rights.

In the context of capabilities, the question of rights explicitly becomes one of legitimacy, as they suggest 'a set of basic human entitlements, similar to human rights, as a minimum of what justice requires for all.'[69] Legitimate government must provide for minimum human capabilities by ensuring that individuals are able to develop the full range of human faculties necessary to freely develop and lead full lives. This is a not an austere minimalism but a demand for the necessary basis to lead a full life. Once these functions are provided for, the multiple ways that individuals develop their capabilities will be legitimately diverse. Nussbaum provides a comprehensive list of capabilities that must be enabled, but not necessarily privileged, by any just political order.[70]

Referring to the necessary process for legitimating the human rights regime, Amartya Sen clarifies the conditions under which such a consensus attains moral force:

> The universality of human rights relates to the idea of survivability in unobstructed discussion – open to participation by persons across national boundaries… through an *interactive* process, in particular by examining what would survive in public discussion, given a reasonably free flow of information and uncurbed opportunity to discuss differing points of view.[71]

While Nussbaum's list of capabilities is open to revision, it provides a robust and universal account of the demands made upon political power, expressed in terms of human rights – a right to the social basis for full human capabilities. Sen adds important qualifications to capabilities approach to rights; first, he limits the idea of human rights, even before we engage in an open discourse, to those capabilities that

---

[68] Nussbaum, "Beyond the Social Contract," 12-15.
[69] Ibid., 4.
[70] Ibid., 13.
[71] Amartya Sen, 'Elements of a Theory of Human Rights', *Philosophy & Public Affairs*, Volume 32, Number 4 (2004): 321.

are both of very high importance and open to social influence,[72] and second, he is more cautious of definitive lists, acknowledging that they may need to be modified more often and may be less universal than Nussbaum is inclined to make them.[73]

Even with these additions an important assumption is unexamined, namely, that we find consensus in-itself a compelling moral justification. The discovery of an actually existing consensus on what people take to contribute to their well-being does not necessarily provide us with a reason to give those valuations moral primacy. The final moral importance of this consensus can only be made clear when we include further normative premises regarding the importance of the capabilities necessary for human flourishing. For the capabilities approach the premise is not clearly identifiable, as what makes capabilities valuable is their contribution to flourishing, but flourishing, if universalism is to be maintained, must be defined by some further account of the human good beyond a de facto consensus.[74] For both Nussbaum and Sen this further account involves a defence of the moral value of autonomy, as their concern is to provide for a range of choices that individuals can develop freely. Consensus is therefore valuable because it is itself an expression of the autonomous choices of individuals, and those values that harm or undermine autonomy can therefore be excluded. As Aristotle's account of the virtues, in the end, depends upon a best life for human beings (the life of rational contemplation, which is the life of the most certain fulfilment), the capabilities approach depends upon an account of the best life – namely the life that expresses our freedom and creativity in pursuing our distinctive conception of the good expressed in a community of equals.[75]

For Nussbaum in particular, there is an emphasis on the need to defend universalism so that we can critique accepted cultural practices, particularly as they relate to the treatment of women.[76] This leads her to privilege the capabilities of

---

[72] Sen, 'Elements of a Theory of Human Rights,' 319.

[73] Amartya Sen, 'Human Rights and Capabilities', ed. Mark Goodale, *Human Rights: An Anthropological Reader* (Oxford: Blackwell Publishing, 2009), 86-98.

[74] MacIntyre in many ways reaches the same conclusion, but rather than replacing what he takes to be a lost universal moral tradition (one that would be sufficient to give content to the idea of flourishing) with a Kantian account of human dignity based in autonomy, he concedes the impossibility of such universal tradition in our contemporary modern conditions.

[75] Nussbaum, *Women and Human Development*, 82.

[76] Nussbaum, *Sex and Social Justice,* 31-33.

practical reason and autonomy as vital to *every* flourishing life.[77] This is necessary, she argues, in order to preserve the equal recognition that is so often denied to women as active subjects. In earlier works she argued for the objectivity of a virtue ethics drawn from Aristotle, which required dropping Aristotle's account of the inherent superiority of a certain kind of male subject over inferior subjects such as slaves and women.[78] While her work on the importance of emotions and particular circumstances in our moral thinking suggests an opposition to overly rationalistic and formalistic forms of moral reasoning, it is hard to square this with her work on cosmopolitan universalism – which seems to suggest the superiority of an abstract and principled moral logic that constrains the pluralism that might be expressed in diverse contexts. Perhaps the best way to understand her position is that context is morally valuable only so far as the contextual elements of life, the particular relationships and practices that define us, enable and express equal and universal moral personality, instantiated by freely developing our capabilities, as determined though our privileged faculty of practical reason.

In many ways it is difficult to oppose Nussbaum's account, she expresses a substantive concern for the importance of diversity, a broad basis for defining human flourishing and a tough-minded insistence that individual human beings have a value that cannot be denied. The political ethics she defends is a robust but tolerant conception of global justice that seems to endorse a wide-ranging definition of human rights, while allowing that different states will protect, promote and institute human rights in different ways. Yet there are reasons to be critical – reasons revealed most clearly in the inherent tensions of her work. First, the tension between the capabilities that every individual must have the opportunity to develop and particular expressions of the good life that may deny the value of certain capabilities, which is resolved though an appeal to a universal form of situated but autonomous moral agency that requires the full development of our faculties. This requires a universal account of moral identity, a claim that all humans have the same moral nature, which remains an ungrounded assumption. Second, in her reliance on the notion of consensus

---

[77] Ibid., 48-49.
[78] Nussbaum, "Non-Relative Virtues: An Aristotelian Approach," *The Quality of Life*, eds. Martha Nussbaum and Amartya Sen (Oxford: University of Oxford Press, 1993), 242-269. See also, "Human Functioning and Social Justice: In Defense of Aristotelian Essentialism," *Political Theory*, Volume 20, Number 2 (1992): 202-246.

Nussbaum presupposes the terms that make such a consensus meaningful – it supports autonomous moral agency – and in doing so claims the voice of the women to whom she attributes the work of developing this consensus as her own. She does this by taking the existence of shared values – a fact about the world – as a morally important fact, without making this move explicit, which raises the question of why there is not a further engagement with *how* and *why* those women value *what* they value. Instead, she claims that the capability approach is '*a freestanding moral idea*, not one that relies on a particular metaphysical or teleological view.'[79] Yet the force of this freestanding moral idea clearly comes from the role it plays in supporting human development aimed at the moral end of developing situated and autonomous moral agents. While this is an improvement on less subtle accounts of human essentialism, the end toward which Nussbaum puts here theory is underpinned by a teleological sense of the best human life and presumptions about true moral agency.[80]

There is a further assumption that human capabilities are a harmonious whole and that joint and fundamental commitments to autonomy and equality are not only justified as such, but they lock together in an important way. What if this is not the case?[81] From an individual perspective, we may not be able to develop capabilities that we value in tandem, but is this a failure to flourish or moral maturity? We may have to sacrifice one capability for the sake of another as they conflict either practically or conceptually. For example, the exercise of independent practical reason conflicts in both practical terms with our commitments and affiliations, not only practically but also at a deeper level where independence and communion push us in opposite directions. Further, we may be attached to multiple communities and be pulled to prioritise certain capabilities at the same time, which may not be possible. While from a social perspective we may not be able to enable all functionings at all times because of a lack of the necessary resources. Or worse, we may find that enabling the development of some capacities results in being unable to ensure the requisite level of provisions for all other functionings. The need to make "hard

---

[79] Nussbaum, *Women and Human Development*, 83.
[80] Anne Phillips, "Feminism and Liberalism Revisited: Has Martha Nussbaum Got It Right?" *Constellations*, Volume 8, Number 2 (2001), 249-266.
[81] Richard J. Arneson, "Perfectionism and Politics," *Ethics*, Volume 111, Number 1 (October 2000), 48-49.

choices" is often abused in the course of politics, but it is a real dilemma we must face in ethical life.

Also, Nussbaum sets certain choices off limits because they undermine autonomy and equality. They can be done with one eye open, so to speak – subsuming one's will to God, for example, but insisting that one can only do this where one has the freedom to choose for oneself. This seems to involve what Bernard Williams calls 'one thought too many,'[82] as the force of religious devotion is not first justified by whether it affords me autonomous and rational choice.

The level at which these criticisms are aimed is important. The primary concern is with the meta-ethical framework, particularly the presumptions about the necessity of universal principles to establishing moral certainty. This should not obscure that there is much to be said for Nussbaum's work, not only in developing a richer account of well-being as a moral value to guide political life, but especially in exposing often neglected capabilities of the poor, of women and of the disabled, who are often unconsidered. Rather, what is problematic, and revealed in her defence of universal human rights, is the presumed need for an ethics of certainty that can discipline pluralism and control political life, and which deploys an account of an essential human nature to justify this effort.

How should we respond to the difficulties encountered in grounding human rights in something essential to human being? It seems that Brown is right, universal rights require a shared notion of human nature, but this approach is deeply problematic and necessarily involves a form of unjustifiable moral absolutism that constrains and disciplines. Not only do the many peoples of the world value different things, even within the Western tradition the exalted value of liberty and autonomy has often been wilfully abnegated or left intentionally unclaimed. Drawing on a colourful allusion by Alexander Herzen, when suggesting that most men prefer good government to freedom Isaiah Berlin makes the point that 'men desire freedom no more than fish desire to fly. The fact that a few flying fish exist does not demonstrate that fish in general were created to fly, or are not fundamentally quite content to stay below the

---

[82] Bernard Williams, "Persons, character, and morality," *Moral Luck: Philosophical papers, 1973-1980* (Cambridge: Cambridge University Press, 1981), 1-19.

surface of the water, for ever away from the sun and the light.'[83] It is the need to overcome this impasse that leads me to a consideration of rationalist theories of rights, as the thinkers in this broadly Kantian tradition seek redeem moral universalism by locating its warrant not in an account of human nature but in the nature of reason itself.

III. Human Rights and Rationalism: Transcendental, Communicative and Public Reason

Kant and Transcendental Reason

The failure of the theory natural rights to ground freedom, or any other value, in something more than convention leads to the rationalist theories of morality and human rights, in which we see a sharp dividing of the moral from the good, as the notion of morality becomes more closely associated with notions of undeniable truth or validity. In examining this influential perspective on rights I begin by looking at Kant who laid the groundwork for rationalist theories of rights.

It is useful to consider Kant's own interpretation of his task – his critical philosophy and appeal to transcendental reason were an attempt to reconstruct philosophy, which he saw as threatened by the 'dangers of unfounded dogmatism on the one hand and rampant scepticism on the other.'[84] Not only did David Hume's scepticism inspire Kant's epistemological work,[85] the implications of Hume's empiricism undermined the possibility of human autonomy, which was central to Kant's moral theory.[86] Hume was content for morality to consist in inclination supported by habit, for Kant this made an adequate defence of human freedom impossible, since it is often sacrificed to these very forces, thus moral obligation 'must be sought *a priori* solely in the concepts of pure reason.'[87] Kant gave the value of autonomy a rational basis, but it is not enough to assert that reason tells us that man

---

[83] Isaiah Berlin, "Herzen and his Memoirs," *Against the Current*, ed. Henry Hardy (London: Pimlico, 1997), 207.

[84] Kimberly Hutchings, *Kant, Critique and Politics* (London: Routledge, 1996), 12.

[85] Immanuel Kant, *Prolegomena to Any Future Metaphysics: with Selections from the Critique of Pure Reason,* ed. Gary Hatfield (Cambridge: Cambridge University Press, 1997).

[86] Kant, *Critique of Practical Reason* (Mineola, NY: Dover, 2004), 52-9. See also, David Hume, *A Treatise of Human Nature* (Harmondsworth: Penguin Books, 1969), Book III.

[87] Kant, 'Grounding for the Metaphysics of Morals', in *Ethical Philosophy,* trans. James W. Ellington (Indianapolis, IN: Hackett, 1994), 2.

is free despite his chains, as natural rights thinking does. A critique of reason itself is necessary before we can be confident in our understandings and intuitions. The value of human freedom, of autonomy, must be absolute, and to complete this task Kant argued that this value was written into practical reason itself.

As a result of Hume's scepticism, concepts such as time and space could not be established empirically, therefore in Kant's formulation they were necessary to reason as such.[88] The rules that regulate understanding, implicit in cognition, also imply rational ideals such as freedom. Because the force of causation cannot be empirically proven, it must therefore be a constitutive idea of understanding; therefore, our understanding of causality entails free will. It is an ideal that does not exert influence as a necessary orientation until we consider practical reason and its attempts to influence the world.[89] As beings limited by reason but existing in the material world, the human will is motivated by both the reasonable and the sensuous, and where we act from reason we demonstrate a transcendental freedom of the will. When we act upon inclination, our will is merely determined and not free, and so cannot be moral.

Free action is moral to the extent that it accords with the good will, which is initially defined by a categorical imperative to will only those actions that could be made a universal law.[90] This implies that moral freedom must take a universal form, that the imperative of the good will is the same for everyone, as a matter of reason – not convention or faith. The good will is, essentially, rational freedom; its rationality is defined by the obligation to respect every other rational will as an end in itself, which the principle of universalisation ensures.[91] Transcendental freedom is necessarily moral freedom, because the imperative of the good will is expressed as the inexorable logic of autonomy, of the will as an uncaused cause. The rational will is the self-legislating will and its highest expression is found in a kingdom of ends, where there is no external law and every autonomous will is respected.[92] This is why morality becomes concerned primarily with duty, as our obligation to respect the autonomy of every reasonable will supersedes any conventional good we may wish to

---

[88] Kant, *Critique of Pure Reason* (Mineola, NY: Dover, 2003).
[89] Kant, *Critique of Practical Reason*, 304-314.
[90] Kant, "Grounding for the Metaphysics of Morals," *Ethical Philosophy*, 7, 30 and 41.
[91] Ibid., 36 and 41.
[92] Ibid., 37-40 and 42-4.

pursue. This moral law of the categorical imperative is not based in any phenomenal desire or interest, and in turn, it serves to define and limit the just pursuit of ends.

While Kant's formulation of moral obligation seems to avoid the problems associated with the natural rights tradition – morality is a postulate of practical reason itself, neither an empirical nor God given end –a new set of problems is created. First, not only are Kant's examples of moral duty notoriously unconvincing, many have suggested that the categorical imperative is incoherent, as it can be taken to be both overly abstract, implying that nearly any rule could be justified, and, alternatively, that any just rule would be far too demanding to be practical. Second, the gulf created between the worlds of reason and experience, morality and inclination, seems to be unbridgeable. Which suggests that Kant has bought the rational grounding of the moral law at too high a cost, since it is not clear how it can exert influence on human action or become effective in political and social life.

A common criticism of Kant is that his view of duty requires us to expunge all inclination if our actions are to have moral worth. This criticism is based on his examples in *The Grounding for the Metaphysics of Morals*, particularly the lover of mankind who loses his sympathy for humanity. As Peter Singer puts it,

> it is only when such a person somehow "loses all sympathy with the fate of others", so that the person is no longer moved by an inclinations, but acts from the sake of duty along, that "for the first time his action has moral worth". Here is a doctrine that might wring a grimace of recognition from an early Christian saint mortifying his flesh in the desert.[93]

Barbara Herman convincingly argues that we can make sense of Kant's view by distinguishing what is done for the sake of duty versus what is done in accord with duty.[94] The true meaning of duty is seen clearly in moments where we have lost all inclination to act in accord with duty and our only motivation is to do what is right. Duty plays two roles: partly it limits justifiable inclinations where there is no positive duty, asking if an act is permissible; while when we act for the sake of duty we do those things that the good will demands of us, and only then do our acts have moral

---

[93] Peter Singer, *How Are We To Live?* (Amherst, NY: Prometheus Books, 1995), 216.
[94] Barbara Herman, "On the Value of Acting from the Motive of Duty," *The Philosophical Review*, Volume 90, Number 3 (July 1981), 359-382.

worth. Though this moral worth need not preclude a good inclination, so long as duty is our motivation.[95] 'Morality sets limits to the ways in which and the means by which we conduct our lives; it does not give them direction. Thus morality apparently sanctions any way of life which is compatible with keeping our promises, telling the truth and so on.'[96] Kant's perspective is not so severe as it may seem, he did not demand that we behave as saints in order to act morally.

Kant's intention was to explain our common sense notions of right and wrong, which entails both freedom and responsibility, rather than offer a radical critique or suggest new moral conceptions. As our attempts to act within the phenomenal world reveal a determined natural order, our sense that we nonetheless choose between right and wrong reveals the transcendental freedom that is the basis of the moral will. The more profound problem with Kant's moral theory is that by separating the phenomenal and noumenal realm, he suggested a profoundly subjective will that is the sole author of legitimate values and ends.[97] While Kant argues that reason ensures that every will would pursue the same moral ends, this is done via the test of universalisation in the categorical imperative, which has proved unconvincing as it is practically possible to fit nearly any end to the universalisation test.[98] As MacIntyre argues, the rationalist claim of Kant's imperative was that the demand to treat all humanity as a means and not an end could not consistently be violated, yet we can 'without any inconsistency whatsoever flout it; "Let everyone except me be treated as a means" may be immoral, but it is not inconsistent and there is not even any inconsistency in willing a universe of egoists all of whom live by this maxim.'[99] Kant's formulation of transcendental freedom and abstract moral reason has unexpected consequences: if we are unconvinced by the ability of reason to give the categorical imperative substance, then what is left is an existential subject free to

---

[95] Ibid., 381.

[96] Alasdair MacIntyre, *A Short History of Ethics* (London: Routledge, 2002), 190.

[97] Berlin, "Kant and Individual Autonomy," *The Assault on the French Enlightenment*, unpublished John Danz Lectures, University of Washington, 22, 24 and 25 February 1971. Accessed at http://berlin.wolf.ox.ac.uk/lists/nachlass/assault2.pdf. See also, "Kant as an Unfamiliar Source of Nationalism," ed. Henry Hardy, *The Sense of Reality* (London: Pimlico, 1996), 232-48.

[98] Berlin, "Kant as an Unfamiliar Source of Nationalism," 244-245. See also, Williams, *Ethics and the Limits of Philosophy*, 63-64.

[99] MacIntyre, *After Virtue*, 46.

choose nearly any end for themselves[100] or a deeply conventional moral subject that is compatible with any given ends.[101]

Kant was not unaware of these problems and in the *Critique of Practical Reason* he suggested that reason presupposes a teleological framework for his moral project.[102] This not only provides a way to bridge the gap between the good will and inclination, as moral education and cultivation of virtue support rather than undermine moral action, but it also makes clear why Kant believed convention imperfectly reflected the moral-will. Conscience is a natural faculty drawn to the consideration of the good will, making progress toward closing the gap between morality and inclination possible, though never complete.[103] Further, the development of human freedom is a natural end, it is in a sense what humanity was made for, and the development of virtue and the possibility of moral education give us reason to hope that we may yet get closer to the moral ideal.[104] While this framework cannot be proven, it is a hopeful supposition; it gives some determinate content to Kant's moral theory, as reason, partially expressed in our moral intuitions and customs, is moving toward a more perfect realisation. Yet if we find the metaphysical presumptions of Kant's noumenal-self unconvincing, it seems unlikely that his theory of the perpetual progress of conscience sentiment would resolve the problem. A formal moral law attached to a particular and largely Protestant conception of human nature, which is at best a historical artefact, hardly seems to provide a convincing reason to accept Kant's moral theory.[105] From this perspective we can make sense of the surprising fact that Kant set the stage for Hegel and Kierkegaard, for both historicism and existentialism.

While Kantian moral theory aims to provide a surer basis for establishing a universal moral order in the face of diversity, the metaphysical system it depends upon leave us with an unattractive formalism[106] – so what explains the continued

---

[100] Berlin, "Kant and Individual Autonomy," 23; MacIntyre, *After Virtue*, 47. Further, this line of existential reasoning is taken to apotheosis by Jean Paul Sartre in *Existentialism is a Humanism,* ed. John Kulka, trans. Carol Macomber (New Haven, CT: Yale University Press, 2007).

[101] MacIntyre, *A Short History of Ethics*, 191.

[102] Kant, *Critique of Practical Reason*, 152-158.

[103] Kant, "Metaphysical Principles of Virtue," *Ethical Theory*, 57-62.

[104] Kant, "Grounding for the Metaphysics of Morals," 8-9.

[105] MacIntyre, *After Virtue*, 56.

[106] There are a number of contemporary Kantians who have done much to clarify and defend Kant's moral theory from standard objections. I do not deal with these thinkers directly because they seek to

influence of his deontological approach? In liberal political theory, Kant's distinction between the moral and ethical has set the terms of debate, and those inclined to accept the autonomous subject at face value can jettison the troublesome metaphysics. This leads to a Kantian legacy in which universal moral rights are based on the necessary conditions for the respect of autonomous and rational agents, and the messy world of politics, with its diversity, change and many goods, is duly limited by the demands of equal moral respect.[107]

For Kant, however, the struggle of practical reason to remake the world was of primary concern and a direct result of his critical philosophy.[108] This broader context explains his approach to law and politics as imperfect tools for drawing the transcendent and the practical closer together, so that the moral law can be expressed in the world, though this process is neither guaranteed or smooth.[109] Right is concerned with the external relations of wills, not with motivation, thus the right that is derived from the moral law is only an a priori standard to be met by positive law that can coerce one's action. Right action is that which accords with universal law, where right choice respects the autonomous choice of others.[110] I do not want to consider Kant's political theory here, but merely point out his sensitivity to the problem created by radical separation of moral principle from the world of experience, which is rarely considered by Kantian-inspired liberals. The moral law does not sanction or demand any particular conception of the good state, instead it articulates minimal conditions of representative legitimacy and disavows revolutionary action, leaving the achievement of political further reform to forces of natural history and the persuasive force of republican ideals.[111] This political quietism, which is a result of the separation of the moral realm from the political,

---

maintain the authority of moral principle in their revisions to Kant's theory, whereas I am taking issue with the problem Kantian theory sets for itself. See, for example, Onora O'Neill, *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge: Cambridge University Press, 1990); Barbara Herman, *The Practice of Moral Judgment* (Cambridge, MA: Harvard University Press, 1996); and Christine Korsgaard, *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996).

[107] See for example, Brian Barry, *Culture & Equality* (Cambridge, MA: Harvard University Press, 2002).

[108] Hutchings, 21-2.

[109] Ibid., 39-40.

[110] Kant, "The Metaphysics of Morals," ed. H. S. Reiss, *Political Writings* (Cambridge: Cambridge University Press, 1991), 132-6.

[111] Hutchings, 41-57.

brings out a persistent feature of the quest for certainty, which is that it affirms or permits the political status quo to remain unchallenged.

Kant's rationalist deontological theory fails to convincingly liberate morality from an unjustifiable particularity, and his articulation of a transcendental moral universalism raises further problems. Practically, the sharp distinction between abstract morality and political life means that 'while saints are engaged in introspection, burly sinners run the world.'[112] At the same time reasonable morality 'lays down principles which are universal, categorical and internally consistent.'[113] Meaning that oppositions to the good will are seen as 'dispositions and appetites for the merely contingent, inessential but always troublesome phenomenal self.'[114] Rather than provide an adequate moral universalism, Kant seems to highlight the remainders left by his abstract rationalism: morality loses its effective power in political and social life, motivations other than respect for free choice become inessential in an ideal order of universal moral right, as all values must pay service to the value of autonomy, whose supremacy is determined in abstraction from all actual conditions and concrete experience.

I turn to the work of Habermas next as an extension of the rationalist defence of moral universalism, and for his explicit defence of contemporary human rights. I have chosen Habermas because he gives significant weight to the critical aspects of Kant's work, such that, while liberal political theory tends to accept the presumption of the autonomous individual as well as modern political conditions without much anxiety, Habermas' theory only offers a more critical version of moral universalism. Finally, in explicitly trying to rescue the Kantian project, Habermas responds to a number of critiques mentioned above, particularly those of MacIntyre regarding the troubling effects of modernity on ethics.

Habermas and Communicative Reason

Habermas' discourse ethics, particularly in combination with his theory of law and politics, responds to the claim that Kant's rationalist moral theory was unacceptably metaphysical and individualistic. Further, Habermas claims that his theory of

---

[112] Dewey, *Reconstruction in Philosophy*, 113.
[113] MacIntyre, *After Virtue*, 45.
[114] Honig, 19.

communicative action presents a critical perspective on our contemporary condition that recognises particularity, while making good on the promise of a legitimate commitment to universality – and in this recasts classical notions of practical reason.[115] First, I will examine how Habermas defends moral universalism via the nature of normative discourse. Second, I turn to his understanding of our current social and political condition, and how, in that condition, we find normative validity. The breadth and complexity of Habermas' work limits the scope of this analysis, and here my focus will be on Habermas' explicit defence of human rights, discussing other aspects of his thought only in the necessary depth.

As quoted earlier, Habermas draws a sharp distinction between the just and the good – what he terms the normative and the evaluative. This distinction is a legacy of Kantian moral theory, which Habermas intends to revise without recourse to metaphysical claims or unacceptable formalism. To make good on this promise Habermas develops a theory of communicative action, which analyses the forms of reason oriented toward understanding.[116] This is opposed to systemic logics that are oriented toward successful action. This communicative rationality replaces Kant's pure reason, and thus provides a critical perspective without recourse to the transcendental.[117] Reason's orientation toward understanding is key, as it implies that rational agreement is based on the inter-subjective recognition of criticisable validity claims. There are three types of claims that communicative action is concerned with: the factual, the normative and the authentic, each of which represents different motivations for action: determining the truth, the right and the sincere in expression. My concern here will be to show how communicative action concerned with normative validity responds to the limitations of Kantian moral theory.

In discourse ethics the source of moral obligation comes from the idea of inter-subjective agreement through rational discourse, rather than as an imperative of reason to follow the good will, as expressed in the categorical imperative. Building on his more general discourse theory, Habermas argues that the claims we make when seeking mutual understanding – in the case of normative statements, agreement

---

[115] Jürgen Habermas, *Between Facts and Norms* (Cambridge: Polity Press, 1997), 1-8.
[116] Jürgen Habermas, *The Theory of Communicative Action, Volume 1: Reason and the Rationalization of Society* (Boston, MA: Beacon Press, 1984).
[117] Hutchings, 60-1.

regarding their rightness – contain the conditions for their own validity.[118] What this means is that while the process of normative discourse is intended to produce rightness, the process by which this occurs limits places limits on the forms of agreement that can be considered valid, as a function of communicative rationality. The general principle of discourse ethics is based upon the conditions of possibility for the transcendental-pragmatic justification of moral principle, which is established by revealing the 'assumptions that are inevitable in *any* argumentation game aiming at critical examination,' the derogation of which results in a performative contradiction.[119] The act of giving reasons for a normative statement necessarily involves stepping outside of any given ethical discourse, and engaging in a practical discourse that supplies the conditions for normative validity as such. These conditions are *intuitively* known but *theoretically* restated in the universalisation principle, which concludes that a contested norm cannot meet with consent 'unless all affected can *freely* accept the consequences and the side effects that the *general* observance of a controversial norm can be expected to have for the satisfaction of the interests of *each* individual.'[120] For Habermas, this is the only moral principle, and like the categorical imperative, it functions as a test of acceptability for any further moral principle. This is restated as the principle of discourse ethics, which is that 'only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse.'[121]

Habermas argues that this derivation of moral principle avoids Kant's problematic transcendentalism and does not make unredeemable metaphysical claims, as it is a necessary consequence of communicative reason. If we are arguing in order to reach an understanding, we must accept the rationality behind that activity – this is transcendentalism through pragmatic semantics. The theorisation of our intuitive expression of these conditions is fallible, but the necessary logic of communicative action is not.[122] Also, discourse ethics are not susceptible to the criticism of excessive abstract individuality, such that anyone can discourse with themselves in order to produce valid norms for everyone else, instead it must involve actual discourse that

---

[118] Habermas, *Moral Consciousness and Communicative Action*, 57-70.
[119] Ibid., 80-82.
[120] Ibid., 93.
[121] Ibid.
[122] Ibid., 95.

results in inter-subjective consensus among all those affected. The reality that this may at times only be approximated does not mean that discourse ethics relapses into abstract individualism, only that it has practical limitations.[123]

Thus far discourse ethics seems to effectively respond to major criticisms of the Kantian project; yet, it is still a formal principle that seems to lack any content, and as such it suffers similar objections.[124] Habermas deflects this concern by admitting that the universalisation principle is indeed empty and formal, but this only means that the content of practical discourse must be supplied from somewhere else. 'It would be utterly pointless to engage in a practical discourse without a horizon provided by the lifeworld of a specific social group and without real conflicts in a concrete situation.'[125] The argument thus far seems convincing, but the fact that we are required to assume the intuitive validity of the conditions for finding argumentative agreement seems to beg the question; as we rightly asked of the categorical imperative, we can ask of the discourse principal: why, given all the ways in which we communicate must valid normative agreement follow *this* logic?[126] The performative contradiction that supposedly results from seeking normative validity without acknowledging the principle of discourse, the injunction to seek and respect the approval of all affected, already presupposes a particular account of validity. While performative contradiction in the manner Habermas' describes may undermine normative validity so stipulated, the account of validity does not benefit from the same analytic necessity. This goes beyond the claims of the sceptic – who Habermas relentlessly pursues throughout *Moral Consciousness and Communicative Action* – as it is certainly possible for communication, and even understanding, to take place under less egalitarian conditions. Validity derived from other forms of communicative action, not based on egalitarian ascent, but authoritative interpretation, for example, would result in very different normative principles. Habermas is not unaware of these issues. If we are not immediately convinced by the semantic arguments, Habermas

---

[123] Ibid., 94.

[124] Seyla Benhabib considers the objection that discourse ethics may result in an unpleasant choice between being trivial or inconsistent when we question how morally substantive the presumptions are, the further implications of this objection are taken up later. Seyla Benhabib, *Situating the Self* (Cambridge: Polity Press, 1992), 28-30.

[125] Habermas, *Moral Consciousness and Communicative Action*, 103.

[126] Hutchings, 68.

appeals to the empirical evidence of moral psychology and social evolution to support his linguistic analysis.

To further defend his discourse ethics Habermas uses the psychological theory of moral development elaborated by Lawrence Kohlberg. In his discussion of the development of moral consciousness he uses Kohlberg's theory, in which higher levels of moral development are correlated with a greater capacity to take on the perspective of others and to seek abstract and universal rules. While Habermas acknowledges Kohlberg's Kantian presumptions in classifying higher levels of development, and considers the empirical divergence in the actual studies, he is convinced it provides empirical evidence for his transcendental pragmatic argument by showing that psychological development leads one to adopt the form of normative validity elaborated in discourse ethics. He also argues that the social development of subjectivity compliments Kohlberg's work and further strengthens the case for discourse ethics. The transition from a subjectivity based in a given way of life to a decentred understanding of the world correlates to higher levels of moral reasoning and reveals the intuitive power of the universalisation principle. But it is not clear that this empirical evidence is innocent or wholly convincing, as Habermas' distinction between logics and dynamics of development suggests, wherein the logic of development is distinct from the actual empirical dynamics. The logic of development is based once again on the semantic linguistic analysis of communicative reason, so the question as to why we should accept the theoretical interpretation of the empirical evidence remains open.[127]

Habermas sees the development of communicative reason as bound up with social development more broadly. While the logic of communicative action may be inherent to speech acts, the importance of this type of reasoning is increasingly relevant because of the development of the social world. Fundamental to his view is the distinction between lifeworld and system, which embody the alternative logics of understanding and successful action.[128] While the modern lifeworld is defined by the fracture of conventional religious belief, leading to separate fields of scientific, moral

---

[127] Ibid., 71.
[128] Jürgen Habermas, *The Theory of Communicative Action, Volume 2: Lifeworld and System: A Critique of Functionalist Reason* (Boston, MA: Beacon Press, 1987).

and bureaucratic activity developed as a result of technical and social changes, it is threatened by system logics that support structures oriented only towards successful action. Communicative reason is central to preventing systemic orders from colonising the lifeworld, which has been weakened by the collapse of conventional belief systems, and the critical and constructive task of reason can only be performed through an orientation toward shared understanding. It is in this broad context that Habermas sees the theory of communicative action reconstructing practical reason in a way that validates not only the liberation of the individual and the power of reason, but also provides new grounds for legitimate moral critique.[129]

There is a further step in Habermas' argument that moves from deriving moral principles to justifying an institutionalised human rights regime as the legitimate basis for domestic and international political authority.[130] Beginning with the idea of a social order in which authority is held by an organised political power, it follows that such order requires legitimacy. In the modern state, political power is constituted through positive law, or law which is enacted and coercive. This law, therefore, makes an inherent claim to recognition. This is a claim that the law should be followed not only because it is authoritative, but also because it is legitimate. The modern conception of the legal person and the legal community requires individual rights to render authority legitimate. These individual rights are moral rights derived from reciprocal moral duties, which in turn justify and limit the legal entitlements of legitimate authority to act coercively.

For Habermas, the moral universe is unlimited, including all people regardless of social space and historical time, while the legal community is a specific and historical social structure. The validity of the state's enforcement and implementation of the law is intertwined with the legitimacy of the purportedly rational procedure for law making. This legitimacy gives individuals a reason, beyond strategic self-interest, to follow the law and to accept the state as the guarantor of legitimate authority. Such a scheme of legitimacy, however, generates a difficult problem: how can we ground the legitimacy of procedures that can be changed by the legislative authorities? For

---

[129] Habermas, *Between Facts and Norms*, 6-8.
[130] Jürgen Habermas, "Remarks on Legitimation through Human Rights," *Philosophy and Social Criticism*, Volume 24, Number 2-3, (1998), 157-171.

Habermas, this illustrates the illegitimacy of non-democratic states, as they cannot justify their power in moral terms. The challenge is made greater by the fact that we cannot call on religious and metaphysical notions of natural law, which could hold positive law in check; this is especially problematic in pluralistic modern societies where such integrating world-views and collectively binding ethical systems have disintegrated or never existed.

The solution to this problem is found in popular sovereignty and individual rights. Within the legal community individuals are protected when they take on the artificial status of individual rights bearers.[131] The democratic features of popular sovereignty presuppose rights to communication and participation, and also secure the autonomy of the politically enfranchised citizen. Individual rights are grounded in the need to protect the life as well as the private and civic liberty of the individual subject to the state.[132] This solution presents us with an idea of human rights as the basic rights that free and equal citizens must accord one another if they want to regulate their common life legitimately by means of positive law. An important assumption here is that a law may claim legitimacy only if all those possibly affected could consent to it after participating in a rational discourse to arrive at shared opinions. Human rights, then, institutionalise the communicative conditions for a reasonable political will-formation, and both civil democratic and classical liberty rights are necessary to maintaining this legitimate legal community of legal individuals.[133]

A first objection to this argument is that human rights refer to all humans, but as legal norms they only protect individuals so far as they belong to particular types legal communities. There is a tension here, which leads us to ask if human rights should not have unlimited validity in all contexts.[134] This raises the concern that these standards hide an unjustifiable claim to superiority by the West based on the false universality of rationalist moral principle and the necessity of a legalised political order. This objection is unsustainable in Habermas' view. The critique of universal reason fails to notice the self-reflective character of the discourse of modernity. In this context, human rights are

---

[131] Habermas, "Remarks on Legitimation through Human Rights," 161.
[132] Jürgen Habermas, "Human Rights and Popular Sovereignty: The Liberal and Republican Versions," *Ratio Juris*, Volume 7, Number 1 (March 1994), 1-13.
[133] Habermas, "Remarks on Legitimation through Human Rights," 160.
[134] Ackerly, 250.

set up to provide every voice with an equal hearing and provide the standards by which latent violation of its own claims can be discovered. Human rights demand universal inclusion and function as 'sensors for exclusionary' practice that marginalise the other in the name of human rights.[135] The further claim that the normative language of law reflects nothing else but the factual power of political authorities misses the power of law to domesticate political power by legitimating law through processes that respect moral rights.

These objections are misdirected and unconvincing for Habermas, because other cultures and world religions are also exposed to the challenges of social modernity, which are the conditions in which human rights and constitutional democracy were in some sense 'discovered' or 'invented.'[136] Human rights stem less from the particular culture of the West than from the attempt to respond to specific challenges posed by modernity. Further, human rights are not metaphysical truths but social constructions that protect our individual and collective autonomy. The model starts with the horizontal relationship between citizens, rather than with the second-level relationship to the functionally necessary state, which must reconstructed after the social transformation of modernity. The legalised authority of the liberal state produces an abstract form of solidarity among strangers who wish to remain strangers by granting each their due rights, but the state is not privileged as such. Given the reality of modern legal states and globalised market relations, human rights and constitutional democracy provide the rightful basis for legitimate political power and social order. These developments increase human freedom by limiting illegitimate social coercion, while allowing for a diverse range of social arrangement and ethical beliefs that are only constrained by those moral principles acceptable to all citizens, as equals.

While this is clearly a fuller response to the objections I have raised against the moral universalism of human rights up to now, two objections remain. First, the use of discourse ethics is unconvincing for a number of reasons. As has been pointed out by critics, the ideal speech situation is essentially impossible to set up in the real

---

[135] Habermas, "Remarks on Legitimation through Human Rights," 163.
[136] Ibid., 163.

world.[137] Yet the hypothetical discourse and agreement that should emerge seems unrealistic in a deeper sense; as it begs the question of whether an agreement could be reached yet remains committed to the strong moral principles that Habermas draws from it based on a merely hypothetical consensus.[138] Related to this line of critique is the objection that discourse ethics assumes the superiority of abstract and general moral principles, but there are other forms of moral reasoning and other basis of discourse that could be considered inherent to moral reasoning.[139] We do not have a priori reasons to start with the sorts of usage of moral claims that Habermas does, other than his own initial privileging of abstract and universal principles.[140]

The second objection, and for my perspective the most substantive criticism, discourse ethics conflates justifiability and necessity. There is no necessary connection between my assertion of a moral claim and the presumption that it holds universally.[141] Habermas endorses a view of moral reasoning that results in a comprehensive vision of the right – which implies that when our values conflict they only conflict part way down, that the right cannot entail moral loss.[142] I want to suggest instead that moral claims can reflect a plurality of values that remain in conflict all the way down. This implies that moral validity is situational and contestable, that if there is something we want to call moral truth, we can only aim for the more modest goal that a moral claim is understandable as a specific value judgment, reflecting special circumstances and a particular act of judgment. This point highlights the costs of the rationalism of discourse ethics, which assumes the

---

[137] Agnes Heller, "The Discourse Ethics of Habermas: Critique and Appraisal," *Thesis Eleven*, Volume 10-11, Number 5 (1985), 5-17. Also, Mihaela Czobor-Lupp, "Communicative Reason and Intercultural Understanding," *European Journal of Political Theory*, Issue 7, Number 4 (2008), 430-448.

[138] Thomas McCarthy, "Kantian Constructivism and Reconstructivism: Rawls and Habermas in Dialogue," *Ethics*, Volume 105, Number 1 (October 1994), 44-63.

[139] Kimberly Hutchings, "Speaking and hearing: Habermasian discourse ethics, feminism and IR," *Review of International Studies*, Volume 31, Number 1 (2005), 155-165.

[140] For example, many feminist theorists starting from Carol Gilligan's response to Kohlberg's theory of moral development have pointed to a contextualised ethics of care that is counterpoised to discourse ethics in a number of ways. See, Kimberly Hutchings, "Towards a feminist international ethics," *Review of International Studies*, Volume 26 (2000), 111-30.

[141] This is similar to an argument made by Bernard Williams, though he takes Habermas' assumption of the modern nation state as a universal and broadly acceptable form of political order in a less critical way that I would like to imply. Bernard Williams, "Realism and Moralism in Political Theory," *In the Beginning was the Deed* (Princeton, NJ: Princeton University Press, 2005), 15-16.

[142] Bonnie Honig develops Williams' thinking on tragedy to suggest that pluralism and contestation in both morality and politics will at times imply that the best we can hope for is survive tragic choices rather than preserve the right. See, Honig, *Emergency Politics: Paradox, Law, Democracy* (Princeton, NJ: Princeton University Press, 2009).

superiority of abstract and unchanging moral principles, if we were to privilege a more responsive and contextual form of moral reasoning the requirements of discourse ethics would seem counter productive and the procedure of justification would look very different.[143]

My second objection to Habermas' defence of universal human rights is based on the connection he makes between his emancipatory ethic and a progressive response to social modernity. Even if we accept the foundational value of freedom, it is less than obvious that the ideal story of "our" response to social modernity is one that can be convincingly framed as one of increasing human freedom. Not only does Habermas' theory seem to presuppose a teleological view of history and social development, in which our ideal end is taken to be a maximisation of equal human freedom, his view of freedom seems overly prescriptive. The freedom of individuals to act as they please is conceptually distinct from the value we find in equality and democratic participation, and it is problematic to conflate such notions and ignore the extent to which they conflict both conceptually and practically.[144] Not only do such packaged readings of important values obscure the complex texture of our moral world – tending to obscure the tensions between freedom and order, for example, with a utopian view of necessary compatibility – they also encourage an account of morality that is unable to take the depth of the plurality of ethical values seriously. Further, taking the modern state and global market economics as not only given, but also as enabling the realisation of greater human freedom further compromises the critical capacity Habermas' theory. It seems to limit critique of the social order, excluding perspectives that question the prescription of a constitutional and social democratic social order as the necessary and best response to the logic of market

---

[143] This critique reflects Dewey's argument that we build ideals, of both moral principles and methods, from experience of specific situations in which the problem at hand is key. In a sense, Dewey's pragmatism is more radical and Habermas' project involves a questionable attempt to found the epistemological dominance of the general over the specific. See in particular: John Dewey, *Lectures on Ethics: 1900-1901,* ed. Donald F. Koch (Carbondale, IL: Southern Illinois University Press, 1991), esp. 51-73.

[144] Isaiah Berlin makes this vital but often underappreciated point, one need not be a libertarian to recognise that freedom is distinct from equality or political self-determination, no matter how linked conceptually and practically these ideas are, they can and do demand trade-offs – democratic equality will limit freedom and the appeal to rational or true freedom is deeply problematic. See, Isaiah Berlin, "Two Concepts of Liberty," *Liberty*, ed. Henry Hardy (Oxford: Oxford University Press, 2002), 166-217.

exchange and bureaucratic rationality, for instance it excludes more radical forms of economic egalitarianism or participatory democracy.

While I can hardly presume to have refuted Habermas' impressive theory, or even dented the considerable amour of his intellectual achievement, I hope to have presented a convincing view of *what is sacrificed* in his move to a communicative moral rationalism. In reading *Moral Consciousness and Communicative Action* one is struck by the language Habermas' uses – in chasing down the moral sceptic to an 'existential dead end' we get an illustrative metaphor of the rationalist project to bring the unruly nonconformity of diversity, particularity and pluralism to heal.[145] If this is a project that is doomed to failure another sort of inquiry is necessary – but before I turn to this positive articulation, I want to consider the work of John Rawls, who sought to revise the Kantian rationalist tradition of rights thinking using an alternative strategy.

Rawls and Public Reason

Many of the strongest defences of both moral universalism and human rights come from the contractualist tradition of liberal political philosophy.[146] Yet one of the key figures, John Rawls, was reluctant to elaborate a robust conception of international human rights. In *A Theory of Justice* the argument is that any individual participating in the original position would agree to Rawls' principles of justice, which entails that each person should have an equal right to the most extensive set of basic liberties that is compatible with a similar set of liberties for others, along with equality of opportunity and a distribution of goods that benefits the least well-off.[147] As each person chooses without knowledge of their particular interests, abilities and social standing, impartiality is maintained and both basic rights and principles of social justice are established. Yet, the terms of this agreement seem to presuppose what it purports to justify, namely a universal scheme of equal liberties provided to morally equal rational agents. If we do not presuppose the value of liberal egalitarianism, then there is no inherent reason the terms of this contract are compelling. Rawls famously

---

[145] Habermas, *Moral Consciousness and Communicative Action*, 102.

[146] Charles Beitz, and Thomas Pogge, for example, are figures associated with the same liberal tradition as Rawls, but lack his concern for the nature of the reason that we appeal to in justifying moral principles, see for example Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009) and Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity, 2002).

[147] John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1999).

restated his position to make clear that his contractual justification was limited to liberal democratic societies,[148] leading to the defence of basic human rights in *The Law of Peoples*.

In Rawls' original work, the moral force of the original position came from his assumption that we have shared ideas that underlie any conception of justice. We assume that individuals have the freedom to form and pursue a vision of the good life, and that they are able to cooperate with others in the pursuit of that life. Further, this freedom applies equally to everyone with the necessary capacities. Therefore, the terms of cooperation in society should not be based our particular interests, convictions, abilities or social position. Given this starting point the contract that results from the original position may seem unproblematic, but these assumptions are substantive and fail to give those who do not take them on a reason to consent to Rawls' conception of justice. The original argument, however, was intended to work out a theory of social justice concerned with discrete political communities, which limits its scope to the domestic politics of liberal democratic states.[149] The later move to a political conception of justice displayed Rawls' sensitivity to the charge that his theory of justice was a partial one and highlights the Kantian legacy in his thought. Because he wanted to establish basic rights, and by extension moral principles, on a priori grounds Rawls was forced to reconstruct the categorical imperative not simply as a hypothetical contract but as an expression of situated rather than transcendent reason. Initially, Rawls tried to establish the rational necessity of the original position by appealing to an ongoing process of finding reflective equilibrium between our given moral presumptions and the results of a rational analysis of those principles – his Kantian constructivism was present from early on[150] – which is why the charge of partiality was more damaging to Rawls' theory than other liberal philosophers. If we lack shared starting assumptions, then reason risks becoming powerless in determining what justice demands.

In response to the challenge that human diversity presents to his theory, Rawls made two distinct moves. First, he distinguished between a conception of justice

---

[148] John Rawls, *Political Liberalism* and *Justice as Fairness*, ed. Erin Kelly (Cambridge, MA: Harvard University Press, 2001).
[149] Rawls, *A Theory of Justice*, 401. See also, *The Law of Peoples*, 23-29.
[150] Rawls, *A Theory of Justice*, 3-46.

based on substantive metaphysical premises (about the nature of the individual or the inherent value of autonomy) and a political conception of justice based on the requirements of political reason, which allow for diverse individuals to find justice terms of coexistence without recourse to substantive presuppositions. Second, he more explicitly differentiated his domestic and international accounts of justice. Because the social conditions between communities are different then within a self-contained society, and the problem of ethical diversity is only magnified by considering the question of international justice, Rawls' international theory was by necessity less ambitious, making his defence of universal human rights minimalist in both justification and substance. Human rights set a minimum standard for the legitimacy of political power, both for authority within states and as limiting conditions for rightful interventions by outside power. These basic rights, which include a right to life, liberty, property and formal equality,[151] are required by the presumptions of public reason, which provides the conditions for a legitimate politics without a deeper consensus.

This political account of justice is first developed in his defence of political liberalism, in which disagreement on comprehensive visions of the good within a society precludes the common sense of justice he employed in *A Theory of Justice*. In its place he argued for a political conception of justice based on an overlapping consensus of principles necessary to a just liberal society, though the reason we support those principles may be different.

> While in a well-ordered society all citizens affirm the same political conception of justice, we do not assume they do so for all the same reasons, all the way down. Citizens have conflicting religious, philosophical, and moral views and so they affirm the political conception from within different and opposing comprehensive doctrines, and so, in part at least, for different reasons.[152]

The goal of such a consensus remains the establishment of some universal basis on which to ground the validity of principles of justice – as a moral law or imperative that is beyond the realm of ongoing disagreement. In this overlapping consensus we find consensus on some basic moral principles, even if we do not find common and

---

[151] Rawls, *The Law of Peoples*, 65.
[152] Rawls, *Justice as Fairness*, 32.

undeniable reasons for that agreement. To base human rights on the results of a political contest between cultures, ideologies or states would have been political in the wrong way for Rawls, hence he appealed to the notion of public reason, which leads us to an agreement on human rights.

In *Justice as Fairness*, public reason is intended to support an agreement in a liberal context, but in *The Law of Peoples* this notion is put to use in an international context of increased diversity.[153] The first demand of public reason is for reciprocity, requiring political decisions to be expressed in terms that are agreeable to all members of a society.[154] In the case of the society of peoples there is not a shared liberal culture to draw from, but a variety of cultures, which means that human rights must provide a minimal standard of legitimacy as part of the shared conceptions entailed by the law of peoples, or the idealised account of the contemporary international order.[155] In turn, human rights are intended to prevent abuses of individuals that make any just society impossible. However, the important values that underwrite the notion of public reason are not politically innocent.

An agreement in accord with public reason is one that affirms the norm of sovereignty and preserves the autonomy of the members of a society of peoples, as well as dictates that fair procedures are the first requirement of justice. What is not clear is why these would be reasonable terms for someone unconvinced by the current international order – and this would importantly include liberals with a cosmopolitan orientation or who support a more substantive account of human rights. Rawls defended his assumptions through an appeal to ideal theory, but the broader critique remains, especially in light of his professed political turn. By attempting to provide an ideal version of existing international norms, Rawls uncritically endorsed notions of sovereignty and international law without considering problems inherent in such ideals.[156] While he argues that to base our decisions on the merely political

---

[153] Rawls, *The Law of Peoples*, 121-128.
[154] Ibid., 136-137.
[155] The basic principles included in the law of peoples are drawn from the traditional principles and practices of international society and law; they include self-determination, sovereign equality, the observation of treaties, non-intervention, self-defence and standards of just war.
[156] Even a mere handful of critical texts are sufficient to undermine the conventional understanding of international politics that Rawls deploys: See, R.B.J. Walker, *Inside/Outside: International Relations as Political Theory* (Cambridge: Cambridge University Press, 1993); Cynthia H. Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics* (London: University of California

contingencies of power, interest or coercion would be political in the wrong way, I want to suggest that his attempt to game the politics ahead of time is ethical in the wrong way, in that it assumes existing ideals to be an ethically acceptable starting point without interrogating their history or consequences. Under the pretence of accommodating what he terms the facts of "reasonable pluralism" we get a political order that places a number of key moral assumptions beyond consideration – that the inter-state system is the best possible order, that communities should ideally be self-sufficient, and that fair procedures are the markers of justice – they may only be political (as opposed to metaphysical) but their "reasonableness" ensures that they should not be challenged.

One of the most problematic aspects of the Rawlsian endeavour is that it is set up so that any contracting parties *would* accept the terms of the contract – or more specifically, that any reasonable people *would* accept the particular set of human rights that comes out of the law of peoples. Even as Rawls' emphasised the political rather than metaphysical nature of the necessary agreement, it is still problematic, as the question remains open as to why those with significantly different moral, political and social understandings would agree to a political understanding of justice that reinforces the liberal capitalist nation-state and the contemporary international order based on sovereignty. This proposition does not only impact the presumably conservative culturist that much liberal theory imagines as the key dissident voice, but it also limits more radical progressive critiques of the political and economics order. If the basic structure of the state, the contemporary capitalist economy and the terms of international order are assumed to be analytically basic and the subject of necessary reasonable consent, then the moral universalism and human rights regimes that emerges from this represents a deeply political agenda, as a particular perspective is written into the supposedly impartial meaning of justice. This is perhaps most clearly seen in Rawls' focus on clarifying when intervention by liberal and decent peoples (practically, powerful liberal states) into the affairs of burdened societies and outlaw states is just; resulting in the affirmation of a right to intervention but no duties of

Press, 2000); and Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004), for examples. Rawls, for example, endorses the notion of state sovereignty without giving consideration to whether this constitutive ideal actually fits our contemporary condition and to the degree that it does fit, whose experience it privileges; further, he is blind to the hierarchical relationships inscribed into European international law that he re-traces with his categories of liberal and decent peoples, and burden societies and outlaw states.

distributive justice.[157] In the end the non-liberal (or non-decent) world is subject to the moral authority of the liberal world, but that liberal world bears no further obligations to the non-liberal world beyond toleration and adherence to the law of peoples. It would seem that Rawls' attempts to be political in the right way are unsuccessful, given that the consequences of his political conception of justice so fully re-inscribe the constellation of international political power, only now in idealised terms of public reason.

In his article "Minimalism About Human Rights: The Most We Can Hope For?" Joshua Cohen defends a conception of human rights that is minimal in its justifications, meaning it seeks to be political and not metaphysical in the Rawlsian sense,[158] while at the same time he argues against taking up substantive minimalism in the way Rawls did, and in doing so he opens up the possibility for a stronger critique of existing international politics. He sees human rights as having a different role to play in providing a shared outlook about the standards to which political societies can be held. Cohen goes on to suggest that human rights should be thought of as guaranties of legitimate membership in political society – they express what is due to each person who belongs to a society.[159] This move recaptures some of the disruptive potential of human rights by focusing individuals can demand of any authority, rather than the demand made amongst political communities.

Cohen argues that the rights that are required if individuals are to be treated as members are essentially those articulated in contemporary human rights treaties. While the practical import of this project is assumed to be acceptable, that human rights define just membership, Cohen thinks that the disagreements that exist over what is required can only be resolved through what he terms global public reason. Human rights are an independent normative enterprise to establish reasonable global norms to which political societies are to be held accountable. Global public reason, which is Cohen's development of Rawls notion, provides the basis for a political agreement that takes no account of how or why a particular world view could find the human rights regime acceptable, but focuses deliberation on the necessity of just

---

[157] Rawls, *The Law of Peoples*, 89-120.
[158] Joshua Cohen, "Minimalism About Human Rights: The Most We Can Hope For?" *The Journal of Political Philosophy*, Volume 12, Number 2 (2004), 190-213.
[159] Ibid., 198.

political membership to legitimate authority. Though Cohen does encourage different ethical traditions to articulate their own most compelling vision in accord with the demands of global public reason, it is a curious engagement with diversity, which basically amounts to: we don't care how or why you take on these norms defined by the need for legitimate membership, so long as you take them on!

This silence on the *how* and *why* of our political agreement, in favour of focusing on *what* is agreed, is what Cohen refers to as "un-foundationalism,"[160] which he takes to be the necessary tolerant and disinterested perspective on why a given political society will embrace human rights as a standard of legitimacy. Ackerly is rightly concerned with the way in which Cohen's theoretical perspective allows him to essentially speak for all those that might be resistant to this idea, which is particularly apparent in his reconstruction of Confusion and Muslim defences of his program of rights.[161] As worrying as this tendency to speak with a voice that is authoritative for everyone, is the claim that there is a need for a universal reformulation of political ideas in light of a undeniable truth about the human person that modern experience has made manifest – which is a call to reformulate political principle not in light of any particular world view but in light of the requirements of legitimate membership. By defining this as the legitimate question, Cohen "allows" those who are not already supporters of liberal human rights to answer his central question in their own terms, but without contesting the terms of the question – which is the question of how to legitimate the contemporary bureaucratic state, or how to justify the liberal norms of justice either as a universal standard for all states or through the creation of institutions of global governance.[162] Given that there is little development of this idea of global public reason beyond Rawls' conception it is hard to find this proposition convincing or appealing if one does not *already and always* agree with the priorities established by global public reason: equal respect for autonomous states in forming a consensus on the terms of (in Cohen's argument) political membership, which

---

[160] Ibid., 199.
[161] Ackerly, 107-117.
[162] This line of argument, like Rawls' own, limits the scope for legitimate critique not only for political cosmopolitans seeking a more radical transformation of the state, but also those arguing for more radical and diffuse forms of democracy. See, Joe Hoover and Marta Iñiguez de Heredia, "Philosophers, Activists, and Radicals: A Story of Human Rights and Other Scandals," *Human Rights Review*, Volume 12, Number 2 (2011), forthcoming. Available though online first at http://www.springerlink.com/content/p8166q6x9g27m121/, last accessed 23 March 2011, see pages 15-17 on the online first version.

simultaneously reaffirms the primacy of the bureaucratic nation-state and limits the question of human rights to that of determining what values and goods are necessary for just political membership. The problem is less the notion that considering what legitimates standards of political membership should be (as there may be good practical reason to focus on these questions) and more with the notion of how these standards are developed and implemented as postulates of public reason and fundamental markers of political legitimacy. An constructivist justification of moral principles (whether as presented by Cohen or by Rawls) that lacks a fuller analysis of the contingency and consequences of the institutional world its ideals are drawn from will always risk dressing up established power in the garb or disinterested reason.

IV. A World Without Certainty

The Rawlsian iteration of rationalist moral universalism illuminates the limits inherent to the tradition. There seems to be no way to square the circle, even with a metaphysical account of reason, which provides substantive principles and norms, the critique that always remains open and only partially addressed is that what reason deems necessary is little more than what power finds acceptable. This is the defining anxiety of universal moral theories because the very end they are aiming at – universal principles that are of absolute importance – ceases to be a certain and transformative one and becomes a contingent and often merely conventional end. This is the same failing that undermines moral essentialism, as presuming that some features of humanity have moral priority and define what is distinctive about being human requires the same quest for certainty, which assumes that the regulative function of morality can only be fulfilled if our moral principles are objectively and universally true in an absolute sense. These very large questions are at the heart of the idea of human rights, an idea that constantly undermines its own need for universal justification. It does this by appealing to humanity as a maximally inclusive category of moral concern and political identification, to privilege some expressions of humanity, some ways of knowing or living, over others suggest that there are those who are more fully or properly human than others – this is tension human rights always struggles with and which is caused by how we understand the task of moral theory.

The primary goal of this chapter has been to analyse and asses dominant perspective on human rights and universal morality, and in particular to test them against a set of presumptions regarding the nature of ethical and political experience. Beginning with the idea that moral principle and political right when expressed, particularly as imperatives, create remainders. That is, they ignore, isolate, demean and discredit what does not fit. Throughout I have tried to show that modern and contemporary theories of rights are in a sense already alive to this problem, in so far as there is a concern with the messy particulars of actual experience. Yet, by and large, the response of moral theory, and in turn theories of human rights, is to provide a universal justification that cannot be denied, to eliminate rather than engage these remainders. What provokes this will to universalise? In part it is a historical tendency within the philosophical tradition I am examining, as we assume that rational answer are singular, or at least come in the form of a harmonious plurality, and that they provide undeniable reasons for acting. This requires in turn that the irrational is a subject for punishment, education or toleration, but remains deviant as a remainder. This is further affected by a tendency to seek absolute answers that hold everywhere and at every time. And the suggestion that answers do not hold in this way invites the cardinal sins of relativism and subjectivism, which threatens the political and moral order. In the following chapters I want to draw on traditions of thought that do not see pluralism or contingency as problems to subdued, but rather as facts with good and bad consequences, of which our ethical and political thinking must take account. That work, however, requires a further critical task. A key element of the critique thus far has been an insistence that we not deny the political content of ethics, that we not expect final and universal justifications. Yet, this presupposes a problematic relationship between morality and politics that I have only hinted at thus far. Where this chapter has been concerned with the attempt to provide certain grounds for moral principles, the next looks at the relationship between ethics and politics that seems to generate the need for certainty.

Chapter 2
Human rights and the politics of uncertainty

'Life is the living of it, the walk is the walking of it, the song is what I compose or sing when I compose or sing it, not something independent of my activity; creation is not an attempt to copy some already given, fixed, eternal, Platonic pattern.'
-Isaiah Berlin, *European Unity and its Vicissitudes*

I. Political Ideals and the Morality of Certainty

In the previous chapter I argued that contemporary defences of human rights as universal moral principles are caught up in an impossible quest for certainty. The result of this search for certain and absolute principles, whether conducted in terms of essential human characteristics or the a priori demands of reason, is an account of human rights in which moral principles must be above contestation and work to constrain contingency and difference. This certainty is necessary so far as we expect moral principles to constrain political life, providing a rational ground for critique and reform of existing conditions. This dynamic not only generates the quest for certainty and the imperative to constrain pluralism, but it limits our political imagination. If the ideals that structure our understanding of world politics – whether the nation-state or the cosmopolis – and the terms in which they are defended, though moralised accounts of legitimacy and membership, are taken to be certain, not open to ongoing contestation and revision, then we risk limiting our moral and political imagination. The separation of moral principles from political conditions and contestation leads to shallow and repetitive calls for rival and incommensurable political orders. Calls either conservatively grounded in existing conditions or oriented toward distant utopian ends. As Kimberly Hutchings argues, the tensions between different ideal orders 'are irresolvable in principle, because they represent a clash at the level of rival idealised ontologies which are mutually exclusive; they are unhelpful or inapplicable in practice, because of the perennial lack of fit between the "first best" world of ethics (morality) as against the "second best" world of politics.'[1] The central task of this chapter is to examine this relationship and to suggest that an alternative account of human rights requires rethinking the relationship between morality and politics. To begin this process I look at the relationship between the account of human rights, and

---

[1] Kimberly Hutchings, "International Politics as Ethical Life," *Ethics and International Relations*, eds. Hakan Seckinelgin and Hideaki Shinoda (Basingstoke: Palgrave, 2001), 31.

the understanding of world politics in the work of Andrew Linklater and Michael Walzer.

How we understand ethics, the individual and society, the nature of politics, and even the process of historical change are interconnected, and while I want to present both Linklater and Walzer as offering compelling accounts of world politics, I also point to the problematic assumptions they make regarding these issues – in particular their tendencies to reduce plurality (whether in terms of fundamental moral values, moral identities, sources of political legitimacy or effective social forces) and to focus on the need for certainty. These criticism may be somewhat surprising, as both thinkers are sensitive to the distance that can arise between abstract theory and concrete experience, but I believe this reveals a tension within their work between their ideals and, for want of a more original phrase, their sense of reality.[2] I conclude that this leads to a moral perspective that constrains plurality in the name of certainty and limits political imagination, despite the best efforts by both authors to bring together the moral and political. While they might accept Dewey's claim that 'Judgment and belief regarding actions to be performed can never attain more than a precarious probability,'[3] neither thinker is willing to give up the prospect of 'deliverance' from uncertainty 'by a knowledge to be attained apart from practical activity.'[4] In Linklater's case attained through universal rights granted to all individuals, while for Walzer deliverance comes in the form of the priority granted to the self-determining moral community. In the final section of the paper I suggest that an ethics that not only *acknowledges* but is also *generated from* irreducible plurality and the constancy of change leads to a different vision of world politics.

The success of human rights as a political project is perhaps best illustrated by the simple fact that supporters and sceptics alike must address their role in international political life. For both Linklater and Walzer, I will focus on the way their understanding of human rights is tied to their broader vision of political life. Crudely, Linklater views international human rights as an imperfect instantiation of universal moral principles that have a vital role to play in achieving a more just world politics in

---

[2] Berlin, "The Sense of Reality," *The Sense of Reality*, 1-39.
[3] Dewey, *The Quest for Certainty*, 6.
[4] Ibid., 17.

which exclusion, violence and harm are reduced, and inclusion, democracy and cosmopolitan justice are increased. Human rights provide a set of principles that justify and structure this improved world politics. Walzer, by contrast sees rights as necessarily dependent upon strong institutionalisation and coherent social meanings. So, while a robust set of human rights might be an admirable ideal it is unlikely in a world of disparate communities. Further, an overly robust and determinate set of rights would threaten the central good of communal self-determination. These reservations aside, Walzer does suggest that we do have a minimal account of illegitimate politics that can be made more effective, and possibly more comprehensive, in our aversion to mass killing, starvation, forced migration, systemic torture and other grave wrongs. For Walzer, these minimal but vital universal principles provide limits to the justifiable actions of governments and communities.

In the final section of this chapter I argue that the contemporary idea of human rights is defined by a tension between distinct but equally unsatisfying conceptions of legitimate authority and political community. In both Linklater's cosmopolitan ideal and Walzer's vision of community an essential human truth finds expression in a distinctly moral form of community that justify human rights, which in turn provide conditions of legitimacy to institutionalised political power. Not withstanding the very different conclusions they draw, both thinkers pursue a reductionist ethics that supports a determinate vision of politics. By turns they present a global politics of multiple and overlapping loyalties, ensured by a cosmopolitan order that includes robust legal institutions and protections of global citizenship rights, and of an international politics of self-determining nation-states expressive of distinctive social values and meanings, but constrained by minimal universalism that recognises the unacceptability of grievous forms of cruelty and violence.

However attractive these visions of moral politics may be, they are not accurate descriptions of world politics, and while no ethical vision – necessarily oriented towards what might be – should aspire to provide such a description, the ideal presented is problematically determinate and limiting. The contemporary idea of human rights cannot fully acknowledge the remainders it generates. Honig rightly acknowledges that Walzer and the Critical Theory that inspires Linklater are both alive to the danger of exclusion generated by universal principles and determinate

identities,[5] but this acknowledgement is only partial, as difference is acknowledged only so far as it does not upset the desirability of a universal human rights bearer or the morally privileged political community. A fuller affirmation of the persistence of plurality and contestation would treat 'rights and law as part of political contest rather than as the instruments of its closure.'[6] This leads to an alternative starting point, one that accepts 'that attempts to shut down the agon perpetually fail, that the best (or worst) they do is to displace politics onto other sites and topics, where the struggle of identity and difference, resistance and closure is then repeated.'[7] This is necessary not only to appreciate the values, forms of community and political order that contemporary human rights explicitly denies, it is also to ensure a place for the experiences, aspirations and imaginations that cannot find expression without challenging the vision of world political order that contemporary human rights are based upon.[8]

II. Linklater's Critical Cosmopolitanism

For Linklater, the fundamental tension that calls for resolution within the current inter-state system is the distinction between man and citizen.[9] This focus on the difference between membership in and exclusion from political community shapes his account of human rights. On his account, the evolution of citizenship rights in the European state-system reflects both increasing inclusivity of concern and the expansion of democratic politics – a pattern of development with wider implications that should be continued at the global level.[10] The justification for expanded citizenship rights within the nation-state generates the problem of unjust national exclusions – if equal rights are accorded universally within the polis, the justification for drawing distinctions of right and duty at the national border is put into question.[11] While he is keen to give an historical account of the expansion of these rights, he also

---

[5] Honig, *Political Theory and the Displacement of Politics*, 14.
[6] Ibid., 15.
[7] Ibid., 15-16.
[8] Gurminder K. Bhambra and Robbie Shilliam, "Introduction: 'Silence' and Human Rights," in *Silencing Human Rights: Critical Engagements with a Contested Project*, eds. Gurminder K. Bhambra and Robbie Shilliam (Basingstoke: Palgrave Macmillan, 2009), 9-14.
[9] Andrew Linklater, *Men and Citizens in the Theory of International Relations* (London: Macmillan, 1990).
[10] Linklater, "Citizenship and sovereignty in the post-Westphalian state," *Critical Theory and World Politics: Citizenship, sovereignty and humanity* (London: Routledge, 2007), 93-6.
[11] Ibid., 100.

argues that there is a universal moral right to exercise control over decisions and activities that affect one's life, and a corresponding responsibility not to cause unnecessary harm to others through the exercise of this rightful power self-determination. These two commitments shape Linklater's defence of human rights, leading him to argue not only for strong protections from harm and violence, but also for robust rights of political participation. Further, this program of rights can only be fulfilled and ensured in a global political order defined both by cosmopolitan citizenship and the "good international citizenship" of reformed post-Westphalian states.[12]

The first issue to be developed here is why Linklater takes the distinction between man and citizen to be of central importance. The bare fact that we accord preferential treatment to co-nationals is not self-evidently objectionable, which is why Linklater emphasizes the harmful effects of such national exclusivity. In limiting political rights and moral responsibility to citizens of a discrete community we are potentially the victims and perpetrators of serious harm. 'The establishment of appropriate global legal and political arrangements, supported by commitments to world citizenship, would ensure that all persons would be protected from unnecessary harm.'[13] Nation-states have capabilities to effect physical destruction and political instability on a global scale, both through the power of modern weapons and as a result of the propensity of the state-system to conflict and military engagement. Further, uncontrolled social forces, both political and economic, are increasing global interconnectedness and thus making all of us more vulnerable to serious harms. Finally, the global threat posed by environmental destruction is another global concern that calls the conventional account of citizenship into question.[14] As the nation-state has become the primary form of social organisation globally it has created conditions of instability and interconnectedness that undermine it as an adequate form of political community. Thus in order to both control the social forces that affect us and to properly honour our moral duties to humanity, new forms of citizenship, based on a cosmopolitan political order and universal human rights, are necessary.

---

[12] Linklater, "Cosmopolitan citizenship," 120-4, and, "What is good international citizenship," 64-78, *Critical Theory and World Politics*.
[13] Linklater, "Introduction," *Critical Theory and World Politics*, 7.
[14] Linklater, "The problem of harm in world politics," *Critical Theory and World Politics*, 145-159.

This is not a purely practical argument – it is not only the need to control our social lives more effectively that generates the need to overcome the exclusivity of national citizenship; there is also a moral argument to be made. First, Linklater claims that we have a moral right to participate in decisions that affect us.[15] This suggests that even if an exclusionary political order were better able to control social life, it would be immoral because individuals would not have a say in important decisions affecting them – this justifies a right of participation, to political self-determination. The second moral claim that calls the distinction between man and citizen into question is the duty not to cause undue harm to others.[16] This calls the current state-system into question because national borders separate humanity in a way that both enables committing such harms and makes it difficult to prevent them. Any legitimate political order, in Linklater's view, must enable us to confront grievous harms such as ethnic cleansing, large-scale war, severe poverty and environmental catastrophe. Merely claiming these moral principles is not enough; therefore I turn next to Linklater's defence of moral universalism, which draws on both discourse ethics and a sociological account of the development of global harm conventions.

Linklater's use of Habermas' discourse ethics is at the centre of his argument for cosmopolitan moral duties. He broadly endorses Habermas' account of communicative reason as the search for an inclusive consensus on moral questions.[17] This process of reasoning requires and legitimates the egalitarian moral agency that animates Linklater's opposition to all forms of unjust exclusion.[18] Discourse ethics suggests that within and between polities all norms are subject to critique in two ways. The first is that to be morally legitimate political arrangements must uphold principles of universal moral respect and equal regard. The second is that accepted

---

[15] Linklater, "The achievements of critical theory," *Critical Theory and World Politics*, 49-58. See also, Linklater, *The Transformation of Political Community: Ethical Foundations of the Post-Westphalian Era* (Cambridge: Polity Press, 1998), especially chapter 3 and 4.

[16] Linklater, "Citizenship, humanity and cosmopolitan harm conventions," *Critical Theory and World Politics*, 129-134.

[17] Linklater, *The Transformation of Political Community*, 77-108.

[18] In the previous chapter I have criticised Habermas' discourse ethics, claiming that it remains committed to the quest for moral certainty – it is the individual agents capacity for autonomous moral agency, as a postulate of communicative rationality that is the central moral value such that morality imposes absolute principles that regulate and confine practical experience. For this reason, my analysis of Linklater's work will focus on his distinctive take on discourse ethics in light of sympathetic critics (most importantly Seyla Benhabib), and the additional emphasis that he places on the historical development of moral universalism from Stoic thought to natural law and finally to modern human rights. While I hope to show that Linklater's use of discourse ethics remains problematic, his work does present a substantively different account from Habermas' own.

norms, laws and social arrangements can be challenged and held up to reflective scrutiny in a representative political system, reflecting a more or less ideal speech situation, in which all participants have an equal right to make arguments and agreement is based on the force of the better argument and not some other source of coercive power.[19] But there is a tension here, as universal rights place limits on the legitimate self-determination of the political community; there are forms of self-legislation forbidden by moral principle. Where moral principle is not respected and the will of the community or the sovereign violates the integrity of the universal individual, then legitimate authority is lost. In political terms, this paradox is expressed in the conclusion that the spread of moral equality, expressed in human rights norms, requires the expansion of democracy beyond the national state, the conventionally authoritative political community.[20] In world politics this means that exclusions based on a presumption of sovereignty or communal identity are insufficient and open to criticism, especially by those who are affected by these arrangements but without a voice in the decision process.[21]

Following Seyla Benhabib, Linklater focuses on the split between the right and the good within discourse ethics, as the norms required by communicative reason, aimed towards practical understanding, provide only a procedural morality that allows considerable space for the expression of difference. Discourse ethics requires only a commitment to those principles that make practical agreement possible, such 'that only those norms can claim to be valid that meet (or could meet) with the approval of all concerned in their capacity as participants in a practical discourse.'[22] This entails universal moral respect and equal access in the decision-making processes that affect one's life. 'The discourse theory develops a normative and critical criterion by which to judge existing institutional arrangement, insofar as these current arrangements suppress a "generalizable interest."'[23] For this reason, Benhabib thinks it is important to emphasise that while the principle on inclusion involves a substantive commitment to universal moral respect, this does not lead to a narrow range of legitimate

[19] Habermas, "Remarks on Legitimation through Human Rights," 157-171. Also see *Between Facts and Norms*, 84-103.
[20] Seyla Benhabib, *Another Cosmopolitanism*, with Jeremy Waldron, Bonnie Honig, & Will Kymlicka, edited by Robert Post (Oxford: Oxford University Press, 2006).
[21] Linklater, "Cosmopolitan Citizenship," 120-24.
[22] Benhabib, *Situating the Self,* 37.
[23] Ibid., 47.

understandings of the good. Therefore, while we come to any discourse with a substantive conception of the good, we must seek to take on the moral view point of the concrete, and not merely abstract, other – one figure representing the universal and equal presumptions of moral thinking and the other those specific relationships and understandings of ethical life that cannot and should not be avoided in the process of discourse. An appreciation of the real effects of difference between participants in a given discourse may lead to the conclusion that consensual principles are not a possible outcome in every situation.[24]

Linklater endorses Benhabib's view, claiming that these reconsiderations of discourse ethics respond to the 'contention that critical theory is committed to modes of thought and action that would subsume difference within one totalising identity.'[25] He argues that the goal is not total consensus and that moral-political understanding has two dimensions: 'to understand the plurality of moral views in order to reach agreement about the principles of inclusion and exclusion, and to comprehend the rules of coexistence, which agents could accept for pragmatic reasons should a consensus elude them.'[26] While this argument does much to make the process of discourse more realistic, it weakens the justification for the presumptions of universal moral respect and equal voice in decisions that affect one's life, because the principles of discourse must give way where difference overwhelms consensus. If the reality of difference between individuals is such that consensus is not possible, the status of the principles and evaluations that emerge from the process of discourse becomes questionable. While practical rules of coexistence may be both necessary and useful in political life, it would seem they lack moral legitimacy as the reasons for agreeing to them was not the unforced force of the better argument. If we introduce other practical concerns as reasons for coming to some agreement the distinctive features of discourse as a form of communicative rationality are undermined. This has at least two potential implications: first, moral legitimacy *is* dependent upon consensus, but because of the degree of difference between some individuals' moral evaluations, common moral principles are not always possible. The second is that practical considerations such as power-inequality, self-interest, sympathy or guilt could prove

---

[24] Ibid., 49-53.
[25] Linklater, "The achievements of critical theory," *Critical Theory and World Politics*, 56.
[26] Ibid.

critical to finding principles of coexistence that are not "rational" but could be moral. Either conclusion is unattractive to a thinker committed to the moral universalism that discourse ethics justifies, which is the reason that Linklater does not rely solely on the necessary presumptions of moral discourse to justify his position. Without explicitly acknowledging this failure of discourse ethics, he does include additional arguments to justify the principles of universal moral concern and equal access to decision-making – which could be seen to give good reason for maintaining these principles where moral consensus is not possible.

In his more recent work Linklater has focused on the issue of harm, and while there will be more to say about the issue of cosmopolitan harm conventions within state-systems in what follows, the moral importance of harm itself needs to be considered. First, Linklater argues that the increasing severity and range of harms we are exposed to gives reason to seek more universal forms of community. Because the nation-state and the state system concentrate massive military power in state agencies, and enable both inter- and intra-state warfare, it generates new demands for wider solidarity.[27] Added to this, economic interconnectedness, technological advances in communication and transport, and environmental degradation increase the exposure of individuals to transnational and global harms that cannot be controlled or responded to adequately at the national level.[28] Linklater self consciously takes forward the Stoic's claim that we have a duty to prevent harm to all of humanity – and what he seeks to show is that while discourse ethics may not provide a fully convincing justification for universal principles, a duty to prevent harm does, as a matter of contemporary fact, require us to embrace cosmopolitan duty.

Appreciating that this appeal to a duty not to harm and the existence of global and transnational harms is not self-justifying, Linklater points to shared human vulnerabilities and capacities for sympathetic understanding. In making this move he explicitly references an earlier generation of critical theorists, who based human solidarity in the shared experience of suffering and mortality.[29] Linklater appeals to an

---

[27] Linklater, "Introduction," *Critical Theory and World Politics*, 8-10.
[28] Ibid.
[29] Linklater, "Towards a sociology of global morals," *Critical Theory and World Politics*, 185. He highlights the work of Horkheimer and Adorno in particular, and the influence of Schopenhauer on their thinking.

'ethic of human concern that is, in some respects, more fundamental than the social moralities that usually shape individual and group behavior,'[30] which begins with human vulnerability and a sense that however much we may want for a universal good, we have an experience of universal evil. This common vulnerability is recognised through a sort of primordial form of human identity, a process of connection that is experiential, emotional and sympathetic – rather than rational, linguistic and procedural. His claim is that we do acknowledge the moral motivation of the suffering of other human beings as human beings rather than as co-nationals or co-members of any community, such that an automatic impulse to rescue, to respond to threats to survival, are immanent if not always actual in human society.[31] This emphasis on vulnerability provides a contemporary defence of the stoic duty not to harm, but highlights the role of emotion, sympathy and physical vulnerability that is often absent in moral universalism. While I am sympathetic to this account, it becomes increasingly problematic when we consider the full extent of Linklater's cosmopolitanism, as he explicitly builds from an account of universal concern to an account of cosmopolitan duty instantiated in a global political order.

There are two problems with this appeal to common humanity. First, Linklater treats the categories of the "outsider" or the "stranger" as if they have the same meaning as "humanity", and while he is clear that 'the decision to help a stranger from another social group need not rest on a doctrine of the equality of all persons – or rather it need only recognize their equality to a limited extent,'[32] this still supposes that the relevant appeal was one to a common humanness, as opposed to duties owed to difference as such. Further, what goes unaddressed is that "humanity" is treated as the more primordial or basic category, which is a questionable assumption and begs the question of how this concept acquires meaning. To the degree that this appeal to the experience of common humanity – both in sympathy and vulnerability – is meant to substantiate a robust and prescriptive form of moral universalism and political cosmopolitanism, it fails to provide the grounds for its own significance. Linklater seems to assume that the failure to be morally motivated by such experiences is explained by the construction of exclusive and particular identities, neglecting the

---

[30] Ibid., 178.
[31] Ibid., 182-186.
[32] Ibid., 180.

way in which a human identity is itself constructed and can be used to justify a great many harms and exclusions as easily as care and inclusion. Colonial subjects were recognised as humans of an inferior variety, and Europeans in some cases thought of themselves as having a variety of duties of "automatic rescue" that included saving their Christian souls or removing them from conditions of barbarism.[33] Certainly, Linklater would oppose such constructions of humanity – my point is to emphasise that the meaning of human identity, whatever its phenomenological immediacy, is not given nor necessary singular and coherent.

The second related point is that the prevention of harm is not a simple or obviously basic value either. To begin with Linklater tells a story of individuals suffering from harm – the challenge for them is exert control over these harms in a way that gives each person a say in this process and regards every individual as equal. Importantly, these qualifications (participation and equal regard) are not built into a concern with preventing harm as such. This is the often repeated point that the individualistic autonomous agent is not a given but a social construction, and one which importantly is defined though an opposition to certain types of harm, mainly threats to autonomy defined through exercising rational choice, being secure in body and property, maintaining clear legal distinctions between individuals and between the public and private in social life. While Linklater may want to begin with "basic" physical harms – which remains contentious in its own way – he also wants to give an account of increasing freedom and inclusion, which requires a more substantive account of harm that will not do the foundational work he intends. Further, not only are basic harms difficult to establish, the prevention or control of one type of harm may result in additional harms or the loss of valuable goods, making this appeal to harms even more ambiguous and complicated. Living in a world in which eliminating threats of bodily harm is prioritised may result in less personal control over one's own body or fewer chances for desired risk taking. In the end I do not want to deny the importance of vulnerability and harm, or humanity and sympathy, to our ethical thought, but rather to point to the fact that they do not necessarily support the grander edifice that Linklater seeks to build upon them. They provide no shelter from the plurality and

---

[33] Maria-Jose Rodriguez-Salgado, "'How oppression thrives where truth is not allowed a voice': the Spanish polemic about the American Indians," in *Silencing Human Rights*, 19-42.

uncertainty that make ethical commitment and judgment an always contingent and political activity.

Linklater recognises that 'the need for compassion for non-nationals, personal responsibility for the environment and action to create more cosmopolitan forms of political association' does not necessarily challenge the nation-state or the inter-state system, as these institutions could be reformed, but he also clearly thinks that upholding our duty and expressing the appropriate care for humanity should lead to new forms of political order.[34] Returning to his original tension between man and citizen, we can trace an argument based both on the practical necessity of more inclusive forms of international political order and the moral basis for cosmopolitan rights. Linklater reads the history of political community as a story of increasing inclusion brought about by both social forces and moral learning – this leads to an increasingly interrelated social world defined by global economic relations, shared environmental threats, societies based on the rule of law rather than custom, the modern state's monopoly of legitimate violence and the regulation of international politics by the sovereign inter-state system. There is a crucial linkage made between this history and cosmopolitan moral duties, which leads Linklater to envision the solution to the problem "man and citizen" as the expansion of the legitimate representational elements of the state to a global level.

In part the development of citizenship rights is a history of practical social evolution, as increasingly powerful and institutionalised states required new forms of legitimacy, which were secured by guarantees of security and then political participation and welfare. But this adaptation of social life to conditions also enables and is guided by powerful moral duties. Whether he looks to the Stoic or natural law tradition, Linklater identifies a similar tension between the duties we have to humanity and those we have towards co-nationals. Many have argued for the acceptability of this split, claiming that our duties to humanity are imperfect and indeterminate, but Linklater supports a conception of universal human rights that expands the rights and protections afforded to citizens to all human beings. While he acknowledges that the contemporary human rights regime is importantly partial, what

---

[34] Linklater, "Cosmopolitan citizenship," *Critical Theory and World Politics*, 117.

he refers to as a 'liberal as opposed to a republican conception of citizenship beyond the state,'[35] he argues that it has a distinct significance in 'challenging the traditional assumption that states are the sole or main subjects of international law.'[36]

The contemporary human rights regime institutionalises an individual legal personality that is not tied to national citizenship but rather reflects the rights of human beings as such. This form of right follows the same logic of the expansion of citizenship rights to all those within the political community, but challenges the exclusion based on nationality. While the universal rights current most broadly accepted lack the guarantees of participation and self-determination, which are central to the full conception of modern citizenship, they still preserve an important realm of cosmopolitan right in which rights violations anywhere are a concern for all, and those whose rights are violated can make their case outside of the nation-state – though the legal and political institutions through which this is done remains practically limited and problematically exclusive, it is still a significant step.[37]

Linklater's argument goes further than claiming that human rights provide minimal principles of legitimacy that inhibit the unjust actions of states against their citizens – though he acknowledge this important function. First, establishing international legal personality for individuals undermines the state as the sole legitimate authority in world politics, as the state is not only often the primary violator of these rights, but it is increasingly incapable of protecting individuals. Second, the need to respect individuals' rights to self-determination and participation suggests the need for new forms of political organisation, as the inter-state system and the nation-state prove unable to ensure the full scope of individual rights and effectively regulate the harms individuals suffer.

Linklater acknowledges that human rights as they exist in the contemporary world are only a partial institutionalisation of cosmopolitan duty, but they are part of a

---

[35] Ibid., 119

[36] Ibid., 117.

[37] Ibid., 119. Linklater clearly recognizes that 'only a fragment of humanity enjoys the liberty to protest against injustices in international courts of law,' but for him this is a call to expand cosmopolitan democracy rather than an indictment of cosmopolitan right.

process by which a cosmopolitan global order may emerge.[38] Also, cosmopolitan right – as the extension of citizenship rights beyond the nation-state – suggests that the idea of good international citizenship has a role to play in improving the inter-state system and potentially transforming it. Linklater suggests that good international citizens are states that 'have a special responsibility for working out the international implications of the more enlightened concepts of national citizenship.'[39] Further, he suggests that this responsibility falls to liberal-social democratic states, as they have most fully worked out the universal moral implications of citizenship rights in their domestic polities. This compliments the idea of human rights as limits on state's rights, suggesting that a commitment to human rights should lead to action to uphold those rights within the international system by upholding international human rights treaties, adhering to international criminal law and giving consideration to the needs and interests of non-citizens.

Many cosmopolitan thinkers draw out the immanent universalism in contemporary international politics to motivate a further cosmopolitan transformation,[40] but what distinguishes Linklater's position is the consideration he gives to both the persistent and important role of the nation-state and the inter-state system. The development of a cosmopolitan democracy – as opposed to unrepresentative institutions of global governance or more limited forms cosmopolitan right – is a possibility to be pursued but one that will likely require much time and effort. Rather than emphasising a unique break in our current moment, such that a cosmopolitan orientation is a sudden requirement, he traces out the historic presence of cosmopolitan harm conventions in international politics, suggesting that the value of universal concern and its role in constraining political power is inherent in our moral sentiments and current institutions of international politics.

> The function of a sociology of cosmopolitan harm conventions is to investigate how far different state systems drew on the idea of a universal community of humankind to create agreements that individuals should be protected from the suffering such phenomena

---

[38] Ibid., 120.
[39] Linklater, "What is a good international citizen?" *Critical Theory and World Politics*, 77.
[40] See David Held, "Restructuring Global Governance: Cosmopolitanism, Democracy and the Global Order," *Millennium: Journal of International Studies*, Volume 38, Number 3 (2009), 535-547 for a recent account of the cosmopolitan implications of the current international order.

cause. It is to ask how far the great state-systems developed moral conventions which reveal that human sympathies need not be confined to co-nationals or fellow citizens but can be expanded to embrace all members of the human race.[41]

This compliments the idea of good international citizenship, as Linklater demonstrates that there are norms of behaviour in the classical conception of sovereignty that insist that states have responsibility for both order and justice in international society, placing limits on the use of violence by sovereign states and upholding the duty states owe to their subjects.[42] Yet, despite these aspects, which are more fully expressed in the current inter-state system, the move to cosmopolitan democracy remains the necessary next step in the pursuit of justice. This is because we have reached the limits of state-centric social order's ability to respond to the demands of justice and adequately control the social world. His work on the NATO intervention in Kosovo both highlights the role for good international citizenship and points to the moral and structural limitations of the current order, as the response to events in Kosovo was famously characterised as legitimate but illegal and states, burdened with their particular interest, were imperfect agents of justice.[43] Further, the issues of global poverty and environmental destruction provide additional evidence that the existing institutions of international society are inadequate.

The exact shape this cosmopolitan democracy takes is not clear, and one could be forgiven in thinking he is idealising the European Union (EU),[44] but Linklater is hardly alone in this failing – what is distinctive is his insistence that what must be expanded are citizenship rights that add a more participatory democratic compliment to existing human rights protections. The most important change would be to fully dissolve the link between nationality or ethnicity and political inclusion, so that all individuals would have a say in those actions that affect them. Linklater suggests this will involve authorities both smaller and larger than the nation-state (speaking both geographically and in terms of numbers), but that proliferation of democratic polities

---

[41] Linklater, "The problem of harm in world politics," *Critical Theory and World Politics*, 146.
[42] Ibid.
[43] Linklater, "The good international citizen and the crisis in Kosovo," *Critical Theory and World Politics,* 87-9.
[44] The EU as a political ideal is featured far more prominently in *The Transformation of Political Community*, but in this and later works he is clearly aware of the important democratic deficit of the current form of the EU and thinks that fulfilling the promise of the institution requires more democratic institutions and processes.

in a cosmopolitan order does not mean the elimination of the state as such. Rather, the state persists in a truly post-Westphalian form, in which its absolute sovereignty is not even a lingering myth and a global order of democratic participation and law constrains the actions of state authority. Not only are vital exclusions eliminated, as a global democratic order would include everyone, the exclusions that remain in political life would be legitimated by inclusive processes of justifiable differentiation or face appeal to higher political and legal orders by individuals treated unjustly.

This vision of cosmopolitan order bears similarities to that suggested by Benhabib, who speaks of democratic iterations at multiple social levels.[45] Comparing their work again reveals two problems faced by a critical cosmopolitanism, which her work responds more fully to. First, universal human rights require the imposition of a political structure and an account of the universal individual upon existing communities and individuals with potentially very different subjectivities. Benhabib is keenly aware of this problem. She argues that legitimate human rights norms are worked out through democratic iterations in which culturally specific human rights are re-made as 'elements in the public culture of democratic peoples through their own process of interpretation articulation, and iteration.'[46] While human rights entail protections for individuals that trump the de facto authority of the nation-sate and, further, that communal authority requires guarantees of democratic participation, Benhabib suggests that the form that actual human rights standards will take depends upon the context in which they are worked out. On this account the universal individual finds expression through an actual person, therefore the space for particularity must be preserved.

The second problem Benhabib's account of rights highlights is that it undermines the priority given to the territorial state in favour of a more expansive democratic order, but, seemingly, without any guide to how the boundaries of legitimate community are to be established. If everyone has a right to participate in decisions that affect them, then potentially everyone has a right to participation everywhere. Benhabib address this issue by accepting the necessity of a democratic sovereignty

---

[45] Benhabib, *Another Cosmopolitanism*.
[46] Seyla Benhabib, "Claiming Rights across Borders: International Human Rights and Democratic Sovereignty," *American Political Science Review*, Volume 103, Number 4 (2009), 696.

that extends beyond the nation-state to a form of global constitutionalism, but without seeking to eliminate or completely transcend the state. Instead the state must find its legitimacy in a cosmopolitan field with multiple levels of governance and participation, institutionalising not a singular human community, but a community of humanity that enables and is legitimated by universal rights that protect individuals not only from state violence, but also social and economic harms endemic to global capitalism, and guarantee the sanctity of forms of community in which individual identity, ethical values and communal autonomy are also protected from unjust intervention.[47] The community of humanity, then, is a diverse community of communities, the members of which preserve their distinctiveness even as morality requires they abide by universal principles of legitimacy.

There are many virtues in Benhabib's justification of human rights. She does allow for an important degree of contestation in the articulation of human rights through her ideas of democratic iteration and jurisgenerative politics.[48] First, the appeal to democratic iterations highlights the necessity of contextualisation, as human rights norms are not simply accepted as they are institutionalised in international politics, but re-made and applied in context through the democratic process. Second, the jurisgenerative nature of law, which she emphasises, denies the capacity of powerful institutions and actors to authoritatively determine the social norms expressed through the law. This is done by appealing to the wider political contestation that shapes the law and allows human rights law to remain critical and subversive of established power, even when they are rhetorically taken up by hegemonic states to justify self-interested policies. However, the degree of contestation and difference that is allowed is still constrained, as it is only when universal moral principles are upheld that it can be said that there 'is legitimate "unity and diversity" in human rights among well-ordered polities.'[49] So, even as democratic iterations lead to diversity, they also lead to convergence, because the moral principles that provide the foundation of rights cannot be contradictory or ambiguous.

---

[47] Benhabib, "Claiming Rights across Borders: International Human Rights and Democratic Sovereignty," 692-695.
[48] Ibid., 696.
[49] Seyla Benhabib, "The legitimacy of human rights," *Daedalus*, Volume 137, Number 3 (2008), 100.

Bonnie Honig suggests, the 'assumption in Habermas and Benhabib of linear time secures' what she calls 'a chrono-logic in relation to which they assess new rights: new rights-claims are judged in terms of the rights' amenability to being subsumed under existing constitutional or universal categories.'[50] As she goes on to argue, Benhabib cannot 'see how new rights-claims do not necessarily demand mere inclusion in a previously stabilized order. They may. But they may also demand a new world. They may unsettle previously existing categories of right.'[51] This approach to rights is a result of the role that the quest for certainty plays in how we understand moral principles, treating them as if they must limit contestation and impose order upon ethical and political life, which means that justifications of human rights that are expressed in this mode will always depend upon a singular conception of humanity and legitimate community, even if one is as sensitive to difference as Benhabib is, there is a need to presuppose the universal moral subject and her place in the political community in order to generate objective principles.

To conclude, I want to point to two problems with Linklater's conception of both morality and politics. First, it is not clear that the progress of human freedom is a process that can be rationalised, in the sense that there is clear progress towards greater and more perfect freedom. Human freedom is the source of conflict as much as harmony; within societies the free creativity of humanity can lead to social breakdown as quickly as social harmony and this problem is only made worse at the international level. If we do not assume that freedom is rationally constrained to take certain prescribed forms, there is no reason to assume it can be developed without continuously leading to conflict that does not admit of any rationally necessary resolution.[52] Related to this is the observation that much of humanity over much of its history has not privileged freedom above other values. This is not an attack on freedom as valuable, but an acknowledgment that what we value does not reduce to freedom and a consistent prioritisation of freedom can force us to sacrifice other values.

---

[50] Bonnie Honig, "The Time of Rights: Emergent Thought in an Emergency Setting," *The New Pluralism: William Connolly and the contemporary global condition,* eds. David Campbell and Morton Schoolman (Durham, NC: Duke University Press, 2008), 90.

[51] Ibid.

[52] Isaiah Berlin, "Pursuit of the Ideal," *The Crooked Timber of Humanity*, ed. Henry Hardy (Princeton, NJ: Princeton University Press, 1990), 1-19; also see, William E. Connolly, *Pluralism* (Durham, NC: Duke University Press, 2005), 41-42.

The second concern I want to raise is that despite Linklater's best efforts, his thinking retains problematically absolutist notions of both progress and moral principle. Even though he makes accommodation for postmodern critiques of modernist narratives of human progress indebted to Enlightenment rationalism, I contend that Linklater retains a broadly progressive notion of the evolution of human society that is supportive of a cosmopolitan political order and universal moral principle.[53] It is unclear how this narrative is compelling if one truly rejects the idea that some social, historical or rational force determines the course of human social evolution. This critique is directly related to Linklater's contention that an increasingly universal ethics, underpinned by the universal moral principles embodied in discourse ethics, is both the needed solution to the tensions between the universal and particular, and a realisation of a desirable Kantian ideal of moral regard as respect for equal, autonomous and rational subjects. If one takes a more agnostic approach to the necessity or probability of historical progress it seems more likely that much of our development is contingent and uncertain.[54] It is this understanding of history that provides a different perspective on questions of moral and political progress. It is a position of greater scepticism and pluralism, which sees both moral principle and social change as an interaction between material conditions, established practice, human moral imagination and rational problem solving.

The problem with abandoning both a comprehensive notion of rational freedom and of a purposeful history that guarantees social progress is that the relationship between morality and politics is called into question.[55] Linklater ties political legitimacy to inclusion, both as equal concern and political participation, but the priority they are given is unsustainable within the terms that he sets out. This aporia does not go unrecognised, but in the end Linklater's secondary appeal to human vulnerability and the historical reality of cosmopolitan sentiments fails as an

---

[53] R.B.J. Walker, "The hierarchicalization of political community," *Review of International Studies*, Volume 25, Number 1 (1999), 151-156.

[54] Hutchings, *Time and World Politics*, especially chapter 5 as a critique of cosmopolitan accounts of progress and chapter 7 on the consequences of a contingent understanding of time, history and progress. Similar themes can be found in the anti-teleological readings of history in Isaiah Berlin's "The Hedgehog and the Fox," in *Russian Thinkers*, ed. Henry Hardy (London: Penguin Press, 2008), 22-81, and John Dewey's *The Public and its Problems* (London: Allen & Unwin, 1927), chapter 2.

[55] Bernard Williams identifies this broadly Kantian approach to politics as political moralism, in which moral principle directly legislates legitimate political order, see Williams, *In the Beginning was the Deed*, 12-17.

independent justification, as these moral ideals only lead to the grander cosmopolitan project if they are already read as justifying and supporting Linklater's account of cosmopolitan right. Returning to the role of human rights, we see again the use of moral principle – removed from contestation and expressing a necessarily moral power – to justify a coercive political order and to limit contestation. Human rights specify not only the legitimate claims of political subjects and authorities, but also the relationships, ends and practices that constitute social life, making the invocation of human rights an always potentially assimilative act of imposition. This is an imposition not only on those who are socially marginalised or who object to the human rights claim in question, but also an imposition of the ideal upon lived experience. The value of Linklater's cosmopolitan orientation is not only in the sensitivity and sophistication of the argument, but also in the tension it exhibits – the reality of international politics challenges and upsets his cosmopolitan vision, pointing to the limits not of a possible ethic of global concern but a particular way of understanding the role of human rights, and moral principles generally, in legitimating the forms political authority he envisions.

In Linklater's work, human rights and citizenship rights have a common source in the demands of equal moral regard and a right to participation, and in both cases these universal rights directly structure political life. Political authority is legitimate so far as it can successfully uphold these rights, and so far as the inter-state system fails to protect these rights effectively or limits their scope then new forms of political order become necessary. Further, this transformed order must be more universal, even as the order need not be based upon a singular world state. The rights of individuals, including rights to maintain communities of permissibly exclusive identity,[56] call for new political authorities both smaller and larger than the nation-state. What is most remarkable about this political ideal is the degree of harmony it presumes, and which would be necessary to its success. Not only is there a harmony or rights – rights to security, political participation, welfare and community are presumed to form a single emancipatory ideal – but the multiple levels of political authority, if they are to be a real advance on the nation-state, must work with astounding coordination and goodwill. While a multi-level order of democratic iterations may offer further levels

---

[56] Andrew Linklater, "Transforming political community: a response to the critics," *Review of International Studies*, Volume 25, Number 1 (1999), 172.

of appeal to individuals abused by political authority, it also serves to expose individuals to proliferating obligations, which they may not be able to meet, as well as creating more sites of vulnerability to institutional abuse, corruption and inefficiency. This remark is not intended merely to point to the practical difficulties of cosmopolitan politics (an important but obvious critique), but rather to point out a weakness in Linklater's conception of politics – and specifically democracy – which is perhaps too focused on procedures and laws, missing much of what is political in both the exercise of power but also the reality of contestation that cannot be contained in the dialogic ideal.[57]

III. Walzer's Democratic Nationalism

In considering the work of Michael Walzer I want to follow important strands of my argument as they apply to his conception of ethics and understanding of the role of human rights in world politics. In the end, I argue that distinctions between universal and particular, or cosmopolitan and communitarian, orientations miss the common assumptions regarding ethics and politics that not only generate core controversies around human rights, and in international political theory broadly, but also render them irresolvable and limiting. Walzer's work is defined by his focus on the contextual and social nature of meaning, which goes deeper than simply insisting on the recognition of the social sources of identity. This leads me to focus on the nature of community and ethical values in my critique, but my concern remains tracing out the way these ideas relate to political authority - and the place of universal principles, such as human rights, in world politics.

Walzer's thought is not structured around a central problem, such as Linklater's distinction between man and citizen, and his work covers many aspects of political theory. He has, however, been centrally concerned with international politics, from his seminal work on just war to his reflections on democracy, justice and tolerance. If

---

[57] This critique is similar, to a degree, to a critique made by Jean Bethke Elshtain (see "Really existing communities," *Review of International Studies*, Volume 25, Number 1 (1999), 141-146) against Linklater's *Transformation of Political Community*, which suggest that his cosmopolitanism misses the importance of practical political struggle and the appeal of more particular identities in those struggles. What I claiming goes even deeper, it is a claim that the formal moral universalism of discourse ethics obscures the contestability of that universalism and the power it exerts on those who refuse its rational imperative.

Walzer's thinking on world politics can be characterised by a unifying concern it would be the connection between community and meaning. It is the importance he grants to embedded understanding that shapes his views on ethics and politics, and which forms the backdrop for his views on human rights and legitimate political authority.[58]

The socially embedded nature of ethics, for Walzer, comes from the nature of truth and meaning. Traditional accounts of morality depend upon the image of the philosopher as lawgiver, such that it is the philosopher's separation from the social world than enables the articulation of justified principles.[59] Walzer acknowledges that this process takes many forms – prophetic revelation and rational deduction being two rather out of fashion ways of generating the moral law – and suggests that in contemporary political theory the image of the judge dominates.[60] In democratic society the law itself is generated through the democratic process, ideally representing the will of the people, but the judge (and by extension the philosopher) is charged with ensuring the agreement of enacted law with higher principles. This requires the philosopher to exist in a removed state from the political community, as their object of reflection is the universal ideal of justice or right. It is this separation that Walzer opposes. He insists that such external and non-social standpoints are unattainable and so far as they are imperfectly put into practice they take a rather authoritarian form.

This critique of philosophical morality is based on an account of truth and meaning that is dependent upon consensus within the community.[61] Importantly this is not simply a dialogic consensus, but one based in deeper currents of history, established practices and common experience. For this reason Walzer finds appeals to original positions or ideal speech situations unconvincing, and instead focuses on the importance of both established social meanings and the processes by which those meanings are established, contested and changed, stating that

[58] This evaluation of Walzer's work is shared by Peter Sutch in "International justice and the reform of global governance: a reconsideration of Michael Walzer's international political theory," *Review of International Studies*, Volume 35, Number 3 (2009), 513-530.

[59] Michael Walzer, "Philosophy and Democracy," *Thinking Politically: Essays in Political Theory*, ed. David Miller (London: Yale University Press, 2007), 1-21.

[60] Ibid, 9-14.

[61] Walzer, "Objectivity and Social Meaning," *Thinking Politically*, 38-51.

conversation is only one among many features of the complex social process that produces consensus and shared understandings. That process includes political struggle (settled, at best, by the force of numbers, not arguments), negotiation and compromise, law making and law enforcement, socialization in families and schools, economic transformations, cultural creativity of all sorts. The understandings that come to be shared will never have been rationally defended by a single speaker who managed to see them whole.[62]

The implications of this starting point can be seen in Walzer's defence of the self-determination of peoples,[63] his argument for a plurality of distributive principles when addressing the demands of social justice as complex equality,[64] and the attention he gives to the challenge of tolerating difference within the community.[65] The process of generating and revising social meanings is a concrete process, and while there is certainly a place for abstract reflection, that abstraction cannot take the place of actual struggles and contestations that generate the sort of situated and historical consensus that community depends upon.[66] This is particularly evident in Walzer's account of democracy, where he offers a vivid picture of democracy as a comprehensive political practice that involves knocking on doors, raising money, holding protests, debating policy and actually casting ballots and abiding by the results, at least until the next round of voting – and it is the immediacy and even physicality of these democratic customs that generate the social identity and relations that enable critique.[67]

Given Walzer's general view it might seem unlikely he would have much to say about world politics, but in fact his account of political community does have implications for international order. In his article "Nation and Universe," Walzer makes clear that his understanding of social meaning does not preclude a form of universalism, what he terms reiterative universalism.[68] The implication of this reiterative universalism is that while there is not a single standard of legitimacy for all communities, there is a common need for and right to self-determination. Because social meanings, and by extension ethical values and the terms of legitimate political

---

[62] Walzer, "A Critique of Philosophical Conversation," *Thinking Politically*, 32.
[63] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York, NY: Basic Books, 1977).
[64] Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York, NY: Basic Books, 1983.
[65] Michael Walzer, *On Toleration* (London: Yale University Press, 1997).
[66] Walzer, "Objectivity and Social Meaning," *Thinking Politically*, 50.
[67] Walzer, "Deliberation and What Else?" *Thinking Politically*, 134-145.
[68] Walzer, "Nation and Universe," *Thinking Politically*, 186.

authority, must be worked out in community, something like a universal right to self-determination should structure relations between communities in order to preserve the needed social space.[69]

Walzer argues in *Just and Unjust Wars* that the society of states is structured by states' rights to territorial integrity and self-determination.[70] It is a point of contention how these rights are grounded, as in that text he suggests that states' rights are derived from individual rights to life and liberty – a concession to individualism that has led critics to allege that protection and priority he gives to states is unjustified.[71] This criticism, as it is generally stated, misses the point of Walzer's argument, as critics all too quickly move from this use of individual rights as a justification for the state to a liberal case for the priority of individual human rights over states' rights.[72] First, the individual rights to life and liberty that Walzer defends are essentially concerned with preserving the individual as a member of a self-determining community, and not with articulating prescriptive and determinate universal rights that individuals can exercise apart from any particular community, stating that 'morally creative men and women produce many different moralities, none of them the one perfect morality that would render their creativity superfluous.'[73] Further, Walzer is clear that he takes these basic rights to be justified by a general consensus that reaches beyond the liberal context in which they were articulated and which are vaguely articulated and conventionally accepted rather than grounded in a universal human nature.[74] This is evidenced by the way in which the nation-state has been taken up as a political structure internationally – particularly in the post-WWII period the protection of state sovereignty was seen as vital for newly liberated peoples, but that liberation takes many forms.[75] Finally, the modern nation-state system is an historical context of its own, so while the rights framework that defines the nation-state system is not a timeless moral principle it does reflect the understanding of an age. While Walzer does not make this direct argument, traces of it can be seen when he points to the way in which "Western"

---

[69] Ibid., 199.
[70] Walzer, *Just and Unjust Wars*, 53-58.
[71] For a representative and well known version of this critique, see David Luban, "The Romance of the Nation state," *Philosophy and Public Affairs*, Volume 9, Number 4 (1980), 392-397.
[72] Sutch, "International justice and the reform of global governance: a reconsideration of Michael Walzer's international political theory," 516-518.
[73] Walzer, "Nation and Universe," *Thinking Politically*, 200.
[74] Ibid., 197.
[75] Ibid., 214-215. Also, see "The Politics of Difference," *Thinking Politically*, 177- 179.

values have changed across historical epochs – a point well illustrated by the increasing priority given to bodily over spiritual health.[76] Also, in his account of tolerance in different ages defined by imperial order, nationalist politics and immigrant states, Walzer suggests that we can intelligently speak of the spirit of an age, so far as this involves the most widespread social understandings and values.[77] It is worth noting that we may only now be entering a period in which globally inclusive social meaning is even a possibility – as it is a relatively recent phenomenon that all peoples are incorporated into a comprehensive international system and some form of human equality is widely embraced.

The protection of the individual's right to self-determination within a community of shared understanding is the central moral principle that structures Walzer's account of international society. Both in discussing the justice of war and the permissibility of humanitarian intervention, he is clear that the walls erected between peoples by the norm of sovereignty are vital to protecting the distinctive and creative features of any community. He is, however, adamant that the nation-state is an imperfect form of political order and its presumptive authority is open to question – this is most clearly the case when the government of a state turns on its people.[78] Yet, judging when the bond between the institutions of government and the community has broken is a difficult thing to do, in large part because of the specific social meanings that define this relationship, but also because the presumptions of sovereignty are such that outsiders experience the state as a combination of government and people. Not only is the outsider unable to fully appreciate the social meanings that define political authority, the external critic also gets only a partial view of the political life of the nation-state. Sovereignty and the state-system clearly have a moral value for Walzer, but it is not absolute.[79]

There are times when a state's lack of legitimacy is evident and a grievous moral wrong is obviously being committed, and it is in these instances that Walzer sees a

---

[76] Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame, IN: Notre Dame University Press, 1994), 21-40.

[77] Walzer, *On Toleration*, 14-36.

[78] Walzer, "The Moral Standing of States: A Response to Four Critics," *Thinking Politically*, 219-236.

[79] This can be seen in Walzer's willingness to rethink the extent of the state's right to non-intervention, granting more ground for exceptions; see Walzer, "The Politics of Rescue," *Arguing About War* (New Haven, CT: Yale University Press, 2004), 67-81.

place for the actions of outsiders. In discussing when humanitarian intervention is legitimate and reflecting on the politics of rescue, Walzer emphasizes the provisional and contingent nature of such actions.[80] We must rely on our judgment in deciding when the crimes of a given state cross the line from unfortunate to unconscionable – though he does suggest that there are some crimes we (used in the most inclusive sense) find absolutely wrong, including genocide, mass murder, famine, systematic torture and the expulsion of large numbers of people from their homes. It is in response to these crimes that we can perhaps begin talking about human rights that go beyond the rather vague account of rights to life and liberty. While Walzer is sceptical of the probability of robust human rights protections in our current world, he does not reject the idea in principle. The primary concern Walzer has is the distance that exists between universal moral aspiration and real world action and social structures. The rights embodied in the sovereign state-system provide a minimal degree of security to individuals and communities, and there are practices of intervention that have begun to buttress individual's rights with concrete protections, but aspiration for a more just international political order is dependent upon assigning correlating responsibilities to the wider-set of emerging rights, as well as building the political institutions that can ensure these rights. In essence, Walzer insists on making clear what is required to make a wider set of human rights effective, while focusing on the primacy of the rights to membership and the right to have rights – underlining the limited value of rights without enforcement.[81]

While I do want to highlight Walzer's limited endorsement of rights, it should not lead to the conclusion that he sees institutionalisation as the only obstacle to a more robust system of universal human rights. The primary value of autonomous political communities is the space it gives individuals to make their collective lives relatively free from imposition, and this is not merely a consequence of the value of diversity as such, but reflects the nature of communal life. The world we live in, from the physical objects we use to the moral ideals that direct our activity, is a socially constructed world and to invade the space in which this activity takes place or to impose values, institutions and practices on others is, for Walzer, a very real kind of violence.

---

[80] Walzer, "The Argument about Humanitarian Intervention," *Thinking Politically*, 237-250.
[81] Walzer, "Beyond Humanitarian Intervention: Human Rights in Global Society," *Thinking Politically*, 251-263.

Beginning from this situated position the appeal to (reiterative) universal values or rights involves a logic that is very different from traditional accounts of moral universalism, as particular structures are not built up from basic and universal premises – the conventional account of political and moral philosophy. What universal values we do recognize are the result of adapting particular values to the task of understanding others, as thin universal values are derived from thick particular ones.[82] This makes the prospects of a universal morality rather precarious as the act of identifying with or endorsing the moral experience of those we do not know risks both misunderstanding and imposing our own values upon them. Thus, what universalism we do find is limited and general – rights to life and self-determination, and injunctions against the most severe forms of political violence – giving us a rather crude set of ethical tools for inter-communal action, which Walzer thinks gives us good reason for caution and humility.

The two most common criticism of Walzer's position are that his views are overly statist and that his understanding of community fails to account for the diversity that exists within any actual society. While these critiques certainly point to important tensions in Walzer's work, I find it difficult to see them as refutations of his position and, more importantly, they do not point to the most interesting limitations of his work. Walzer has said much to contextualise the rather conditional priority he grants to the state as such, making the disagreements that liberal and cosmopolitan thinkers have with his views a field of diminishing intellectual yields.[83] My concern is not to point out the ways the state violates individual rights or to argue that the state is no longer the most relevant unit in the political order, but to argue that Walzer represents one-side of the tension inherent in the current inter-state system, such that he and his critics share a great deal of ground – and that it is this shared terrain that is most in need of criticism. The weaknesses of Walzer's notion of community present a more fruitful line of critique, but I want to consider the limitations of his thought within the context of his understanding of social meaning and the concrete processes by which ethics and politics are actually carried out.

---

[82] Walzer, *Thick and Thin*, 63-84.
[83] Walzer acknowledge as much when he notes: 'We all know one another's lines. In every argument, we anticipate the opening gambits; we have memorized the standard replies and the follow-up moves; no one's closing flourish is at all surprising,' in "Nation and Universe," *Thinking Politically*, 183.

Walzer's ideal of international society mirrors Linklater's universalist vision, which claims that we can have a plurality of political authorities ordered by a singular conception of cosmopolitan citizenship that ensures the same moral rights to everyone. For Walzer, there can be a plurality of meanings to citizenship and the rights that individuals have are dependent upon their social context, but the social context to which individuals belong is importantly singular. The nation-state may only be a modern version of the creative moral community, but the ideal of communal identity is vital to ordering the diversity of the world. To allow for plurality without the authority of the community risks a descent into meaninglessness.[84] The importance of this unspoken threat can be seen in Walzer views on social criticism – contestation and struggle over social meaning is vital but it must take place within the terms of the community.[85] In the case that outsiders want to offer criticism, it must be translated in order to be effective and non-invasive. This is a consequence of the authoritative relationship of morality to politics, which in Walzer's thought means the moral community determines legitimate political structures,[86] but the legislative logic at work is the same one we see in Linklater's cosmopolitan vision.

As his ideal of legitimate political authority and its instantiation in the modern state is a revealing limitation, so to is Walzer's ideal of community. Critics have highlighted the way in which his account of community at best glosses over the diversity within community, and at worst renders the process of contestation and change difficult and obscure by strengthening rather than destabilising structures of social marginalisation.[87] The implication of this critique can only be appreciated by taking Walzer's responses to them seriously. First, Walzer has insisted that communities are defined as much by the processes of contestation and criticism as they are by agreement and stability. Second, he advocates for a conception of community that acknowledges duties to outsiders and can make space for tolerance of difference within the community. And finally, much of his seeming conservatism is a function of his realism regarding the process of political change within communities

---

[84] The importance of this focus on the self-determining and democratic nature of community for Walzer is highlighted in James Gregory, "The political philosophy of Walzer's social criticism," *Philosophy and Social Criticism*, Volume 36, Number 9 (2010), 1093-1111.
[85] Walzer, "Objectivity and Social Meaning," *Thinking Politically*, 46-51.
[86] Molly Cochran, *Normative Theory in International Relations*, 59-62.
[87] Richard Shapcott, *Justice, Community, and Dialogue in International Relations* (Cambridge: Cambridge University Press, 2001), 46-48.

that are defined by social meanings built upon history, established practice and common experience.[88] I do not think these responses redeem Walzer's vision of moral community, but again I want to suggest they point to widely held concepts that limit our understanding and approach to human rights, and the relations between morality and politics more broadly.

I have already argued that Walzer's understanding of social criticism presupposes a realm of shared social meaning, such that the role of the critic reinforces the importance of a shared conception of community. I want to pursue the implications of this relationship further, as it is because Walzer understands the social construction of meaning in an exclusive way that he must limit who can be a critic and what the critic can say. Accepting that meaning is deeply social implies that meaning is necessarily constrained by the current forms that association takes, but it is only by presuming some primordial significance for a certain type of communal identity that priority is given to the institutional borders of community rather than the plurality of associations that define the social world.[89] Walzer's view of social meaning is uncritically conservative so far as it begs the question of how the community itself comes into being and is sustained, as well as how social meaning is established and changed. The key point for my argument is that the appeal to a collective identity that grounds the moral value of community elides the exclusions and silences that prioritising one common identity creates – the consequence of this is not only that certain identities are marginalized or ejected from the moral community, but that these exclusions and silences are internal even to those who embrace the communal identity. This denial of the more radical implications of pluralism,[90] both external and internal, manifests in founding mythologies of the nation and sustains the exclusive

---

[88] Peter Sutch points to the importance that changing global conditions in pushing Walzer to acknowledge not only the break-down of the nation-state but the modernist ideal of nationalist identity, though he, I think, over-emphasizes Walzer's cosmopolitan tendencies. Walzer is clear that the breakdown of traditional sources of identity is balanced by the weight of tradition that lies behind the idea of both nation-state and international society, and his response to this 'post-modern' condition is to seek alternative sources of community identity – importantly, this mirrors Linklater's response to the global condition, which is to recast citizen identity in cosmopolitan, rather than merely national, terms. See, Sutch, "International justice and the reform of global governance: a reconsideration of Michael Walzer's international political theory," 513-530.

[89] Toni Erskine, *Embedded Cosmopolitanism: Duties to Strangers and Enemies in a World of 'Dislocated Communities'* (Oxford: Oxford University Press, 2008), 130-132.

[90] Gregory, "The political philosophy of Walzer's social criticism," 1101-1105.

identity of the moral community.[91] Yet, how social meanings are actually established and how they evolve reveals a productive tension in Walzer's work. In his defence of democracy Walzer highlights the contestation and compromise involved in establishing social meanings, and it is the openness of this contextual, rather than rational, view that provides the possibility for embedded criticism. Walzer, however, does not focus on the sources of opposing meanings and identities – despite their importance to preserving his critical orientation. This is not surprising, however, because focusing on the ambiguity central to social meaning, both its expression and suppression, blurs the vision of the moral community and threatens the political structures based on national self-determination.

This is also related to an ambiguity in Walzer's understanding of universalism. While his arguments about the directionality of universalism –from particular to universal – is a useful corrective to traditional philosophical understanding, it leaves unaddressed the question of how shared meanings are possible and why they exert motivational force upon us. Like Linklater, Walzer points to our capacities for sympathy and our vulnerability to pain, as well as to the importance of our capacity for language that takes shape in associated experience, and while the implications he draws from these gestures toward commonality are more limited than Linklater's, the potential they have to unsettle his own view of social meaning are not addressed.

> Walzer's insight that moral culture, even viewed from a particularist perspective, need not be considered fixed is an extremely valuable point for an embedded cosmopolitan position to adopt. His concomitant assumption that this culture is defined and interpreted within boundaries that *are* fixed is, however, problematic and in need of correction.[92]

A similar tension can be found in the account of universal rights to self-determination and the duties that communities have to outsiders. Duties to outsiders include giving refuge to those who have been expelled from their homes and providing pathways to membership for outsiders within the community – while this later duty may be specific to democratic societies with inclusive self-understandings, Walzer makes the case that a duty to tolerate outsiders within the political community has long been

---

[91] William E. Connolly, *Identity\Difference: Democratic Negotiations of Political Paradox* (Ithaca, NY: Cornell University Press, 1991), 159.
[92] Erskine, *Embedded Cosmopolitanism*, 148-149.

acknowledged. The appeal to universal values and duties seems to acknowledge that the communal world of social meanings exceeds convention and that the elements of political life that exist at the margins of community are made meaningful despite their exclusion from the world of social meaning.

This leads me to Walzer's final response: his acknowledgment of the difficulty of changing social meaning without engaging in the concrete activities of community. It is in his account of the detailed and concrete reality of social practices that Walzer shares common ground with Alasdair MacIntyre, as both thinkers claim that social life is defined by shared ideas and practices that directly impact how we think and act.[93] If this is true, then no exercise in rational critique or appeal to abstract ideals will do the heavy lifting involved in making political or social change happen. Walzer and MacIntyre accept the social construction of reality, which means that they must seek political and social change within the terms internal to the political community, leaving only marginal spaces for effective universal appeals. Again we find a mirrored contrast in Linklater's work, as he would seek to overcome convention by appealing to universal values and the emancipation of individuals from limiting and coercive social forces. What is missing from both accounts of the comprehensive social order, as a reality to be accepted or transcended, is an account of how social order and meaning interact and how actual individuals experience it. The experience of individuals in the social world never perfectly conforms to institutionalised social meanings – it is a world filled with remainders, litter and incoherency.[94] Further, the individuals jointly making the community do not confront their experience in a uniform way, either appealing to universal emancipatory ideas or suffering in passive conformity, but respond in creative and often unpredictable ways, generating political activity easily missed by political programs guided by moral visions endowed with certainty. Walzer seems to appreciate the value of individual experience, the humane tenor of his philosophy is only the most obvious expression of this concern, but this concern is not the starting point of his investigation into social life but a point of tension that resists resolution with his vision of the national moral community.

---

[93] MacIntyre, *After Virtue*, 181-203.
[94] Connolly, *Pluralism*, 71-75.

Rather than taking a stand on either side of the dichotomies that separate the work of Linklater and Walzer, or reaching for a more perfect synthesis, I have tried to illustrate the common limitations in their work. In the end, I would like to characterise Linklater and Walzer as particularly compelling examples of common approaches to thinking about human rights. Along the way, I hope the case has been made that the idea of human rights is (1) tied up with questions of legitimate political authority, (2) the scope and nature of political community and the (3) relationship of morality to politics. What I have argued is that the way these questions are answered – whether in favour of universal moral principles that define legitimate authority for all political communities, or with the emphasis on the preservation of spaces where particular accounts of political authority and comprehensive moral principles can be generated for members of a national moral community, the answers reflect a strain of absolutism that places antecedent moral ideals in a position of authority over our understanding of the social world and judgment of political structures, and an ontological dualism in which the contingent, changing, unfinished and excessive is devalued and is at best accommodated, or at worst denied and repressed.

IV. Reconstructing the Relationship between Ethics and Politics

In the final section of this chapter I offer an initial plan for how an alternative view of ethics could lead to a reconstructed account of human rights, with important implications for the meaning of legitimate authority, political community and the relationship between ethics and politics. Whether the ideal is individual freedom or communal self-determination, the ideal becomes pathological when we insist upon its absolute character to ensure its meaning. When we frame the debate as one between universal and particular, or cosmopolitan and communitarian, the ideal in question becomes absolute in order to avoid political struggles over value. Our contemporary wariness of explicit foundationalism has done little to change the logic of the question and instead it has lead to a series of less convincing accounts of moral authority.[95] Because this view of morality and politics retains a notion that the world is a whole not defined by remainders, by the litter of an open universe, the suggestion that our

---

[95] Molly Cochran's account of 'weak and contingent foundationalism', as an unavoidable compromise, illustrates the difficulty of seeing around this question without putting the relationship of morality and politics into question, see *Normative Theory in International Relations*, 256.

ideals are contingent, plural and open to constant contest and reconstruction is unsettling. Certainly, Linklater and Walzer both appreciate the space between moral ideals and actual experience (it is what makes them complex and rewarding thinkers), but in appealing to dialogic universalism or the coherence of social meaning within the national community the best one can hope for is to find terms of coexistence with an undeniable realm of change, uncertainty and contest. It would seem William Connolly's contention that the modern age is characterized by our inability to accept or change our condition applies to both Walzer and Linklater[96] – and I would suggest to the perennial debates that define human rights more fully than any specific argument or articulation of rights.

My primary purpose has not been to reveal the problematic foundational assumptions or to diagnosis the assimilative tendencies in the different visions of human rights presented – not only has this work been done well elsewhere,[97] but also it can only take us so far. Hutchings points out that the tensions that define the debates over human rights, and myriad other aspects of international political theory, suffer from a common affliction. 'Whichever idea is in question, it provides a standard against which the actual world is always found wanting. The noise of the battle obscures the extent to which all of these perspective are making very similar arguments and running into similar problems.'[98] Within the limits set by how we think about political authority and moral community it seems there is little hope of resolving the tension between universal and particular values in the idea of universal human rights. The project I want to pursue is to think about these basic ideas in a different way by focusing on the relationship between morality and politics, as well as the way ideal social orders respond to uncertainty. I will do this in two steps: the first

---

[96] Connolly, *Political Theory and Modernity*, 4. 'In our times we can neither endure our thoughts nor the task of rethinking them. We think restlessly within familiar frameworks to avoid thought about how our thinking is framed. Perhaps that is the ground of *modern* thoughtlessness. And perhaps that condition is linked to two others: in modern times the debate over how to master the world engulfed the one over whether to do so, while the dangers accompanying the project of mastery become most discernable just when the institutional structures of modernity become most tightly locked into this project.'

[97] Molly Cochran convincingly argues that both Walzer and Linklater remain committed to problematic forms of foundationalism, see *Normative Theory in International Relations*, 52-120; Richard Shapcott is critical of the assimilative tendencies in Linklater's version of critical theory in *Justice, Community, and Dialogue in International Relations*, 80-94 and 105-128; and Toni Erskine points to the limits of Walzer's understanding of community in *Embedded Cosmopolitanism*, 119-147.

[98] Kimberly Hutchings, "The Question of Self-Determination and Its Implications for Normative International Theory," *Human Rights and Global Diversity*, eds. Simon Caney and Peter Jones (London: Frank Cass, 2001), 103.

articulating what I see as the limiting conditions for rethinking human rights, and the second is to suggest a positive account of one potential way of understanding human rights.

In accusing both Linklater and Walzer of a form of absolutism I am not accusing them of fanaticism – clearly they appreciate the complexity of ethical life. Yet, despite this recognition their ideal political order is oriented around a central value that not only provides order but which is also presumed not to conflict with other values. Further, the role that these ideals play is intentionally pre-political; they do not allow room for contestation. To acknowledge that our most central values may not only be multiple but also might be incompatible suggests that ethics is a more contingent and uncertain endeavour than we are usually willing to admit. The perspective I have argued for thus far does not imply that our ethical commitments are unjustifiable; instead, what it suggests is that they are always political in the sense that they involve compromise, loss, commitment and imposition. In the political realm pluralism calls our attention to remainders: the losers in political contests, the socially excluded and the marginalised; and in shifting our focus it forces us to acknowledge the contingency of our commitments, the role of power in establishing primary social values, and the interrelation of the ethical and the political.

While I do not want to obscure the difference between ethics and politics, I am suggesting that they are both elements of a common activity. Crudely, the ethical is distinguished by a concern for reflective evaluation – distinctly ethical questions regard the good, or more precisely if some specific action, event or thing is good. The processes of evaluation is importantly self-referential in that our self-understanding is implicated in this process, this is true both for individuals and social groups. In its reflective nature the ethical provides motivation and guidance for action, but the mistake all too often made is to think that this guiding function is certain, absolute or complete. The results of acting on our ideals, or of attempting to find compromises or resolutions between conflicting ideals, should enter back into our ethical judgment and our values - this process of reflection and action should be ongoing.[99]

---

[99] This account of an ethical method is strongly influenced by John Dewey. In particular his account of ethics in *Reconstruction in Philosophy*, and his lectures on ethics collected in *Lectures on Ethics 1900-1901*.

The political is generally taken to be more active and less reflective social sphere. Contestation, compromise and coercion are just a few of the activities of politics, defined primarily by the exertion of power and force. Traditionally moral values are seen to legitimate the activity of politics, such that accepting the coercive power of the state or the results of democratic processes is justified by some ideal. If that ideal is moral and absolute, then the negative consequences of legitimate political action are hidden from view, as they are either morally justified or an inescapable necessity. This understanding closes off the political from the ethical, obscuring the results of political activity from ongoing evaluation and limiting political experience's influence on moral ideals – this should be challenged. What I am suggesting is that there is an ongoing interrelationship between the ethical and political, and that the ethical is active and imposing in its own way, while the political is a potential space for reflection and evaluation.

The appeal of the quest for certainty we find Linklater and Walzer struggling with is only partly explained by the link that has historically been made between reason, understood as certain and orderly, and the good – as this explanation begs the question of why we have prioritised certainty in ethics. In part it is the role of ethics in political life – pre-political values or principles provide the foundation for political authority in a way that is analogous to role of a founding figure that gives the just law to the political community, while remaining importantly separate from that community.[100] Additionally, the privileging of certainty is the result of the political function of morality – as moral norms are appealed to by those with power, the unchanging and certain nature of those moral norms play an important role in institutionalising and preserving social order.[101] The dual role of ethical values in social life highlights the limitations of how ethical ideals are generally understood in debates about human rights.

In Linklater's work the ideal of the nation-state is rejected, but in its place he puts a form of cosmopolitan order, which is legitimated by an appeal to undeniable social

---

[100] Dewey examines this relationship between certainty and authority in *The Quest for Certainty*; while the need for a moral foundation separated from the "everyday" realm of politics is explored by Bonnie Honig in *Democracy and the Foreigner*.
[101] This has been analysed by a number of thinkers; I refer particularly to William Connolly's examination of this phenomenon in *Identity\Difference*, which is heavily indebted to both Nietzsche and Foucault.

forces that are increasing interconnection, a substantive human identity that makes wider social orders possible and an historical trend towards inclusive and moral forms of social life that reach their fulfilment in a form of cosmopolitan democracy. The certainty of this vision is striking – not only are social forces leading to greater interconnection, human nature is such that this interconnection can be shaped into inclusive forms of global order that instantiate the moral ideals of democracy and a cosmopolitan political order that humanity has been progressively working towards. While in Walzer's work we see a less grandiose vision; the bounded political community is a fixed form of social order. The ideal of the discrete community is not unreasonable, certainly the sharing of social space, economic interaction, shared cultural traditions and history, and common political institutions give this form of social order a thickness that is undeniable. Yet, it remains a fixed ideal that is not open to change, at least not without radically altering our self-understanding, and as an ideal, the actual work of constructing discrete and bounded forms of political community is made invisible.

If we remain committed to this way of thinking about both ethical ideals, then moving beyond merely conventional moral community forces us to accept a universal or a particular founding – do all people follow one just law or is the justice of the law specific to each people. If we do not accept the logic of idealism that this choice suggests, then answering the question of whether the universal or the particular ideal is primary is a fruitless activity, and one that importantly obscures the exclusions and power at play in ideals of justice and law, however they rendered legitimate. Insisting that there is a primary ethical value, or that our values can be finally and coherently ordered, and that there is an ideal form of social order that provides us with stability and certainty, is a conceptual dead-end. Yet, this way of framing ethics and politics is appealing precisely because it is a way of both preserving established forms of authority and identity, and justifying radical change, as it is the certainty about moral and social ideals that justifies the exertion of force that maintains or radically alters the social world. If one, however, begins with an assumption that ethical values are multiple and open to conflict, and that social order itself is subject to indeterminate change, the certainty of either conservatism or radicalism is undermined, and we need a different understanding of political and social change, one more modest and piecemeal.

Both Linklater and Walzer are democrats and in many ways their ideas and visions of political life are miles away from the sort of coercive and violent regimes that most readily display the vices I am highlighting. Certainty and idealism are more terrifying when they motivate a totalitarian or fascist regime, without question, but recent political experience does suggest that democracy alone is insufficient to avoid the destructive consequences that can follow political action motivated by moral and intellectual certainty.[102] In what follows I do not reject this democratic starting point, but I do want to move away from both the republican and liberal universalist understandings of democracy found in Walzer and Linklater. The implication of the pluralist and pragmatic position I am suggesting is that our democratic ideal itself needs to be more democratic – more open-ended, less procedural, more thoroughly embedded in social life and imbued with an inclusive ethic.

If we begin with the assumption that ideals are constantly subject to change and revision in light of experience, then the project of justifying political authority is always an ongoing process – the rights and duties of individuals, the nature of political community, offices of authority and the institutional structure of political life are constantly being remade. This perspective asks us to accept a great deal of uncertainty in social life, an uncertainty only increased by the resistance to prescriptive accounts of the social world that is implied. Appeals to a progressive history of inclusion, moral learning or civilising processes, whatever the supposed empirical verification suggests, reflect ideal understandings of the social world – imparting purposes and meanings to forces that are claimed to provide justification but which remain at their core mysterious. Much as insisting on the coherency of our ethical values obscures much of experience, particularly the experience of those without power and privilege, the appeal to directional and determinant social forces relies upon the absence of experience of those forces as personal, intentional and historically contingent – the spread of liberal market economies, for example, is carried out through the intentional actions of actual people, forcibly altering their lives and those of others with no indisputable assurance that the ideals pursued will be

---

[102] The US invasion of Iraq (2003) is only the most obvious example of a form of liberal hubris leading to negative consequences – and while some might think the US was only self-interested, I see no reason to doubt the moral motivations and intentions of the war's architects. A similar sort of moralistic certainty is seen in the dominant neo-liberal economics of the recent past – with both failures in development and poverty reduction, and the financial collapse, pointing to the dangers of certainty.

realised. The element of faith in these sorts of commitments should be recognized and subject to critical scrutiny along with the ethical values we seek to privilege.

The implications for human rights as an ideal are significant. First, the idea that human rights can be justified by some single and universal ethical value should be abandoned. This includes not only reductionist views that attempt to limit human rights to those necessary to preserve human autonomy or meet basic needs, for example, but also those that see human rights as ensuring a minimally just form of political order – whether that is necessarily democratic or more permissive. Also, the idea that human rights embody necessary progressive guarantees of individual freedom or universal political participation, or that they represent a civilising process that guarantees a certain level of human dignity is unsustainable. While these myriad ways of justifying and understanding human rights no doubt exemplify some of humanities most laudable ideals, without rethinking the logic and function of these ideals they will remain partial, limiting and potentially assimilative of, and violent towards, difference. Second, we must rethink the function of human rights, as their historical function in providing a universal order is compromised. Whether voiced in the quasi-religious tone of natural right or the legalistic tenor of international criminal law the song remains the same, and human rights are taken to provide the moral principles that structure and justify the international political order.

I want to suggest that human rights can be reconstructed as part of a democratic ethos, as their distinctive claim, or prophetic promise, is that every human being has moral value and that this value should be recognised in political life. This starting point is plural and situated – suggesting not a universal duty to respect human moral agency or a universal claim to communal self-determination, but rather that human rights can be, and have been, a way of claiming moral recognition in terms of shared humanity in order to make political claims upon social life. Human rights are described as an ethos rather than offered as a set of principles, because the intention is to establish an orientation to thinking about the questions of legitimate authority and political community. In the following chapters I will argue that human rights can be understood as an ideal that is self-consciously open to reinterpretation of what we understand to be most importantly and distinctly human, though this is an always delicate and risky process that may simply become assimilative. Also, because human

rights are claimed in the name of "humanity", as an empty universal they can serve the political contestation of those who are excluded and marginalized in any current social and political order.

Chapter 3
Deep pluralism: reconstructing universalism

'Pluralism is the philosophy of a messy universe.'

-William E. Connolly, *Pluralism*

I. Reorienting Human Rights: The Affirmation of Deep Pluralism

In the previous chapter, I have argued that the goal of justifying universal human right is hindered by the very understanding of the nature of moral principles and the relationship between morality and politics it presumes. The problem goes beyond the persistent failure to rationally ground moral principles in a convincing metaphysics, as even the contemporary move to seek a political or communicative account of rational moral principles fails to overcome dissensus – constantly leaving open the question of whether universalism does violence to difference, renders the rational merely coercive and reveals the moral as simply conventional. Yet the imperative to achieve universal justification presents itself to any thinker who wants a morality that will constrain political life, which will bring certainty to the realm of ideals even if the realm of practical activity remains unpredictable and precarious. This chapter begins the task of developing a political ethics that seeks to avoid this unitarian moral impulse. Eliminating this gap, identified by Hutchings, between the "first best" world of ethics (morality) as against the "second best" world of politics,'[1] requires reconstructing political ethics in a radical way if the objections raised against universal human rights are to be addressed in a manner that provides the opening needed, letting in new light for evaluating human rights with fresh eyes. This chapter suggests how we might begin to do this by arguing for the need to place an account of deep pluralism at the centre of ethics and to respect the situated and contingent character of ethical action.

The first task of my reconstruction of human rights is to argue for deep pluralism as a starting point. This idea of deep pluralism serves as an orientation to political ethics that does not demand absolute or certain moral principles, but rather accepts the plurality of human experience and ethical values as a necessary starting point, a condition to be embraced rather than overcome. To begin this work I turn to the thought of Isaiah Berlin, in doing so I argue that his value pluralism should be read as

---

[1] Hutchings, "International Politics as Ethical Life," 31.

a form of deep pluralism and that he provided a promising starting point for developing a critical political ethics. To some this choice of starting points might be surprising, as Berlin is often taken to have been a conventional figure defending an uncritical brand of liberalism. At the very least, looking to Berlin runs the risk of becoming trapped in the ongoing debate over the suitability of liberal morality and politics as an accommodation of plurality. Both of these points have merit and starting with Berlin requires some qualification.

My account of Berlin's pluralism and my argument that it can form the basis of a critical political ethics in large part ignores the ongoing debate over the relationship between his liberal commitments and his value pluralism. Much of the recent commentary on his work seems to presuppose both that his central task, and the most important consequence of his work, was to articulate the compatibility of liberalism and pluralism, and in the process preserve 'nothing less than the liberal tradition as a whole.'[2] While I think this misconstrues the nature of his work, I also take no stand on these debates here. Rather, I focus on Berlin's value pluralism as an ethical theory and argue that it was a form of what William Connolly has called deep pluralism, which goes beyond the liberal account of pluralism as unresolved disagreement or scepticism about values, and affirms the persistent reality of plural faiths (spiritual, intellectual and moral) held in an unfinished and contingent universe.[3] This distinction is vital as these different forms of pluralism lead to very different understandings of ethics. Liberal pluralism essentially follows Rawls' line, which responds to plurality by seeking synthetic forms of certain moral principle, while deep pluralism begins from that fundamental uncertainty and tries to determine how to live ethically in such conditions. I substantiate these claims through an analysis of Berlin's theory of values, looking to his account of their sources and the nature of the claims they make upon us. In the process, I read Berlin in the context of thinkers that highlight his pluralist rather liberal sensibility, notably John Gray, who suggests that Berlin defended an agonistic pluralism.

---

[2] Alex Zakaras, "Isaiah Berlin's Cosmopolitan Ethics", *Political Theory*, Volume 32, Volume 4 (August 2003), 496
[3] Connolly, *Pluralism*, 70.

The importance of Berlin's pluralism for my project is in the way it alters the question of human rights. In previous chapters, I have analysed the difficulty presented to moral theory by the persistence of disagreement over fundamental principles, which seems to render the task of fully and finally justifying human rights hopeless. While most contemporary thinkers accept the reality of pluralism, as disagreement over moral foundations or diversity in moral belief, it remains a condition to be overcome. Moral principles are needed precisely to constrain political life in the face of dissensus and contingency, but deep pluralism, which affirms rather than tries to overcome the persistence of divergent and competing commitments, leads to a different initial premise. First, it implies that pluralism in ethical and political life is an undeniable reality, and that the sources of moral value are contingent and plural. Second, this means that the task of moral theory is not to provide final principles but to improve our ability to exercise judgment in the face of uncertainty, as ethical life requires choices, commitments and action without final assurances that we are doing so rightly. Finally, the most challenging consequence of deep pluralism is that it undercuts the aspiration of a universal ethics based in a singular concept of human dignity and a universal political order, which is a fundamental presupposition of the international human right regime, which raises the question of whether a deeply pluralist human rights is possible.

This further question of whether pluralism undermines the possibility of universal principles is addressed in what follows by reconstructing the meaning of universalism in moral thought, focusing on the issue of universal concern and communicability as opposed to absolute and universal standards. Berlin defends a qualified account of universal values, in part based on a potentially refutable claim that historically certain values have been held in common by the majority humanity, but also based on a revised notion of universality as communicability. In this case, there are certain presuppositions we hold that define humanity, which imply a limited set of universal values, the loss of which would make understanding across difference impossible. This account of universality is not, however, a way to limit or discipline difference, but rather an articulation of the basis for understanding, which is precondition for the exercise of moral judgment that pluralism demands. In a world of deep pluralism we face moral choices without certain guidance, we must exercise judgment and bear our share of the responsibility for the world that our actions create – through this dynamic

pluralism reconfigures the relationship between ethics and politics, as we have no absolute guarantee of the rightness of our choices, therefore the political content of our ethics is brought to the fore.

II. The Plurality of Values

Pluralism is a concept with many different meanings. Here I will speak about value pluralism as an ethical theory distinct from other pluralisms, which include pluralist theories of knowledge, as well political and international theories.[4] Value pluralism is credited to Berlin, although it is not his term, and while he was among the first to argue for a pluralist theory of values others have developed the idea.[5] My aim here is present what is most distinctive in Berlin's conception of pluralism, including an argument that his pluralism is best categorised as a deep pluralism. The basic propositions of his pluralism are: that values are multiple and, in addition, at least some values are objective; further, these distinct values are irreducible, meaning there is no higher order value that encompasses all other values, or to which all others are subordinate; these ultimate and distinct values can and do conflict, and are at times un-combinable; and finally, the choices that are made between values are at times incommensurable, meaning no rational measure provides for the "correct" choice.[6]

Berlin was opposed to a central orientation in the history of philosophy, which he termed monism. Monism identifies the ideal that the truth is singular. The search for a unified theory in contemporary physics, Kant's categorical imperative, and Marx's

---

[4] Value-pluralism bears a family resemblance to pluralist theories in political theory, international relations as well as the work of pluralists within English School international relations theory, but there is no little historical or direct conceptual link – Robert Jackson does draw on Berlin's work in *The Global Covenant: Human Conduct in a World of States* (Oxford: Oxford University Press, 2003). There is a more hereditary connection between issues in epistemological pluralism, particularly William James radical empiricism, but this is not explicit in Berlin's major writings, though he mentions James and Dewey in Berlin, "'The Second Confucius', review of John Dewey, *Art as Experience*," *London Mercury,* Volume 31 (1934–5), 87–8.

[5] Along with the numerous works that explicitly take up Berlin's legacy there have been a number of major works that develop the idea of value pluralism, though largely within the confines of liberal political theory. See Joseph Raz, *The Practice of Value* (Oxford: Oxford University Press, 2003), George Crowder, *Liberalism and Value Pluralism* (London: Continuum, 2002), William Galston, *Liberal Pluralism: the implications of value pluralism for political theory and practice* (Cambridge: Cambridge University Press, 2002), and John Kekes, *The Morality of Pluralism* (Princeton, NJ: Princeton University Press, 1993).

[6] These propositions reflect a general consensus amongst those commenting on and developing Berlin's value pluralism, for example George Crowder, *Isaiah Berlin: Liberty and Pluralism* (Cambridge: Polity Press, 2004) and John Gray, *Isaiah Berlin* (London: Harper Collins Publisher, 1995).

historical materialism are intellectual manifestations of this drive toward singularity. What pluralism entails is that the truth may in fact be multiple and that there are a number of true things, whatever those true things may be: laws of physics, moral values, or social forces. Further, value pluralism asserts that the diversity we find in moral life is not a mistake or a failure, either of our faculties or our methods, but rather a reflection of the way we experience the world. This is in part a phenomenological argument, but one that does not reduce to subjectivism or relativism, as it requires better and worse understanding of moral experience.[7] The plurality of values was "real" for Berlin, and a failure to acknowledge this – to revert to a form of monism – is to get this aspect of moral experience wrong. Berlin's understanding of what this means, however, does not map neatly on to the distinction between cognitive or non-cognitive understandings of morality.[8] Moral values are true in the sense that they refer to things we have reason to value, and which in some cases we may all have reason to value, but they are not undeniable rational propositions. Not only are there many things that we value, which cannot be authoritatively compared and ranked, but our values are also contingent human creations not certain moral laws.

Berlin was centrally concerned with how values – our goals, ideals, and ends, at both a personal and social level – influence our actions and relationships. The values that we hold reflect our considered answers to the question of how best to live, they represent our reflective judgments on the worth of the ends we pursue. Therefore, understanding both the nature and content of values is vital for social and political thought, whether we want to understand events or are required to make moral judgments. Berlin's concern with plurality, not only of values but also with the value systems of individuals and societies, makes his theory one of political and social pluralism.[9] As we can see, coming to grips with Berlin's pluralism requires understanding his philosophical thinking on the nature of knowledge and morality, as

---

[7] Zakaras, 497-501. Roger Hausheer has used this idea of phenomenology to describe Berlin's work, and importantly notes the complex relationship of his thought to the Hegelian legacy of historicism; see Roger Hausheer, "Introduction," ed. Henry Hardy, *Against the Current: Essays in the History of Ideas* (London: Pimlico, 1997), xliv-li.
[8] Jürgen Habermas and Ciaran Cronin, "On the Cognitive Content of Morality," *Proceedings of the Aristotelian Society*, Volume 96 (1996), 335-358.
[9] Yael Tamir, "A Strange Alliance: Isaiah Berlin and the Liberalism of the Fringes," *Ethical Theory and Moral Practice*, Volume 1 (1998), 279-81; and Michael Kenny, "Isaiah Berlin's Contribution to Modern Political Theory," *Political Studies*, Volume 48 (2000), 1032-3.

well as his view of history and society. While Berlin famously distinguished intellectual types between systematic and totalising hedgehogs and more nimble and patchwork foxes, with whom he self-identified, appreciating the distinctiveness of his position requires looking at the whole of his thought.[10] His thought was not systematic in a traditionally philosophical way, but the disparate threads do hold together to form a recognisable cloth, though not in a conventional liberal or universal pattern.

Values reflect human interests but they are more than a simple listing of things that are good for human beings; values are reflective attitudes of approval toward objects, states, or relationships in the world. Ethical values are particularly concerned with our interpersonal relationships and the pursuit of the good life because they refer directly to how we judge others and ourselves. It should be noted that Berlin took values to be naturalistic in the sense that value does not come from a non-natural entity like "goodness," for example.[11] He did not make any metaphysical claims regarding value and he did not hold that there is a source of value outside of human experience. Most basically, values are those things that humans commit themselves to; they are our 'eulogies and condemnations to acts and characters of men.'[12] Because Berlin viewed values in this way he often used terms like goods and ends interchangeably with values, and at times he even talked about principles or laws in a similar tenor. While this could be sloppy thinking or rhetorical excess, I believe that charge is not wholly fair. For his purposes it made sense to see all these categories – goods, ends, moral principles and laws – as a reflection of basic human commitments, of our considered values.

We can begin to see the distinctiveness of Berlin's account here: values are not given by an essential human nature nor by the commands of reason, but are the products of a shared historical process of creating and developing values. Berlin makes use of a notion of human nature, but it is an historical and constructed understanding that embraces a 'minimal account of what man is in order not to

---

[10] Isaiah Berlin, "The Hedgehog and the Fox," in *Russian Thinkers*, 22-81.

[11] Certainly "naturalness" is a contested concept; here I mean only that saying something is a value is not a metaphysical or intuitionist claim, G.E. Moore for example argued that any of a plurality of objects could be valued because they possessed the quality of goodness, which was a non-natural property. See, G. E. Moore, *Principia Ethica,* ed. Thomas Baldwin (Cambridge: Cambridge University Press, 1993).

[12] Berlin, "Introduction," *Liberty*, 8.

foreclose the possible (and even likely) emergence of entirely novel and unforeseen forms of life and self-fulfilment, in individuals and groups, whereby our conception of human nature will be enlarged.'[13] This common human nature is necessary so far as a common understanding remains possible and desirable in light of a human self-understanding that is 'a branching out in new directions, essentially untidy, hesitant, sometimes violent, unpredictable in advance, and guaranteed neither to stand still nor to proceed in any assignable direction.'[14] The understanding we share as human beings, however, is not a priori – not given by the dictates of reason – but is the result of shared history, common experience and the construction of the idea of humanity as an identity we share and affirm.

Beyond offering an historical account of the source of ethical values, Berlin claimed that our values are diverse; this statement alone is not critical of conventional modes of ethical thinking. Clearly people do have different values; what is more interesting is the implication of pluralism for how we understand the basis of, and how we deal with, the diversity of values. As was argued in previous chapters, traditionally, moral theories have dealt with pluralism in two ways: one is by separating out self-interested values from our true moral values, in a sense separating tastes or desires from what is morally right. In other theories, the diversity of values is acknowledged, but an overriding value is thought to provide a way to order that diversity. Alternatively, sceptical theories of relativism or subjectivism hold that the diversity of values reflects the fact that values are either completely dependent on social understandings or are individual expressions of approval, completely undermining the objectivity of values. What makes pluralism distinctive is that ethical values are multiple and at the same time objective. So the obvious question is: how do we know that values are objective and plural?

For Berlin, there was something like a continuum of values, ranging in importance from common ethical values, which are part of all human lives, to customs and conventions, reflecting particular social values, and at the far end manners, etiquette, and tastes, which are more specifically cultural and personal.[15] This continuum of

---

[13] Hausheer, xlix.
[14] Ibid.
[15] Berlin, "European Unity and its Vicissitudes," *The Crooked Timber of Humanity,* 205.

values takes the measure of two things: the degree of objectivity and the degree of plurality, which increases as the degree of objectivity decreases. What Berlin calls common human values are those values that are shared by all people in light of their humanity.[16] There is still a plurality of values at this level; for example, Berlin argues that individual freedom and communal identity are both common human values that cannot be reduced to a further more fundamental value. But how much plurality is there at this level of common values? Berlin does not give a clear answer; the number is finite but not specified.[17] One way of understanding this limit is as what Berlin calls a common core of values, shared by all people regardless of their specific histories and social location. This commonality, however, does not provide for a single human essence.[18] Instead, Berlin argues that the common core of values is too anaemic to form a recognisably, much less full, human life. They are the historically necessary values of any life we recognise as human – similar to mental and physical capacities that all humans share – but as social evolution occurs, it may be that the common core shrinks or grows with the passage of time.

As we consider values further along the continuum, they become less objective and increasingly plural. These values, what Berlin called customs or conventions reflect values that originate in specific social and historical settings, and while there may be a link to a more objective common value, these customs or conventions are part of a particular shared history and social framework. It is because of this contingent basis in history and society that customs and conventions exhibit greater plurality, as human inventiveness leads to greater diversity. Finally, at the far end of the continuum are manners, tastes, or rules of etiquette. These sorts of values exhibit the greatest diversity and the least objectivity. Though it is worth noting that even the most deeply idiosyncratic values can potentially be understood – though perhaps only with great difficulty. With this framework in mind we can now turn to Berlin's more detailed argument for the objectivity and plurality of values.

To begin it is important to note how Berlin understood the objectivity of values. He was not seeking a foundation outside of human experience, a view from nowhere

---

[16] Berlin's word choice is inconsistent, which I believe reflects a hesitance to make strongly universalist claims, but the particular way he intends 'universal' is laid out below.

[17] Berlin, "Pursuit of the Ideal," *The Crooked Timber of Humanity*, 11.

[18] Berlin, "The Decline of Utopian Ideas in the West," *The Crooked Timber of Humanity*, 46.

providing clear principles with which to pass judgment. Rather, he was referring to the objectivity of values as the degree to which we share common assumptions sufficient for communication with people very distant from ourselves, as the capacity for understanding and being understood.[19] 'This common ground is what is called objective – that which enables us to identify other men and other civilisations as human and civilised at all.'[20] Berlin's first argument for the objectivity of values was that the majority of people over the majority of time have shared certain central values. He said this claim was quasi-empirical and dependent upon the work of historians, anthropologists and philosophers of culture to know and test the facts in question.[21] I will examine this empirical claim below, but first it is important to make a general comment about Berlin's overall approach.

Berlin's work drew on two distinct traditions that be brought together in a unique way in his thought: on one hand he was impressed by English empiricism and its emphasis on giving experience its due; while on the other hand, he was deeply concerned with the importance of ideas, emphasising their role in framing experience. This dual concern reflected both the waning legacy of British idealism and the rising influence of logical positivism that dominated Berlin's intellectual world at Oxford in the early part of the 20th century.[22] Added to this is an interest in the historical development of ideas divorced from deterministic notions he found in both Hegel and Marx. Together, these influences lead to his historical account of the dynamic interrelationship between experience and ideas.

The simple empirical claim about common values is that the majority of people for the majority of history held some basic values in common. The methodological difficulties of conducting such a study would be staggering, and obviously will not be pursued here. However, this claim about the potential commonality and plurality of

---

[19] Berlin, "Historical Inevitability," *Liberty*, 152.
[20] Ibid.
[21] Berlin, "Introduction," *Liberty*, 45.
[22] Berlin, "The Purpose of Philosophy," *Concepts and Categories*, ed. Henry Hardy (London: Pimlico, 1999), 1-11; and "My Intellectual Path," ed. Henry Hardy, *The Power of Ideas* (London: Chatto & Windus, 2000), 1-23. Also see, Jamie Reed, "From Logical Positivism to "Metaphysical Rationalism": Isaiah Berlin on the "Fallacy of Reduction,"" *History of Political Thought*, Volume 29, Number 1 (Spring 2008), 109-131; Peter Skagestad, "Collingwood and Berlin: A Comparison," *Journal of the History of Ideas* (2005), 99-112; and James Cracraft, "A Berlin for Historians," *History and Theory*, Volume 41, Number 3 (October 2002), 277-300.

values across time and space presupposes that there is some basis for these similarities. Berlin pointed first to the physical capacities that human beings share: 'a certain physical, physiological, and nervous structure, certain organs, certain physical senses and psychological properties, capacities for thinking, willing, feeling,' and then to a set of common human values, for example freedom, safety, well-being, and family relationships.[23] Given that Berlin thought values were developed out of human experience these common features can, at least plausibly, lead to the sort of common values he described. He also claimed that these common values were distinct, which is to say that most human societies across most of time not only valued things like physical well-being and family life, but they also acknowledged that these values are distinct. Berlin most clearly expressed what these common moral values entail in the negative, noting that '[f]ew today would wish to defend slavery or ritual murder or Nazi gas chambers or the torture of human beings for the sake of pleasure or profit or even political good – or the duty of children to denounce their parents, which the French and Russian revolutions demanded, or mindless killing.'[24] While these historically shared valued tend to find expression in the negative (what John Gray calls universal evils) the positive side of these shared values is as important, even if it is less clearly articulated.[25] The values held in common – Berlin was hesitant to strongly assert they were universal moral values established without question – form the basis of a human conception of ethics, which is a requirement for the communication and understanding across difference that Berlin sees as constitutive of objectivity.[26]

There are a number of objections that can be raised against this empirical aspect of the argument. The first is that societies and individuals do at times value things in opposition to what history and physiology tells us is the norm. Pain for example can be a part of religious or sexual experiences, or a solitary life may be held in higher regard than a life lived in a tight network of family relationships. These plausible "deviations" help to clarify Berlin's idea. Certainly individuals, or whole social traditions, can place a greater value on particular values rather than others. In the case

---

[23] Berlin, "European Unity and its Vicissitudes," *The Crooked Timber of Humanity*, 203.
[24] Berlin, "Pursuit of the Ideal," *The Crooked Timber of Humanity*, 18.
[25] John Gray, *Two Faces of Liberalism* (New York, NY: The New Press, 2000) 66-67. Gray's phrase is idea to Ken Booth's account of human wrongs. See Ken Booth, "Human Wrongs and International Relations," *International Affairs*, Vol. 71, Number 1, (1995), 103-126.
[26] Berlin, "Introduction," *Liberty*, 44.

of the self-flagellating believer, religious insight is more valuable than physical comfort, but the pain inflicted is instrumental to another value. Assuming that there are not people who we would consider healthy, in either mind or body, that seek out physical pain or loneliness for its own sake, we can acknowledge that people will privilege some values at the cost of others without concluding that such compromises are incomprehensible.[27] We should not assume that this notion of common human values results in a coherent and wholly desirable set of values, also it should not lead us to assume that deviation from them is necessarily immoral. The tradition of critical genealogy provides an important counterweight to the assimilative tendencies inherent in the idea of common humanity. Thinkers like Michel Foucault and Friedrich Nietzsche illuminate the role of power in shaping the "normal" or "acceptable" as conceptual and moral categories and render the very notion of "human nature" an object of constant contestation – I think we must read Berlin's work with these insights in mind.[28] Berlin's own writings acknowledged this contestation, as he was keenly aware that even the values he most celebrated – liberty and self-creation – had not only found their privilege relatively recently, they required sacrifices that many are unwilling to make. While Berlin was not part of the critical genealogical tradition, his understanding of values provides an opening that most liberal thinkers do not. The empirical claim about common values, however, is not a normative one, suggesting that history can tell us the right way to be human. The substantive point Berlin drew from his argument was not a definition of "normal" humanity or a justification for legislative moral principles, but rather the grounds for objective understanding that are necessary for an ethics with global scope.

The empirical claim that there are common human values also seems to be limited by group belongings, because most value systems do specify those that are inside versus outside the realm of concern. So, that murder is wrong may be a universal, but

---

[27] If this assumption is objected to, I would not know how else to argue for it except to say, valuing something like pain or loneliness for its own sake seems to radically shift our understanding of human physiology and psychology, such that a person seeking pain or loneliness, not because he got pleasure from the experience or felt that pains were deserved, but because he valued pain and loneliness, would be someone we could hardly know how to communicate with about our values.

[28] For example, Friedrich Nietzsche, *On the Genealogy of Morality* (Cambridge: Cambridge University Press, 1994); Michel Foucault, *Madness and Civilization* (London: Routledge, 2001).

that value is only applied to those recognised within the moral structure.[29] It is this structure that allowed colonisers to kill "savages" without feeling they had done something wrong.[30] This point is more damaging to Berlin's position if we understand the idea of a common value as equivalent to "the murder of any human being is always wrong, and always has been." On one hand, the obvious falseness of this as a universally accepted and adhered to value highlights what is lost in abandoning conventional notions of moral principle as separated and above the world of what people actually do – history is as likely to show us common capacities for valuing and enjoying violence, exclusion and cruelty. Berlin acknowledged this darker side of "human nature," as his examination of the appeal of anti-rational fascist thinking and violent nationalism revealed common values of belonging and submission to authority, which, despite their destructive consequences in the 20th century, provide important insight into understanding "human nature."[31]

On the other hand, Berlin's way of arguing gives us good reason to see the limitation of concern as an ethical failure. He saw human nature, in all its socialised and historic forms, as allowing for communication and understanding across barriers, and we can reasonably assume that most developed value system will acknowledge, if not the moral equality of all people, at least the value of human recognition. This could potentially be false, but Berlin thought experience told a different story. Not only is universal concern a very old idea, but also most historical cases of violent particularity have seen brave acts of human solidarity.[32] It may be that in his own writing Berlin was too optimistic about the degree of commonality, both historically

---

[29] Richard Rorty makes this point in his commentary on the violence in Bosnia during the early-1990s, "Human Rights, Rationality, and Sentimentality," *On Human Rights: The Oxford Amnesty Lectures 1993*, eds. Stephen Shute and Susan Hurley (New York, NY: Basic Books, 1994), 111-34.

[30] Richard Shapcott, *Justice, Community, and Dialogue in International Relations,* 14-26. Also see, Tzvetan Todorov, *The Conquest of America* (New York: Harper Collins, 1982).

[31] Berlin's understanding of this was evidenced in visceral form when he discuss the ideas of Joseph de Maistre, and finds much that is insightful and accurate in Maistre's unsettling thought. See, Isaiah Berlin, "Joseph de Maistre and the Origins of Fascism," *The Crooked Timber of Humanity*, 91-174. Also, his work on the power and potential dangers of nationalism revisits this idea in a different context, see "Nationalism: Past Neglect and Present Power," *Against the Current*, 333-55.

[32] For all of its weaknesses as a detailed history of human rights, Micheline Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkley and Los Angeles, CA: University of California Press, 2004), does provide an overview of universalism in ethical thinking. See also: Norman Geras, *Solidarity in the Conversation of Humankind: Ungroundable Liberalism of Richard Rorty* (London: Verso, 1995), particularly on the many Germans who valiantly saved Jews during the holocaust; and for Bartolommeo de Las Casas opposition to Spanish treatment of Native-Americans despite the conventional views of the time, see Shapcott, *Justice, Community, and Dialogue in International Relations,* 22-24.

and today, but even if this is the case his way of understanding values retains much of its power.

Finally, the fact that over time humans, and societies, have valued diverse goods is an empirical observation open to the claim that this diversity is a mistake and reflects a long-standing and wide spread failure of moral knowledge.[33] Berlin was aware of the limits of what could be pulled out of his empirical claim that there is, and has been, a great deal of commonality regarding "universal" human values. This is why he said his argument was only quasi-empirical. While George Crowder argues that this use of quasi-empirical argument reflects a lack of clarity in what Berlin meant by universal, this criticism is misdirected and reflects an inadequate understanding of Berlin's broader argument.[34] The part of the argument that is not empirical has to do with the nature of ethical thought itself. Berlin, in several places, suggested that there is a structure to ethical thought, and that we make use of concepts and categories shared by all such systems.[35] To clarify Berlin's point it is necessary to make a slight detour, and consider Berlin's views on epistemology.

In the essay, "The Purpose of Philosophy" Berlin outlined three different types of questions, each of which produces its specific answers and types of knowledge.[36] First, he outlined a distinction between empirical and formal questions; these are questions answerable either by observation and induction, or analytical deduction on. Then he identified a third type of question, one that we cannot easily answer by looking at the world or performing a formal analysis. These questions are properly philosophical and involve how we view the world. 'Its [philosophy's] subject-matter is to a large degree not the items of experience, but the ways in which they are viewed, the permanent or semi-permanent categories in terms of which experience is conceived and classified.'[37] In ethical and political experience Berlin thought there were both commonalities and differences among individuals. There will a be a great deal of diversity in what categories of ethical thought are privileged depending on

[33] Crowder, *Isaiah Berlin,* 127. Crowder is not making this critique, but he does point to its force.
[34] Ibid., 133.
[35] Berlin, "Does Political Theory Still Exist?" *Concepts and Categories*, 143-172, "European Unity and its Vicissitudes," *The Crooked Timber of Humanity*, 175-206, and "Introduction," *Liberty*, 3-54.
[36] Berlin, "The Purpose of Philosophy", *Concepts and Categories*, 4-6.
[37] Ibid., 9.

one's outlook, [38] consider, for example, the most morally significant categories from a utilitarian versus a Muslim perspective, where one would be focused on satisfying desires and the other with obedience to divinity. There is, however, some amount of commonality in the categories and concepts we use in moral thought, that stem from our shared humanity.

> The basic categories (with their corresponding concepts) in terms of which we define men – such notions as society, freedom, sense of time and change, suffering, happiness, productivity, good and bad, right and wrong, choice, effort, truth, illusion (to take them wholly at random) – are not matters of induction and hypothesis. To think of someone as a human being is *ipso facto* to bring all these notions into play: so that to say of someone that he is a man, but that choice, or the notion of truth, means nothing to him, would be eccentric: it would clash with what we mean by 'man' not as a matter of verbal definition (which is alterable at will), but as intrinsic to the way in which we think, and (as a matter of 'brute' fact) evidently cannot but think. [39]

Berlin believed that our ethical thinking was structured by these concepts and categories, which while liable to variation and change, are much firmer than moral sceptics or relativists would be willing to concede. [40] These common elements of our ethical thinking provide the basis for common human values.

This commonality does two things; it provides an understanding of certain actions that are anathema to any ethical system (the universal wrongs mentioned above) and a basis for understanding and communication between diverse ethical views, which instantiate and interpret the abstract values we may find to be common to all ethical systems. 'Otherwise the concept of man would become too indeterminate, and men or societies, divided by unbridgeable normative differences, would be wholly unable to communicate across great distances in space and time and culture.' [41] When Crowder criticises Berlin's ideas of a 'common core' and the 'horizon of humanity' as contradictory, he is missing the meaning of what Berlin has said. [42] The common core is a set of values that reflect what all people share, it is expressed most clearly as

---

[38] Berlin, "Does Political Theory Still Exist?" *Concepts and Categories*, 163.
[39] Ibid., 166.
[40] Gray, *Isaiah Berlin*, 69. Gray points out that for Berlin it is 'not possible to state once and for all, in advance of any changes in our scientific and anthropological knowledge, in the manner of Kant, what are the permanent categories of human thought, including moral thought.'
[41] Berlin, "Introduction," *Liberty*, 25.
[42] Crowder, *Isaiah Berlin,* 133.

prohibited actions because the positive expression of justice, for example, will vary in a way that the experience of gross injustice will not. The idea of a human horizon is different, it refers to the reach of human understanding that our shared core provides; it is the limit of what we can recognise as human and provides the basis for both criticism and praise of values that are different from our own.[43] This idea is similar to Hans-Georg Gadamer's notion of a horizon of understanding, though Gadamer suggested that the merging of distinct horizons is based upon a common capacity for language, while Berlin is speaking to a psychological, and even physiological, basis for such understanding across both time and cultures.[44]

Berlin compared this idea of basic ethical concepts and categories to the Kantian notion that perception is possible only by way of universal categories, common to all sentient being. The changes he made are: first, to remove the a priori character of these categories, arguing that their seeming permanence need not presuppose an external source, they are simply what he terms brute facts about the world; and second, that it is possible that our mode of perception could be different, but if that were the case, our conceptual apparatus and experience would be very different.[45] Our basic ethical notions, such as a sense of truth, are of a kind with the fact that we perceive our world in three dimensions, or time as only moving forward. The difference is the degree of alterability. It is less likely that we could understand, or much less operate in, a world with non-linear time, than we could understand a world where truth telling or personal expression held no value, but either world would upset our conceptual apparatus in a radical way.[46] This argument, however, should not be taken as an assault on moral diversity, but rather as a way of ensuring it remains meaningful.

---

[43] This interpretation of Berlin is substantiated by Henry Hardy, Berlin's long-time editor, "Appendix: Berlin's Universal Values – Core or Horizon," *The One and the Many: Reading Isaiah Berlin*, ed. Henry Hardy and George Crowder (Amherst, NY: Prometheus Books, 2007), 293-298.

[44] Shapcott, "Cosmopolitan Conversation: Justice, Dialogue and the Cosmopolitan Project," *Global Society*, Volume 16, Number 3 (2002), 221-43. Also, Hans-Georg Gadamer, *Truth and Method* (London: Continuum, 2004). Gadamer also more strongly emphasises the way in which the merging of horizons changes those participating in conversation, even those that do not result in consensus, a point not developed in Berlin's work. The hermeneutic character of Berlin's work has been noted by Cracraft, 282, and Zakaras, 506. Also, David Boucher has highlighted this trend in R. G. Collingwood's work in "Tocqueville, Collingwood, history and extending the moral community," *British Journal of Politics and International Relations*, Volume 2, Number 3 (October 2000), 326-351; not only is there much similarity in approach in Berlin and Collingwood, but Collingwood was Berlin's supervisor while he was a student at Oxford.

[45] Berlin, "Does Political Philosophy Still Exist?" *Concepts and Categories*, 165.

[46] Ibid., 169.

> We are urged to look upon life as affording a plurality of values, equally genuine, equally ultimate, above all equally objective; incapable, therefore, of being ordered in a timeless hierarchy, or judged in terms of some one absolute standard. There is a finite variety of values and attitudes, some of which one society, some another, have made their own, attitudes and values which members of other societies may admire or condemn (in the light of their own value-system) but can always, if they are sufficiently imaginative and try hard enough, contrive to understand – that is, see to be intelligible ends of life for human beings situated as these men were.[47]

Berlin thought these categories provided a basis for understanding ethical concepts, but they do not constitute a developed framework and human lives are only realised through particular institutions, practices and choices, at both the individual and social levels. The difference between this idea and contemporary defences of moral universalism based on a notion of minimal consensus or basic needs is clear – our ethical world, our practices of judging and valuing, is a shared but constantly reconfigured space. Not only did Berlin suggest that the Kantian idea of basic categories of thought need to be naturalised and historicised, but that both "nature" and "history" need to rethought – Berlin argued against the idea of historical determinism and essentialism.[48] Both ideas betray our experience of reality and impose a singularity upon human lives that limits and deforms creativity and difference. Read in this way Berlin's pluralism bears many similarities to that developed by William Connolly, especially in the insistence that values are human creations open to change, but also deeply based both in our historical and corporeal experience – and that pluralism actually opens ground for understanding and solidarity in way that is actually closed off by monism.[49]

What has been said thus far extends Berlin's argument for the objectivity of value, but there is more to be said for the truth of the plurality of values. The idea of a common set of diverse ethical concepts will go some of the way toward making this case, but Berlin's complete view will only become apparent when we address a second argument he makes. As John Gray states,

---

[47] Berlin, "Alleged Relativism in Eighteenth-Century European Though," *The Crooked Timber of Humanity*, 79.

[48] Berlin, "Historical Inevitability," *Liberty*, 94-165; also, "The Counter-Enlightenment," *Against the Current*, 1-24.

[49] Connolly, *Pluralism*, 68-92.

> Berlin's most original claim about this common framework is that its structure is such as to generate dilemmas that are unavoidable and at the same time un-decidable by reason. He claims that the categories of thought that undergird the common judgement of mankind generate conflicts that are objective and of which it is true that they have no right solution.[50]

Certain moral values logically occlude others – justice and mercy is a favourite example of Berlin's that illustrates the point nicely. Here it is more difficult for a normative argument to say the fact of pluralism is simply an error of knowledge. If justice demands retribution, making forgiveness impossible, while mercy requires that we forgo the equal treatment demanded by justice, what does that say for the possibility of a normative absolute? At this stage one cannot simply say that the monist demand for an overriding value is incorrect. A monist ethical theory could tell us that while justice and mercy are both basic concepts, mercy must give way to justice, or vice versa, or further still that there is some other overriding value, or that we can rank values by importance. Ronald Dworkin makes this point and suggests that Berlin too quickly assumed that our values conflict, and in the process underestimated the role reason can play in mediating such conflicts.[51] While Berlin would not have denied the important role of reason in softening and avoiding tragic conflicts of value, the idea that reason can provide a definitive solution to value conflicts is incompatible with how he understood values Even our most basic and shared concepts and categories conflict because they are the result of a messy and unruly historical process, and any choice to privilege one over the other is just that, a choice, which has consequences that must be acknowledged.[52] This point is a key insight of Berlin's pluralism: tragedy is not only a real possibility but our ethical choices are importantly political, they impose upon others and even upon our selves.

Berlin presented a comprehensive case for the plurality of values. He argued that the source of what we value – our shared ethical framework and the resulting common values combined with our particular social and historical experiences – comes from

---

[50] John Gray, *Isaiah Berlin*, 70.

[51] Ronald Dworkin, "Do Liberal Values Conflict?" in *The Legacy of Isaiah Berlin*, eds. Mark Lilla, Ronald Dworkin and Robert B. Silvers (New York, NY: New York Review of Books, 2001), 73-90.

[52] While Berlin would have supported an individual's right to make such choices, and this forms the basis for the linkage he draws between pluralism and liberalism, this is not a necessary entailment of pluralism. Instead, the choices we are called to make, to affirm one value over another, are often already made by our personal habits and the traditions we live within – or others make them for us.

the physical and psychological facts, individual experience, and social history of human existence, which results in a plural ethical world. Ethical concepts both frame experience and are revised in light of experience. History, passed on through ideas and cultural attachments, shapes not only groups but also individuals, but neither groups nor individuals are powerless in the stream of history – they are in fact the constant makers of it. As untidy an idea as his theory of values is, it is certainly less obscure than the notion of finding some metaphysical or transcendental justification for the priority of an overriding value. Further, Berlin's value-pluralism does not require us to deny the truth of different value systems, which privilege different basic values, something monist theories imply. The Kantian and the Utilitarian both say that a value system that privileges nobility, for example, is wrong and immoral in a fundamental way. For Berlin, so long as a value system is based on common values it is intelligible to us, and not right or wrong in a clear manner. Though it may be that some value system so violates our current sense of common values that, while it can be understood, it can in not be accepted or tolerated. Examples of this would be those engaging in slavery in the contemporary world or the racist ideology of Nazi Germany, a controversial example from Berlin's own work.[53] It must be admitted that this will not convince a committed moral monist, and in addition it raises the question of what, if any, kind of ethical system does pluralism prescribe, and how can we evaluate an ethical framework, if not by its truth or falsity.

To address the first point, there is no "philosophical" argument that pluralism can offer to the committed monist.[54] What pluralism can do is bring the facts of history and our ethical concepts to bear on the monist's steadfast rejection of plurality, and ask the question: if moral truth is single and it exists in a way that is universal and objective, what is that truth?[55] Further, why is there so little agreement concerning it? This illustrates the gulf that is opened up between liberal pluralism and deep pluralism – Berlin was not sceptical about our ability to know which values to privilege, he did not think any value had anything more than the contingent priority we grant it through

---

[53] Berlin suggested that even the Nazi regime was not beyond understanding and that to suggest that it was an incomprehensible evil was an important ethical failure – while the Nazis, for Berlin, were clearly evil, their values and motivations could also be understood. Berlin, "My Intellectual Path," *The Power of Ideas*, 12.

[54] John Gray, *Isaiah Berlin*, 64.

[55] In following chapters I will argue that value-pluralism can be strengthened by taking on elements of pragmatic epistemology, which will expand the argument against traditional universalist accounts.

our actions, through our commitments, as individuals and communities. Rawls, for example, might have been willing to concede that it is practically impossible to know with final certainty the best way for humans to live, but he thought theoretical inquiry could lead us to be more right that others – deep pluralist reject this framing and this is why they are more attentive to the agonistic dimension of ethics, why they are more concerned with remainders

The final argument that Berlin made for the plurality of values relies on individual perception, or experience, of the values we hold. Our ethical values, at the individual and social levels, place conflicting demands on us for a number of reasons. They may be practical, there simply is not time or resources to do all the things humans can do, or it can be a matter of incompatibility as in the case of justice and mercy. This experience of conflict is a strong argument against moral monism and Berlin thought it was necessary to respect this plurality of values because it is a truth we experience in our lives – Berlin's expression a "sense of reality" sums up this idea that there is immediacy to phenomenological experience that should be respected.[56] There is an objective sense of reality that is a sort of balance between experience and our ideas, which can be known to a greater or lesser degree.[57] It takes account of historical developments, such as the differences between the ancient and modern worlds, or the effects of the industrial revolution, while at the same time expressing our ideal self-understanding. Berlin argued that we feel as though we are presented with choices, that we are able, or forced, to choose between values that are equally ultimate. Perhaps this sense of the reality of choice did not exist in earlier eras, but he thought to deny it now is to suffer under a very real delusion.[58] Berlin wanted to emphasise that denying the plurality of values will deform our experience.

This experience of plural common values, as well as their potential conflict, is the basis for understanding particular values across borders that may seem impossible to

---

[56] James Ferrell, "The alleged relativism of Isaiah Berlin," *Critical Review of International Social and Political Philosophy*, Volume 11, Number 1 (March 2008), 48-49.
[57] Berlin, "The Sense of Reality," *The Sense of Reality*, 1-39.
[58] Our contemporary condition enables this greater sense of pluralism through increased contact between value-traditions, the effects of modernisation as a process that undermines existing tradition and creates isolated individuals that are both enabled and forced to choose – it is important to note that Berlin did not draw grand linkages between this modern condition and a particular privileged value, like autonomy. These conditions remain and in many ways are intensifying.

transcend. We can apply our imagination; we can attempt to see how other human beings could find value in disparate ways of life by recognising their values as responding to human needs and being structured by common ethical concepts and categories. Our experience suggests this form of understanding is possible because we understand our own values as at times conflicting and diverse. There is a sense in which recognising the plurality of our own values is the recognition of the foreign within our selves. The nature of the values in question may make this process of imaginative understanding more or less difficult. It may be very hard for me to understand the importance of the etiquette of feudal Japan, because these highly specific values are steeped in a particular history and way of life. On the other hand, values that are more clearly objective, say a Native American's anger at the near extermination of her people, would be more readily meaningful. Again, for the question of objectivity, our experience of values is more suggestive than definitive, but in conjunction with Berlin's other arguments the case for his pluralist objectivity is clear, if not finally persuasive. This imaginative experience can be the starting point of both commending and criticising practices that are foreign to our own. While at the same time, it is not a conventional sort of universalism.[59] Berlin's thought points us in the direction of the increasing importance of global ethics, but as a realm of understanding and recognition, rather than an endeavour to derive universal moral principles, which is the conventional task liberal universalism sets for itself. Pluralism requires sensitivity to the context in which value systems have been developed, and further recognises that diversity is not a symptom of error in our ethical thinking, but a reflection of different ethical histories and communities that we can try, to the best of our ability, to understand and appreciate, before passing judgment.

Finally, pluralism is not a prescriptive moral theory in the sense that it can provide a decision rule for moral questions or inherent rights and duties; a large portion of what it does is descriptive and illuminative. Berlin did not think that moral theory could tell us what is right or wrong to do. What pluralism offers us is insight into what we mean, and have historically meant, by right or good; further, it helps us to understand and negotiate the conflicts we experience in our moral lives. 'The goal of philosophy is always the same, to assist men to understand themselves and thus

---

[59] James Ferrell, "Isaiah Berlin: Liberalism and pluralism in theory and practice", *Contemporary Political Theory*, Volume 8, Number 3 (2009), 312.

operate in the open, and not wildly, in the dark.'[60] Ethical life is specific and active, which means that we face particular situations and we have to judge and act in the concrete world, and pluralism suggests that our ideas about how best to act are complex and at times conflicting. We can think of pluralism as offering insight on the rules, virtues and goods that guide us, which are defined in part by individual experience and in part by our social and historical contexts.

Regarding the question of how we evaluate value systems if it is not in light of their truth or falsity, Berlin said most simply that we must look to the coherence of any given value system.[61] Our values, both common and contextual, are historical and social artefacts that reflect a history of testing against our experiences. This is the final arbiter of a value system, even of our most fundamental ethical framework. Does it cohere and reflect our experiences of individual and social life? If it does not, it will be replaced and become an artefact, of curiosity to some, but without true relevance to our lives.[62] Berlin thought that these sorts of breaks are uncommon, but not unheard of, in our ethical thinking. This is due partly to the commonality of human lives; even value systems far removed from us can speak to our experience and offer challenges and insights to our own.[63] Our ethical knowledge relates to how we see ourselves, how we conceive of society, what we should aspire to – which is a very different type of knowledge, not subject to progressive accumulation.[64] Aside from this notion of coherence, there is an underlying aesthetic idea in Berlin's work, in which some values, or value systems, will be unattractive – too violent, cruel or competitive for endorsement. Further, he was committed to a humanistic concern for the lives and well-being of people – in a sense his first priority was the protection of 'some irreducible core of free, creative, spontaneous human nature, of some elementary sense of identity, dignity and worth, against all that patronises and diminishes men, and threatens to rob them of themselves.'[65]

---

[60] Berlin, "The Purpose of Philosophy," *Concepts and Categories*, 11.
[61] Berlin, "Does Political Theory Still Exist?" *Concepts and Categories*, 164.
[62] Ibid., 163.
[63] Ibid., 169-172
[64] Ibid., 167-168
[65] Hausheer, xlv. It is worth noting that Berlin understands that even this commitment to the value of human life is in its way political and contingent – people have lived in the light of harder and perhaps nobler values, in which death, discomfort and pain were sacrifices made to grander values of victory, power and grandeur.

An important point of ambiguity can be brought to light by considering the development of ethical values over time. Though much of history the subjugation of women was widely accepted – does this imply this is a universal value or that the most people throughout history have been wrong?[66] To make sense of a pluralist response to this question it is necessary to consider its historical character. The claim that a value is common or universal can be read in two ways. First, at an abstract level, common values provide categories of understanding, such that the value of gendered distinctions has been and is expressed in ways that we may find objectionable – but importantly the value remains understandable. Second, common values have an historical character, so that today we can speak of common values that guarantee respect for women given actual social and political changes. Finally, Berlin's approach exposes the political nature of ethical life – because our values can be competing and often contradictory, embracing and advancing particular values will at times mean opposing others, such that valuing equality may require opposing most forms of chauvinism. The subjugation of women involves not only a common human value in making distinctions based on gender, but also counterpoised values of equality and respect, which have conflicted historically and continue to do so – this approach to understanding values does not suggest a single authoritative moral principle, but rather a basis for understanding and judgment. To answer the above question: human beings have throughout their history at times found the subjugation of women acceptable and justified, and we may find that unacceptable and unjustifiable – neither response has the irresistible force of "truth" on its side, they both represent understandable values. What emerges in this example is the troubling consequence of pluralism: perhaps the equality of women is not a universally embraced value, and the same is potentially true of any value. Objectivity as understanding only means that values we find unacceptable are not mysterious or irrational. The values we pursue are political in the sense that they displace other values and are contingent upon human action; Berlin famously framed the work of Machiavelli in such a light. He suggested that one of Machiavelli's most profound insights was to see the incompatibility of two different sets of value – on one hand Christian values of humility and forgiveness, and the other Roman virtues of pride

---

[66] I am indebted to both Kirsten Ainley and Meera Sabaratnam for raising this objection.

and strength – without suggesting that "rationality" privileged one over the other.[67] Berlin's ethical vision picks out the potential for conflict and tragedy, to which many contemporary liberal and cosmopolitan outlooks are blind.[68]

III. Understanding Ourselves: Facing Uncertainty and Pluralism

The account of Berlin's pluralism presented above describes pluralism in ethical and political life as a feature of experience to be faced, while also claiming that the source of moral value itself is contingent and plural. In the following section I want to distinguish Berlin as a deep pluralist by showing how he understood moral theory, not as a way to provide final principles, but as part of an effort to improve our judgment in the face of uncertainty. Berlin's pluralism is based in an understanding of ethical life in which choices, commitments and action without final assurances are the most we can hope to attain. Moving from an account of pluralism as a condition to be overcome or treated, to a pluralist ethic that accepts and embraces this feature of experience is the vital first step in reconstructing human rights.

It is possible to accept the plurality of values yet still argue that some values are overriding for instrumental reasons, or because of the necessity of creating an ordinal ranking of values in order to preserve a coherent view of the good life. Berlin was unconvinced by such arguments because they rest upon the idea that some values can be subsumed under higher ones, which denies the reality of loss when we compromise one value for the sake of another.[69] Yet, the un-combinability of values is not exclusively a commitment of deep pluralism. Rationalists could easily accept this, but only by claiming that we should privilege true moral values or those that are most essential. Deep pluralism, however, is committed to value incommensurability, the claim that there is no distinctly rational or singularly appropriate way to compare intrinsic values. This is what Gray calls a break down of transitivity,[70] because these

---

[67] Berlin, "The Originality of Machiavelli," *Against the Current*, 25-79.
[68] Chris Brown, "Tragedy, "Tragic Choices" and Contemporary International Political Theory," *International Relations*, Volume 21, Number 1 (2007), 5-13.
[69] Bernard Williams has explored this idea and seems to conclude that a rationalistic theory would preclude feelings of loss, if rationality were taken as expressive of the right or the good in some robust way. See *Moral Luck* and *Ethics and the Limits of Philosophy*.
[70] Gray, *Isaiah Berlin*, 50.

values are intrinsic and there is no overarching criterion of judgement, making anything other than contextual and contingent comparisons impossible.[71]

Berlin recognised that, while values are indeed plural and we have no a priori or distinctly rational method for prioritising our values, it is necessary to make choices that involve privileging some values over others in specific situations, over the course of a life, and at a societal level. As he says, '[p]riorities, never final and absolute must be established.'[72] The choices we make between plural values are "irrational" in the sense that reason does not give us a decisive ordering, but he does not believe that our choices are unreasonable in the sense that nothing can be said for why we have chosen as we have.[73] For Berlin the 'concrete situation [was] nearly everything.'[74] His program for coping with the conflicts we encounter in life, which pluralism allows no escape from, was to seek compromise where possible, to soften the collisions of values, and to realise that we can intelligently examine our values to determine if conflicts are as stark as they seem.[75] While some commentators see Berlin as a conventional sort of liberal, his pluralism presents a more challenging ethics that undermines moralised political commitments, such as those common in contemporary liberal theory. In what follows, I want to follow two interpretations of the relationship between Berlin's pluralism and liberalism, but not in order to make a judgment upon that question, but to develop the argument affirming the depth of his pluralism. Berlin was clear that he thought liberalism and pluralism were compatible, but he also denied any necessary connection between the two ideas.[76] Instead, he emphasised the historical nature of liberalism as an outgrowth of a particular social and political experience, which is valuable, but not distinctly rational over other value-systems.[77]

---

[71] Kekes, *The Morality of Pluralism*, 53-56.

[72] Berlin, "The Pursuit of the Ideal," *The Crooked Timber of Humanity*, 17.

[73] It is important to note that Berlin's notion of choice is neither radically existentialist or conventionally liberal; he was clear that many of our "choices" regarding our values are made for us by the historical communities we are members of, by the psychological habits we develop and even by those values we simply do not pursue. He did, however, think that the plurality of values would often lead us to moments of conflict when explicit choice is necessary; these moments are at the core of ethics.

[74] Ibid., 18.

[75] Ibid., 17-18.

[76] Ramin Jahanbegloo, *Conversations with Isaiah Berlin* (London: Phoenix Paperbacks, 1991), 44; and Isaiah Berlin and Beata Polanowska-Sygulska, *Unfinished Dialogue* (Amherst, NY: Prometheus Books, 2006), 213.

[77] Isaiah Berlin and Bernard Williams, "Pluralism and liberalism: A reply," *Political Studies*, Volume 42 (1994), 306-309.

This is an affirmation that there are a number of ways of being good, for individuals and communities, and that difference is understandable and deserving of recognition.

George Crowder argues most strongly for the liberal implications of Berlin's pluralism.[78] While acknowledging that Berlin himself did not draw a necessary connection, Crowder does so by challenging one particular aspect of Berlin's theory. He does not think that value-systems differ in the manner that Berlin suggests, such that different values can be legitimately privileged over individual liberty. Rather, he argues that all societies are required to privilege a substantial degree of personal liberty in order to protect the plurality of values.[79] The idea is that liberty is an ordinal value, which makes the pursuit of other values possible; plurality is thus dependent on liberty. This moves Crowder away from Berlin's deep pluralism, where he was explicit that liberty is an intrinsic value but without necessary primacy,[80] and Crowder in fact moves closer to liberal theories struggling to deal with diversity, rather than pluralism as such. Crowder takes pluralism to entail a more straight-forward normative thesis, believing that the fact of pluralism among individuals implies that autonomy is the primary good and that liberalism is the best political system for supporting this good.[81] Liberalism protects reasonable pluralism, and restrains radical pluralism. Because Crowder thinks that the rational necessity of autonomy, as a cardinal value, will guide us in making choices between conflicting values, choice is less radical and the reality of tragic choice is obscured.[82]

Part of what is at issue here is a conflation between diversity and pluralism. The thesis of pluralism is not simply that individuals will value many different things and the world of diversity that results is an inevitable feature of the second best world of political life – if that were the case it would indeed be a quintessentially liberal perspective.[83] Contrasting Berlin's pluralism with the reasonable pluralism developed in Rawls' later work, we see that for Rawls the central issue was the impossibility of

---

[78] Crowder, *Isaiah Berlin: Liberty and Pluralism*, and "Value Pluralism and Liberalism: Berlin and Beyond" in *The One and the Many,* 207-230, are just two examples.
[79] Crowder, *Liberalism and Value Pluralism*, 135-257. In part three of his book Crowder offer his extended defence of liberalism based on the fact of value pluralism.
[80] Berlin, "Introduction," 30. Here Berlin states that political liberty is not 'intrinsic to the notion of human being; it is a historical growth, an area bounded by frontiers.'
[81] Crowder, *Liberalism and Value Pluralism*, 63.
[82] Ibid., 57.
[83] Alasdair MacIntyre in fact misreads Berlin in this very way. MacIntyre, *After Virtue,* 109, 237.

agreement among individuals and that the proliferation of values cannot be contained by reason.[84] The failure of reason to substantiate a single value-system in Rawls' understanding was primarily attributable to human limitations, and he was not willing to accept the reality of deep pluralism in the way that Berlin did.[85] This is in part because Berlin's offered an historical rather than an ideal theoretical understanding of ethics, but also because Berlin did not aspire to provide a replacement for our loss of faith in the power of reason to provide an authoritative theory of the good. Berlin was too much the realist to pursue such a chimera; he also associated such attempts with an assimilative monistic logic that he saw as a threat to people's ability to pursue and even create their own values, individually and collectively – a temptation he attributed to well-meaning liberal pluralists, as well as more radically utopian and monistic value-orientations.[86]

In contrast to Crowder, John Gray offers a more radical reading of Berlin. Pluralism implies that all orderings are contingent, including liberalism, and for this reason he terms Berlin's own commitment to liberalism, agonistic – implying that his commitments must be seen as an ungrounded affirmation of liberalism, a "choice" unsecured by a necessary account of rightness. This means there is no special warrant granted to liberalism by reason or the facts of pluralism.[87] Mark Lilla makes this claim clear, 'Berlin believed that liberalism is not just a matter of principle and theory; it is an existential matter, a certain way of carrying oneself in the world and in the company of others.'[88] The need for this existential commitment comes from the fact that values are in part acts of will, as Berlin said, 'morality is moulded by the will and that ends are created, not discovered.'[89] Our conceptions of the good life, our choices, our ways of life, reflect contingent prioritisations, which though they may be understandable to most human beings, do not necessarily motivate others in the same way. Gray's emphasis on the existential and voluntarist elements of Berlin's thinking is contested, but he accurately reflects Berlin's interest in exploring the limitations of Enlightenment ethics and his sympathy for elements of the Romantic counter-

---

[84] John Rawls, *Political Liberalism* and *Justice as Fairness*.
[85] Ferrell, "Isaiah Berlin: Liberalism and pluralism in theory and practice," 310-311.
[86] Tamir, "A Strange Alliance: Isaiah Berlin and the Liberalism of the Fringes," 279-281.
[87] Gray, 141-168.
[88] Mark Lilla, "Wolves and Lambs," *The Legacy of Isaiah Berlin*, 32.
[89] Berlin, "The Apotheosis of the Romantic Will: The Revolt against the Myth of an Ideal World," in *The Crooked Timber of Humanity*, 237.

enlightenment.[90] Agonistic liberalism, in Gray's account, focuses on the fact that our values lack absolute foundations and can only be ironic commitments - in the language or Richard Rorty.[91] Yet, Gray's account of Berlin's agonistic liberalism is partial because it fails to emphasise that liberalism is not simply an individual existential choice, as our "choices" take place within historical and cultural contexts that set psychological barriers to the completely free existential play of Rorty's metaphoric redescriptions.[92] This aspect of Berlin's agonism is underplayed in Gray's account and adds an embedded context to Gray's strong existential account of pluralism. While there are voluntarist elements in Berlin's pluralism it is not an existential ethical theory that celebrates the complete freedom of the will. The will is reined-in by our placement in a social and historical world, and by the account of common values detailed above.[93]

One difficulty of living and thinking within a particular system of values is that it is seemingly difficult to imagine a good way of life that is drastically different from one's own. This is why imaginative insight is so important to Berlin's pluralism. He believed that if we tried to understand the reasons people have for valuing as they do, we could begin to understand other ways of life as different and good. This is a fundamental challenge of deep pluralism to liberal political theory. Liberalism is not uniquely appropriate to the truth of pluralism; other views of the good life could easily be as successful.[94] If European culture broadly embraces liberalism today it is because of a shared history, rather than some unique insight into the nature of goodness or being at the forefront of the progressive flow of history.[95] Pluralism requires us to rethink what toleration means, as it is not a matter of allowing people the space to be acceptably non-liberal in their values. For Gray, the best we can hope for is a pragmatic *modus vivendi*, where we try to find terms of common life, rather than tolerating the failings of others or aspire to some more prefect consensus.[96] Yet this highlight another limitation of Gray's development of pluralism, the discussion of

---

[90] Gray, *Isaiah Berlin*, 77,139, and 157. As well as Graeme Garrard, "Strange Reversals: Berlin on the Enlightenment and the Counter-Enlightenment," *The One and The Many*, 141-158,

[91] Gray, *Isaiah Berlin*, 60.

[92] Richard Rorty, *Contingency, Irony, and Solidarity* (Cambridge: University of Cambridge Press, 1989).

[93] Berlin, "The Pursuit of the Ideal," *The Crooked Timber of Humanity*, 18.

[94] Isaiah Berlin and Bernard Williams, "Pluralism and Liberalism: A Reply," 306-309.

[95] Berlin, "European Unity and its Vicissitudes," *The Crooked Timber of Humanity*, 204-206

[96] Gray, *Two Face of Liberalism*, 161-162.

modus vivendi, especially applied to liberal and non-liberal cultures, largely defines pluralism in terms that are too strongly collectivist.[97]

By focusing on the reality of pluralism within social and historical communities, as well as within the individual, Berlin was more attuned to the loss and fragility that is central a feature of ethical and political life. Berlin developed an ethic of engaged-coexistence in which key virtues are receptivity to difference and a care for plural expression of human values, without succumbing to the indifference of relativism. Because deep pluralism defend a final authoritative value or understand plurality as a condition to be overcome, the experience of real and tragic choice opens up a greater generosity and develops a more finely attuned ear for voices that are excluded, marginalised and all too often silenced completely.

> And if we understand how conflicts between ends equally ultimate and sacred, but irreconcilable within the breast of even a single human being, or between different men or groups, can lead to tragic and unavoidable collisions, we shall not distort the moral facts by artificially ordering them in terms of some one absolute criterion; recognising that (*pace* the moralists of the eighteenth century) not all good things are necessarily compatible with one another; and shall seek to comprehend the changing ideas of cultures, peoples, classes and individual human beings without asking which are right, which wrong, at any rate not in terms of some simple home-made dogma.[98]

Finally, while Gray is right that Berlin clearly rejected the faith that there is a special rational warrant for how we decide: 'the romantics have dealt a fatal blow to the proposition that, all appearances to the contrary, a definite solution to the jigsaw puzzle is, at least in principle, possible, that power in the service of reason can achieve it, that rational organisation can bring about the perfect union of … values.'[99] What is, however, clear in Berlin's thinking, is that we can give reasons for our commitments, that our choices are not wholly subjective or ironic, but conditioned by historical and social circumstances as well as by the limits of our sense of human

---

[97] In this regard Gray is similar to Rorty, who also affirms a form of Romantic pluralism, while at the same time all too easily talking as if the primary fault line of pluralism was between homogenous ideological blocs: like liberal and non-liberal. Rorty, "Pragmatism as romantic polytheism," *Philosophy as Cultural Politics, Volume 4* (Cambridge: Cambridge University Press, 2007). More explicitly still, Kekes defends a conservative pluralism in which the foundations that are undermined by pluralism are replaced with an appeal to traditions; see Kekes, *The Morality of Pluralism*.
[98] Berlin, "Historical Inevitability," *Liberty*, 151
[99] Berlin, "The Apotheosis of the Romantic Will," *The Crooked Timber of Humanity*, 236

morality, making choices understandable and providing firmer grounds for the generous sympathy that makes deep pluralism an active political ethic of engagement, rather than a passive form of liberal tolerance.

In the end, Berlin's deep pluralism regarding values does not lead necessarily to either a conventional liberal pluralism or even ironic liberalism. He affirmed his own liberal faith, he committed himself to a politics (what Bernard Williams calls the Liberalism of Fear)[100] that sought to avoid cruelty and preserve difference in the face of state and social power – including moralised power. Yet this commitment was contingent, as all such commitments must be in a pluralist world. This contingent commitment, however, is not the same as ironic anti-foundationalism; the tone is different and the ethic more generous – which is why Gray's comparison to Rorty does not hold. Deep pluralism does not start from scepticism, by doubting that we have deep and substantial reasons for being moral, instead its first insight is that the good in human life is multiple and exceeds the dominion of any individual or value system. This is the difference that makes a difference.

Berlin's tragic sensibility anticipates Honig's analysis of virtue and *virtú* politics, in which the latter acknowledges that every moral ideal, each ideal political order, has remainders[101] – values that are lost, experiences that it devalues and voices that are silenced. Deep pluralism preserves remainders as sources of insight and value, not mistakes to be disciplined or eccentricities to be tolerated. Honig (as well as Williams in his later writings)[102] politicises this insight by focusing on an agonistic (*virtú*) politics that insists that fundamental principles of political order are open to contest, and engaging in this contest is a central political virtue.[103] This goes beyond Berlin's acknowledgment of this political openness to an explicit agonistic democratic ethos, which is important for dusting off the stolid air that hangs over Berlin's political thought – understandable as his own hesitance to emphasise contest in political life

---

[100] Bernard Williams, *In the Beginning was the Deed,* 52-61.
[101] Bonnie Honig, *Political Theory and the Displacement of Politics*, 6-14.
[102] Williams, *In the Beginning was the Deed*, 3-5.
[103] Honig, 205-210.

was, given his very personal involvement with the violent extremes of 20th century politics.[104]

Further, his emphasis on the psychological experience of pluralism, his insistence that reason will not authoritatively silence our own ambiguous value-commitments, creates space for a pluralism that is critical of the construction of normalised identities – either of the autonomous individual or the member of the cohesive ethical community. It is telling that Berlin's ambiguous endorsement of nationalism is read as incoherence. David Miller suggests that Berlin was unable to articulate a clear position either in support or opposition to nationalism[105] – yet, read from a pluralist perspective, his thought revealed a nascent genealogical sensibility that clearly saw the threat of violence that resides in affirming either the atomistic rational individual and the member of the moral community as ideal figures grounding political life. Even his famous distinction between positive and negative freedom takes on a different hue when read as a deep pluralist analysis[106] – the distinction is not a final normative judgment nor necessary truthful account. Instead it traces distinct understandings of liberty and the ways in which they fold back in upon themselves – such that individual liberty risks becoming the external imperative of rational freedom, or the protection of a space free of social interference becomes an open field in which the wolves prey upon the lambs. The critical edge of deep pluralism comes from the denial of privilege to any attempt to absolutely justify a particular value or order – whether through the contortions of public reason, appeals to authoritative communal meanings or even shared capacities for suffering and enjoyment.

Berlin saw pluralism emerging out of the disorder of things. In "Historical Inevitability" Berlin argued that our ability to hold ourselves and others responsible is incompatible with historical determinism, but in that piece he only sought to highlight what is lost if we believe history is a closed system rather than arguing against

---

[104] Michael Ignatieff, *Isaiah Berlin: A Life* (London: Vintage, 2000). Not only did Berlin lose relatives to both Soviet and Nazi atrocities, he also developed close personal relationships with a number of Russian dissidents; further, he was involved with the Zionist movement during and after WWII, but despite his support for a Jewish state he was opposed to the violence used prior to Israel's founding and that perpetrated against the Palestinians.

[105] David Miller, "Crooked Timber or Bent Twig? Berlin's Nationalism," *The One and the Many*, 181-206.

[106] Berlin, "Two Concepts of Liberty," *Liberty*.

directly for a different understanding of history and the world. In "The Hedgehog and the Fox," which examines Leo Tolstoy's views on history, Berlin was more confident in affirming an experience of history and social life as radically undetermined. He began by contrasting Tolstoy's theoretical commitment to a determinate but unknowable (to human beings) order with his well developed "sense of reality"; 'Tolstoy perceived reality in its multiplicity, as a collection of separate entities round and into which he saw with a clarity and penetration scarcely ever equalled, but he believed only in one vast, unitary whole.'[107] The essay focuses on the contrast between theoretical certainty and the experience of indeterminacy, as well as the power of literature to reflect the complex and textured nature of human experience, but Berlin's own pluralist sense of reality emerges as well: 'no theories can possibly fit the immense variety of possible human behaviour, the vast multiplicity of minute, undiscoverable causes and effects which form the interplay of men and nature which history purports to record.'[108] What distinguishes Berlin's deep pluralism is that he does not wrestle with the imperative that the universe must be a determinate whole, as Tolstoy does; instead, he affirms the reality 'a messy universe.'[109]

The final distinctive aspect of Berlin's pluralism is the contrast it allows us to draw between pluralism and diversity. Liberal pluralists and ironic liberals generally use these terms interchangeably, but for deep pluralists they have distinct meanings. Pluralism of values, final ethical faiths and political commitments is a reality of human life, which pluralists encourage us to engage – to be aware of our own ambiguities in our commitments and identities, to seek compromises with those who affirm different goods, to engage generously in understanding why others believe as they do and where possible to engage coalitions of political allies affirming different ultimate sources of value. Diversity, for the deep pluralist, is a challenge of understanding. The challenge of understanding difference is threatening for those who cannot tolerate or value diversity, and difference is always at risk of turning into incomprehensible otherness, into the distinction between privileged self and unknowable other, subject to discipline, discrimination and much worse. Deep pluralism is then a feature of the world and our experience that influences how we

---

[107] Berlin, "The Hedgehog and the Fox," *Russian Thinkers*, 57.
[108] Ibid., 39.
[109] Ibid., 70.

engage with diversity; it is in part the faith that understanding difference is possible, and a commitment to respecting and valuing diversity without demanding otherness conform to our own values. Pluralism suggests that being human is an ambiguous condition expressing rich diversity, and that we can generously engage difference though responsive and respectful pluralism.

IV. Pluralist Human Rights: Openings and Challenges

In conclusion, there is a final challenge to the deep pluralism defended here that needs to be addressed. Particularly, if my reconstruction of human rights is going to begin with pluralist moral theory it is necessary to respond to the claim that pluralism undermines the possibility of a universal ethics based in a shared concept of human dignity and a common political program. Without these presuppositions it is not clear that a moral defence of an alternative international human right regime is even possible. Affirming a deep pluralist ethic seems to make it impossible to appeal to human dignity or any other central value that could not only ground but also orient human rights as a political project. Further, pluralist agnosticism about the ideal political order and its acknowledgment of ongoing contestation goes against the grain of cosmopolitan human rights institutions by suggesting that neither the moral individual nor embedded citizen is the highest ideal of political life. Important as these objections are they do not make a human rights based in a deep pluralism impossible. They do, however, require that we attend more closely to the relationship between ethics and politics, as well as the place of universal claims in a pluralist ethics.

Established objections to human rights are that they are based on a problematic essentialism that privileges individualism, liberal governance, capitalist economics and the Western model of the nation-state.[110] The idea of human rights is seen as an ideology that assimilates and distorts the experience of others, particularly non-western and female experience.[111] From this perspective the universalism of human

---

[110] Jack Donnelly presents a cogent statement of this critique while providing a compelling defence of human rights in "The Relative Universality of Human Rights," 281-306. Also, Kate Schick, "Beyond Rules: A Critique of the Liberal Human Rights Regime," *International Relations*, Volume 30, Number 3 (2006), 321-327.

[111] Brooke A. Ackerly, *Universal Human Rights in a World of Difference*, 1-39.

rights is a false universalism that devalues and often ignores the reality of many people's experience.[112] The problematic political result of this epistemological elision are a blindness to certain types of violence and cruelty, as well as an inability to give value to alternative understandings of social and political ethics. These criticisms resonate with the critique of the previous two chapters, which claim that the universal presumptions central to human rights conceal their political nature, and that the appeal to universal principles of political legitimacy is an attempt to establish standards that are outside the realm of politics, and in fact outside the complex ambiguities of the actual social world. Whether the process of determining these principles takes, a particular vision of the good life, of legitimate social order and the moral individual is imposed upon real individuals.

A pluralist reconstruction of human rights must begin from the assumption that any attempt to adopt an absolute universal ideal is a political act that will privilege certain values and experiences, and displace alternative visions and generate real losses. This requires both the ethic of engagement introduced in embryonic form here and developed in what follows, as well as a commitment to an open-ended politics of human rights. The politics of human rights, for deep pluralists, must be a politics that attends to justified resistance to human rights and emergent human rights claims. This will have implications for how we understand the role of human rights in world politics – including reconsidering their function in legitimising sovereignty and calling for more comprehensive global organisations, while turning our attention to sites of contest over the meaning of human rights and social movements engaged in claiming human rights, including those that oppose the sovereign state as such and oppose an increasingly hierarchical global order.[113]

Beyond inspiring us to rethink the politics of human rights, a deep pluralist ethics leads us to reconstruct the purpose and nature of universal ethical claims. Berlin defended universal values, but his notion of common understanding is not prescriptive in the way conventional understandings of universal principles are; universal values

---

[112] Fiona Robinson, "Human rights and the global politics of resistance: feminist perspectives," *Review of International Studies*, Volume 29 (2003), 161-180; and Rajat Rana, "Symphony of Decolonisation: Third World and Human Rights Discourse," *The International Journal of Human Rights*, Volume 11, Number 4 (2007), 367-379.
[113] Hoover and Iñiguez de Heredia, "Philosophers, Activists, and Radicals," 17-25.

do not give us imperatives, norms and laws that should be applied to everyone and all situations. The difference is greater than that still, as the loss of the universal and absolute imperative is not to be grieved over, so far as pluralism emancipates us from the will to singularity it opens ethical and political life up to more ideals and institutional orders, while at the same time placing greater responsibility on our capacity for practical and situated judgment. The universalism Berlin defended provides a basis for confronting the ethical issues of world politics as unique conflicts requiring context sensitive solutions. Further, the idea of human rights that we have, from the perspective of Berlin's pluralism, is an historical artefact and the result of an actual political process. Not only does this provide us with a better understanding of the idea of human rights than appeals to abstract principle, but it also changes the critical interrogation of that human rights regime. The question is no longer how to ensure that a particular right, or rights regime, is universally warranted – whether by reason or consensus. Instead, we will ask do the values affirmed have universal scope? Are these values a useful aid to our exercise of practical ethical judgment? As a political artefact, whom do these values exclude? And what scope is there for their contestation and reconstruction? Universalism as a faith in the possibility of human understanding, in a shared and plural humanity, allows us to ask ethical and political questions at the level of maximal inclusion, it holds open the possibility of universal regard. Yet, this universalism must remain critical, as humanity as an identity is ambiguous and the temptation of normalising that identity to exclude others is ever present.

As promising as I think a pluralist ethics is for reconstruction human rights there are a number of issue to be addressed and further developed. In the next chapter I turn to the ethical theory of John Dewey to address two key weaknesses of Berlin's work. The first regards Berlin's underdeveloped conception of judgment under conditions of pluralism. The question of how we judge, and what this means in relationship to action is not fully addressed. Berlin suggests that accommodation, tolerance and mutual respect should guide us, and that ethical judgment is importantly tied to a sense of coherence with experience and the aesthetic appeal of certain values and ways of life. This is evocative, but in the end it needs further clarification and development. In the next chapter I examine the work of John Dewey in order to develop a fuller account of situated practical reason, of the process of ethical

judgment under conditions of pluralism. The second lingering concern is Berlin's ambiguous appeal to a shared human nature. His rejection of essentialism seems to make his appeal to human nature contradictory. While I think his historical exploration of human self-understanding is an improvement on either simple universalism or relativism, there is a danger that Berlin was too assimilative in his assumptions about our common human nature. Dewey's thought, examined below, responds to these limitations in part, but in chapter 5 the pluralist and pragmatic ethic developed thus far is furthered through a direct engagement with the agonistic and pluralist democratic theory of William Connolly, who directly addresses the question of whether universalism will inevitably become assimilative and violent.

Chapter 4
Situationist ethics: reconstructing practical reason

'American pragmatism is a diverse and heterogeneous tradition. But its common denominator consists of a future-oriented instrumentalism that tries to deploy thought as a weapon to enable more effective action. Its basic impulse is a plebeian radicalism that fuels an antipatrician rebelliousness for the moral aim of enriching individuals and expanding democracy.'

-Cornel West, *The American Evasion of Philosophy*

I. Ethics as Critical Intelligence

In the previous chapter I have argued that embracing deep pluralism entails fundamentally rethinking what ethical inquiry should provide us with. Pluralism, as I have tried to make clear, suggests that answers to questions of value do not come in the form of a singular imperative, but are instead many and contestable. The pluralism that I have argued is essential to reconstructing human rights is a deep pluralism, it is not only that people with different cultural backgrounds or philosophical commitments may disagree, but rather that we may disagree with ourselves, with our families, compatriots and with strangers in equal measure as a consequence of the variety of human values and the complexity of our lives. This does not mean that values are merely relative, nor does it mean that theoretical reflection on questions of value is fruitless, but it does imply that the search for simple moral principles or comprehensive ethical systems is at best ineffectual and at worst a will to impose a coercive order and singularity upon our experience. Here I turn to the work of John Dewey to further develop the ethical basis for a reconstructed human rights, in particular drawing on his situationist ethics, which provides an account of ethical intelligence (in contrast to practical or communicative reason) and a distinctive understanding of universalism, which I argue are key expansions upon Berlin's deep pluralism.

Dewey's philosophy is fundamentally a call to abandon the search for immutable and absolute truths. At first glance this is consonant with contemporary work in ethical and political theory: not only are there a variety of postmodern approaches that would insist that such a search is both impossible and pernicious, but more conventional voices no longer speak with strong metaphysical accents or declare such

ambition to finality. Yet, the problem that universal moral theories address themselves to is the very problem Dewey identified in *The Quest for Certainty*. In that text he traced the changes in modern thought that created both the sense that moral values were under threat while diagnosing the futility of attempts to defend the certainty of moral values from contingency, as each new foundation intended to preserve ultimate value crumbles.

> When men began to reflect philosophically it seemed to them altogether too risky to leave the place of values at the mercy of acts the results of which are never sure. This precariousness might hold as far as empirical existence, existence in the sensible and phenomenal world, is concerned; but this very uncertainty seemed to render it the more needful that ideal goods should be shown to have, by means of knowledge of the most assured type, an indefeasible and inexpugnable position in the realm of the ultimately real.[1]

From Dewey's perspective it is not that we tragically lack power to know final and absolute truths about human values, it is that such a search is misguided. Dewey argued that the failure to find absolute and final answers is not a cause for disillusionment but a liberation of human intelligence. The more common response to a world that seems so unwilling to accommodate finality or certainty is, especially in ethical and political theory, to find some synthetic grounds for what has been lost. Dewey enjoined us to stop looking for truth, value or the good *external to experience* and to *get on with the work of making, and remaking, these vital materials.*

Like Berlin, Dewey was often accused of undercutting the very possibility of objective value,[2] and for similar reasons, as he denied both the final authority of tradition and the rationalist dream of discovering absolute values through the conceit of reason. The source of this reaction is the seeming impossibility of conventional moralists to reconsider the nature of values as uncertain and contingent. Dewey's ethics reject the need for imperatives. He said, the 'imperative, like everything

---

[1] Dewey, *The Quest for Certainty*, 35.
[2] Both Morton White and C.L. Stevenson made this argument against Dewey, though in different ways. See, Morton White, *Social Thought in America: The Revolt Against Formalism* (New York: Viking Press, 1949), and C.L. Stevenson, *Ethics and Language* (New Haven: Yale University Press, 1954). Later commentators were more sympathetic to Dewey and critique both White and Stevenson, see James Gouinlock, *John Dewey's Philosophy of Value* (New York: Humanities Press, 1972) and Cheryl Noble, "A Common Misunderstanding of Dewey on the Nature of Value Judgments," *The Journal of Value Inquiry*, Volume 12, Number 1 (1978), 53-63.

absolute, is sterile. Till men give up the search for a general formula of progress they will not know where to look to find it.'[3] In place of the search for a general formula, he sought to understand the logical, psychological and social elements of ethical thought in order to improve ethical intelligence as part of our experience, to develop our ability (as co-authors of moral value) to make judgments and improve social life in light of our best ideals in specific situations.

Building upon the deep pluralism taken from Berlin in the last chapter, Dewey's situationist ethics provide a better account of how our values are developed and a fuller understanding of how practical judgment works if we accept the plurality and contingency of values. These aspects of Dewey's thought are developed in sections two and three, while paying attention to the important contribution to Dewey's ethical thought made by emphasising the elements of pluralism in his pragmatism. In the final section, I confront the issue of how the appeal to universal humanity functions in the reconstructed political ethic developed here. This final development requires focusing on the persistence of political contest in ethical thought, which is inadequately addressed in Dewey's work – this failing sets the stage for chapter five, where the always political contest at the heart of ethics is examined in detail.

II. Situationist Ethics and Practical Action

To understand Dewey's ethical thought it is necessary to place it in the context of his wider philosophy. In particular, the distinctive meaning he gave to experience is central to his rejection of traditional moral theory and his account of ethical intelligence. Where moral theory is divided between transcendent appeals to moral authority (whether religious or rational) and claims that moral authority is evident in the nature of things (whether in the human nature or communal traditions), Dewey rejected the possibility that our experience will give us ground for such final authority. Transcendent and transcendental theories depend upon an escape from everyday practical experience in order to access higher levels of experience that justify our knowledge, particularly authoritative moral knowledge.[4] While empirical

---

[3] John Dewey, *Human Nature and Conduct*, 283.
[4] Dewey, *Lectures on Ethics,* 7-14, 52-68. Also, see Dewey, *Outlines of a Critical Theory of Ethics* (New York, NY: Hillary House, 1957), 78-93.

theories claim that truth is written upon the world such that we can access that truth through perception, even as it may require special methods, which affirms the authority of moral knowledge that comes from experience of custom or self-evident human nature.[5] Dewey denied that either rational or empirical experience provides knowledge, moral or otherwise; instead, experience is active and knowledge is generated through interaction with our physical and social environment. From this idea of active experience Dewey developed a situationist and experimental ethics that makes use of empirical reality and rational reflection in the reconstruction of experience, but which changes the fundamental goal of ethical thinking from determining final and authoritative rules to developing better ways of acting ethically in light of constantly shifting experience.[6]

For Dewey ethical reflection started with problematic experience, with those situations that disrupt our everyday experience of acting in the world. Our experience most of the time is mediated by habit and custom, which makes our interactions in the world relatively seamless, this importantly includes ethics.[7] Most of the time we judge right and wrong, good and bad, with unreflective ease, but there are disruptions of experience, when for various reasons habit and custom fall short. It is in these problematic situations, Dewey argued, that ethical thinking really happens, where ethical theory has important work to do in reconstructing experience. This implies that ethical problems are situational, first and foremost, and that absolute imperatives are hollow, whatever purported source of authority they claim.[8] This is because our experience is contingent, plural, ungrounded and subject to change and further development, meaning that the successful responses we find to specific problems are the most firmly true ethical claims we can make – leaving grander claims of moral principle open to continued testing against experience. Dewey inverted the hierarchy of universal over particular principles, of universal and rational over situational and practical experience.

---

[5] Dewey, *Lectures on Ethics*, 5-7, 16-28,42-51. And, Dewey, *Outlines of a Critical Theory of Ethics*, 53-78.
[6] Dewey, *Reconstruction in Philosophy*, 99-102.
[7] Dewey, *Human Nature and Conduct*, 75-83.
[8] Ibid., 125-130, 169-171, and 189-198.

Our fullest knowledge of truth, according to Dewey, is achieved in consumatory moments in which problematic situations are overcome and a unity is established between reflective thought and empirical experience through practical activity.[9] These moments of successful reconstruction are more meaningful than our common state of effective habitual action, as experience has been self-consciously reconstructed to overcome the problematic situation created by the failure of habitual activity.[10] Yet this quintessentially idealist moment of merger between the actual and ideal is the fleeting result of practical activity that expresses a feature of improved experience, rather than a metaphysical and singular absolute.[11] Dewey's was a plural universe in which change and adaption are ongoing, developments multiple and leading to further improvements in our ability to cope with and make meaning in such a world.[12] Therefore, the central goal of Dewey's ethical theory is to improve our ability to transform problematic experiences into consumatory ones.

Dewey's ethics are not simply instrumental, as a crude reading could suggest, as the transformation of experience it aims at places the critical interrogation of our existing moral values at the centre of ethical inquiry. In distinction from inquiry in the physical sciences, ethical inquiry requires that we consider the implications of any particular action for the values we affirm for ourselves and our communities; because inquiry into human relations leads to conclusions that affect our self-understandings, Dewey thought that all social inquiry has an ethical element. 'Judgments are "moral" in logical type so far as the presence of activity in affecting the content of judgment is seen consciously to affect itself – or whenever the reciprocal determination of activity and content becomes itself an object of judgment whose determination is a prerequisite for further successful judgments.'[13] The self-reflection that is constitutive of ethical inquiry makes plain that the question of "what sort of people should we be" is always in need of an answer through our practical action, rather than our declared

---

[9] Dewey, *Experience and Nature* (Chicago and London: Open Court Publishing Company, 1925), 78-83, 116-118.
[10] Dewey, *Human Nature and Conduct,* 281-283.
[11] Boisvert, Raymond D. "Dewey's Metaphysics," ed. Larry A Hickman, *Reading Dewey: Interpretations for a Postmodern Generation* (Bloomingdale and Indianapolis, IN: Indiana University Press, 1998), 155-160.
[12] The term taken from William Connolly, who, however, is directly inspired by William James; see James, *Pragmatism: A New Name for Some Old Ways of Thinking* (New York, NY: Barnes and Noble, 2003) and *A Pluralistic Universe* (London: University of Nebraska Press, 1997).
[13] Dewey, "Logical Conditions of a Scientific Treatment of Morality," *Problems of Men* (New York, NY: Philosophical Library, 1946), 247-248.

imperatives. So, while it is correct to see Dewey's idea of inquiry as the application of critical intelligence to improve experience that improvement is not merely found in exerting greater control over external consequences – in ethical inquiry it is importantly about making plain the values we affirm, evaluating them and reorienting both our action and values in light of experienced consequences, which may require changing ourselves as much as our social environment.[14]

The situationist ethics Dewey developed prescribes a method of practical action, of ethical intelligence, that reconstructs conventional accounts of practical reason intended to assist us in determining the right thing to do. Once we find ourselves in an ethically problematic situation, the first requirement is to determine the nature of the problem that is impeding our action: is it a practical difficulty or a psychological doubt leading us to question our own values?[15] Once it has been made clear what the problematic ends are in a given situation, then we can work towards imagining a new "end in view" that reconstructs the problematic situation into a consumatory one.[16] This new end in view, however, is tentative and hypothetical – it must be tested out in both imagination and practical action to establish its value.[17] And even when a new end proves successful, Dewey enjoined us to remain self-reflective in considering the nature of the new experience engendered by our actions – to keep the existential question at the forefront our minds: has this new end and the actions to make it effective in the world lead us to be the sort of people we should be? More needs to be said about the functioning of ends in particular ethical situations as well as the place of values in ethical thought more broadly.

Dewey's ethical thinking is built around his analysis of how values function in social life, most importantly in providing ends and means that guide our action. In any particular situation we will be guided by ends that we take for granted, pursued in

---

[14] Dewey, *Outlines of a Critical Theory of Ethics*, 117-123.
[15] Dewey, *Reconstruction in Philosophy*, 94.
[16] Ibid., 97. The phrase "end in view" is important for understanding Dewey's ethics – it refers to those ends and goals that are ultimate in a particular situation. They are more than simple desires, as they are ends we have judged to be worthwhile, but they are not final ends because they are judged to be valuable and worthy ends only in a particular situation. Our ends in view may achieve stability, such that certain goods or principles have generally authoritative status, but this stability is always open to contestation and reconstruction by further inquiry.
[17] Steven Fesmire, *John Dewey and Moral Imagination: Pragmatism in Ethics* (Bloomington and Indianapolis, IN: Indiana University Press, 2003), 69-91.

ways that we rarely stop to reflect upon. Nonetheless, the ends we pursue and the manner in which we pursue them reflect our valuations of them as goods, even if these valuations are often tacit or second-hand, but the things we value are more than simple satisfactions.[18] To begin with, a moral good is one that is valued for more than the satisfaction it brings – even the hedonist must first moralise enjoyment before pleasure becomes a moral end, must affirm that it is the sort of thing we should dedicate ourselves to in though and conduct.[19] Beyond this reflective evaluation, our moral values are social and therefore the process of acquiring, evaluating and changing our values takes place in common with others. Therefore, we confront an already existing world of plural values, an ethical world of many goods expressed in diverse ends and pursued through diverse means. This is a major source of tension in our ethical lives leading us to confront problematic situations and seek reconstructions of value; added to this are changes in our material conditions and changing patterns of social interaction that bring the experiences of new individuals and groups together. Keeping the depth of this value pluralism in mind, Dewey's remarks have a distinct contemporary relevance when he says:

> All the serious perplexities of life come back to the genuine difficulty
> of forming a judgment as to the values of the situation; they come back
> to a conflict of goods... And to suppose that we can make a
> hierarchical table of values at large once for all, a kind of catalogue in
> which they are arranged in an order of ascending or descending worth,
> is to indulge in a gloss on our inability to frame intelligent judgments
> in the concrete.[20]

It is easy to imagine that Dewey would not be surprised that the challenge of acting ethically and thinking critically in our complex contemporary situation, especially when dealing with issues of international and global scope, has lead moralists to expend so much energy defining universal moral principles that bear upon all situations as a matter of definition.

Responding to problematic situations then requires us to suggest revised ends in view to restore continuity to ethical experience. The content of these ends, however, cannot be given by a prior theory. We can draw upon the larger context of the

---

[18] Dewey, *Lectures on Ethics*, 184-198.
[19] Ibid., 23-28.
[20] Dewey, *The Quest for Certainty*, 253.

situation, such that other values may guide our reconstruction; the demands of the situation may call upon us to reconsider what is most important to us in a given situation; or the situation may call for effecting social and political changes in order to enable the original end pursued. Aside from calling for this sort of detailed and empirically grounded analysis, Dewey's ethics also demand action. He discussed two types of action. First, he suggested that we should employ imaginative rehearsals, in which we think through the consequences of pursuing a new end as carefully and thoroughly as possible.[21] Even this strategy, however, has its limits and action is required to confirm the value of our new ends.[22] Yet, this action is only a stage in the ongoing cycle of ethical inquiry and provides ground for further reflection.

This ongoing process of action and reflection was, for Dewey, the only plausible and effective response to the uncertainty we face in practical action – a commitment to the intelligent pursuit of moral actions.

> To abandon the search for absolute and immutable reality and value may seem like a sacrifice. But this renunciation is the condition for entering upon a vocation of greater vitality. The search for values to be secured and shared by all, because buttressed in the foundations of social life, is a quest in which philosophy would have no rivals, but coadjutors in men of good will.[23]

Key to this process of reflection is the distinction he made between something having value for us, and the reflective process of valuation. That something is enjoyed and therefore has immediate value can be a call for caution as much as it is a confirmation of the experience's moral value – even in reflective action we may find that our new end in view leads to an experience we enjoy or prize, but that does not guarantee that upon further reflection we find it morally valuable, as the enjoyment of a particular end may well be outweighed by negative consequences that result.[24] Dewey's articulation of an ethical method does much to clarify the consequences of pluralism for practical action and gives substantial content to Berlin's gesture toward pluralist ethics as a guide to making choices in specific consequences without the guidance of final principles. More, however, must be said to expand upon this basic account of

---

[21] Dewey, *Human Nature and Conduct*, 234-235.
[22] Ibid., 283-294.
[23] Dewey, *The Quest for Certainty*, 295.
[24] Ibid., 247.

Dewey's ethics. Most importantly what has been discussed thus far raises the question of what role general moral principles, like those articulated as human rights, play in political ethics. Also, what has been said is focused on singular experiences rather than the social and political context in which ethical action is required. Both of these issues are addressed in the next section.

III. Democratic Reconstructions

The account given thus far is essentially a phenomenological account of moral experience, a personalised understanding of the process of moral judgment. This is vital for Dewey, as he wanted to shift the focus of ethical theory away from an ideal realm of absolute principles to the concrete problems we face. Yet this raises the question of what further content is there to his ethical theory. While Cornel West is correct to characterise Dewey's thought as part of a pragmatic tradition that evades rather than solves most traditional philosophical questions,[25] Dewey clearly saw himself as articulating a new philosophy that would assist ethical thought and action without according theoretical abstraction a privileged position over practical action. This is why his ethical theory is essentially presented as a resource for dealing with problematic situations, as a tool we can turn to in order assist us in making better ethical judgments both as individuals and members of communities.

> A moral law, like a law in physics, is not something to swear by and stick to at all hazards; it is a formula of the way to respond when specified conditions present themselves. Its soundness and pertinence are tested by what happens when it is acted upon. Its claim or authority rests finally upon the imperativeness of the situation that has to be dealt with, not upon its own intrinsic nature – as any tool achieves dignity in the measure of the needs served by it.[26]

In his most explicitly ethical works Dewey pursued three lines of inquiry that he thinks will improve our ability to make ethical judgments, these include an investigation into the logical structure of ethical concepts, which can clarify our thinking and expose concepts in need of reconstruction; an analysis of the psychological aspects of ethical judgment including an analysis of habits, desires and

---

[25] Cornel West, *The American Evasion of Philosophy: A Genealogy of Pragmatism* (Madison, WI: University of Wisconsin Press, 1989), 69-111.
[26] Dewey, *Quest for Certainty*, 264-265.

the development of moral character; and finally an analysis of the social and political structures within which ethical judgments are made.[27] In each case he was working, quite consciously, at a level of abstraction removed from practical action and therefore his ethical theory should be understood as an attempt to clarify the generic aspects of ethical experience as a tool for improving practical action, not as presenting regulative philosophical ideals.

The logical concepts of ethics are analysed in order to make clear how ethical terms and ideas function in our daily experience, a process that Dewey used to articulate his critique of traditional moral theories. A full exposition of the ethical concepts he addresses or of his critique of traditional morality is not possible here, so I focus on those aspects of this work that are most relevant to the task of reconstructing human rights: the good and the right. To begin with, Dewey looked at "the good" as the primary feature of ethical thought, as the good is fundamentally that which motivates action – those ends and actions identified as good are desired and prized.[28] As was discussed earlier, a moral good is more than a desired end or state of enjoyment, it has been analysed and its consequences affirmed in reflection, and this process of reflection upon our ends is central to the ethical method that Dewey prescribed.[29] As goods become problematic they must be reassessed and reconstructed through ethical judgments and therefore always remain central to ethical intelligence, yet this centrality is not buttressed through transcendental or empirical theories of value. This is the central difference in Dewey's ethical thought, and the point that has lead many to believe he prescribes a positivist ethics without normative content.[30] For Dewey, a properly experimental ethics must begin with those things that people do value as good, but without abandoning the capacity for critical reflection and moral progress.

---

[27] This approach is laid out explicitly in *Principles of Instrumental Logic: John Dewey's Lectures in Ethics and Political Ethics, 1895-1896*, ed. Donald F. Koch (Carbondale, IL: Southern Illinois University Press, 1998), *Outlines of a Critical Theory of Ethics,* and *Lectures on Ethics*. Various elements are followed up in later works: in *Quest for Certainty* Dewey develops his theory of valuation, in *Human Nature and Conduct* the psychological and social elements of ethical intelligence are examined, and in his political and educational theory he further examines the place of social institutions – see, *The Public and its Problems*, *Democracy and Education* (New York, NY: Macmillan, 1930), and *Freedom and Culture* (Amherst, NY: Prometheus Books, 1989).
[28] Dewey, *Lectures on Ethics*, 42-45.
[29] Dewey, *Quest for Certainty*, 252.
[30] Noble, "A Common Misunderstanding of Dewey on the Nature of Value Judgments," 53-63.

> Affections, desires, purposes, choices are going to endure as long as man is man; therefore as long as man is man, there are going to be ideas, judgments, beliefs about values. Nothing could be sillier than to attempt to justify their existence at large; they are going to exist anyway. What is inevitable needs no proof for its existence. But these expressions of our nature need direction, and direction is possible only through knowledge. When they are informed by knowledge, they themselves constitute, in their directed activity, intelligence in operation.[31]

Moral progress, however, is not guaranteed through reason; instead it occurs within human experience through reflection on our ends and means, through an experimental and corrigible pursuit of the good. In this context "progress" is made in terms of confronting specific problems, not building towards some final and complete morality.[32] The moral content of the good is our best reflections and our most careful action as we work towards creating the best selves and communities we can imagine.

This highlights the importance of the social nature of the good, as we start our pursuit in an existing social context, with many established goods, and we pursue the good in community with others. Therefore, the good cannot be judged from a purely self-interested perspective, the consequences of our ends upon others matter for determining their moral value.[33] This also means that the assessments of others matter, at least as far as our actions affect them and, most fully, as far as the assessments of others determine how we judge ourselves.[34] It is in this context that goods become regulative ideals, as some goods are given priority in regulating our personal conduct and our assessments of others – and while Dewey had much to say, as a moralist, about which ideals should regulate our conduct, the more fundamental point is that even as our ideals provide guides to action they can fail and must be open to reconstruction.[35] Further, because ethical judgment is an inherently social act, critical ethical intelligence requires an attention to the differential effect of ideals

---

[31] Dewey, *Quest for Certainty*, 284.

[32] Ibid., 64 and 105. Note Dewey's response to progressive accounts in Idealist and Evolutionary philosophies: 'The perfect adjustment of man, personal and collective, to the environment is the evolutionary term, and is one which signifies the elimination of all evil, physical and moral. The ultimate triumph of justice and the union of the good of self with the good of others are identical with the working out of physical law.' And, 'For objective idealism, reflective inquiry is valid only as it reproduces the work previously effected by constitutive thought. The goal of human thinking is approximation to the reality already instituted by absolute reason.'

[33] Dewey, *Lectures on Ethics*, 221-223.

[34] Dewey, *Outlines of a Critical Theory of Ethics*, 104-113.

[35] Dewey, *Lectures on Ethics*, 229-230.

upon individuals in society and an understanding of the social structures and power that holds certain ideals in place. Dewey's analysis, in other words, is not conventionalism or arid idealism; it serves to empower our self-conscious acts of ethical reconstruction.[36]

While more will be said about Dewey's analysis of the social and political context of ethical judgment, I want to highlight his analysis of the concept of "the right" as well, which will inform the reconstruction of human rights that I begin in the final section of this chapter. The right, according to Dewey, is derivative of the good as it represents the codification of particular ideal goods into rules of social action that both grant rights and assign duties.[37] Unlike formal moral theories (which would include Kantianism and discourse ethics), Dewey did not think the pure concept of right can give us determinate moral rules because as the right expresses a rule it also expresses established goods, both ends and means.[38] Rights, therefore, figure into ethical experience differently than the good because rights express the social rules of conduct (the privileges and responsibilities) that influence our actions. Specific rights are prior to a general conception of right on Dewey's understanding, which means that that our experience of established rights is vital in determining the moral value of any particular right. Therefore, rights are still open to reconstruction in problematic situations, as the experience of individuals exposes incoherency and exploitation in existing concepts of the right; this change of focus is actually quite radical, as it undermines the authority, both social and intellectual, that normally preserves rights and instead focuses on their practical consequences and empowers the democratic reconstruction of established privileges and responsibilities.

A further change entailed by Dewey's analysis of rights is that there is no longer a universal account of right, as any abstraction from the context in which a right is made determinate leaves us with only a generic abstraction. Such abstraction can serve as ideals and guides to action – in essence the idea of universal human rights is the ideal of a global community in which everyone has privileges and duties to one another, but the generic abstraction itself lacks content. The content and value of any

---

[36] Dewey, *Outlines of a Critical Theory of Ethics*, 123-132.
[37] Dewey, *Lectures on Ethics*, 246-252.
[38] Dewey, *Outlines of a Critical Theory of Ethics*, 148-152.

right or rights regime must be put to the test in specific situations, in concrete practical activity. This makes clear that rights as given in any particular context are fundamental to the legitimacy of the existing social order, as they institutionalise the account of what each owes to another. Calls to reconstruct the privileges and responsibilities that define the social structure are radical in the sense that they call for fundamental changes in society.[39] While we lose the power of transcendental theories of right to make absolute claims upon the social order, what is gained in Dewey's understanding of rights is a clearer picture of how rights function in society and what is actually involved in rejecting existing rights and claiming new ones. His ethics also points us toward the analysis of actual rather than ideal rights regimes and the actual experience that drives us to make ethical judgment and social change.

Beyond an account of how key ethical concepts function in thought and action, Dewey insisted that we must understand the psychology of ethical judgment. Again Dewey's work is so broad that only a partial presentation is possible. The key idea that Dewey developed in social psychology is the role of habit and custom in determining our behaviour and wider social structures. While he was keen to overcome the negative consequences of convention, Dewey did not imagine that ethics can or should eliminate habit and custom – the primary task is rather to enable better habits and customs that open up possibilities for further ethical advancement and growth.[40] It is striking that his account of the psychological basis of ethical action is represented as opening up human powers to control our environment and improve our communities and our selves; the social psychological basis of ethics is not an impediment to judgment and it is not a cage of biological determinism or social conventionalism.

Dewey understood habits as the established currents through which experience flows, leading us to pursue given ends through accepted means until something disrupts the course of activity. Customs are socialised habits, they represent the established goods, rights and institutions of society that coordinate social activity in relatively stable ways. Importantly, customs provide the backdrop of habit, the source

---

[39] Ibid., 171-174.
[40] Dewey, *Human Nature and Conduct*, 149-168.

of our habits and the primary means of their reinforcement.[41] Given the weight of habit and custom as unconscious guides to activity, the work of disrupting and changing convention is difficult but vital; which is why the disruption of experience is so important to Dewey. Our desires, impulses, frustrations and suffering are all potential motives to reconsider established ways of acting as they generate the problematic situations that call out for ethical judgment.

> Fear and hope, joy and sorrow, aversion and desire, as perturbations, are qualities of a divided response. They involve concern, solicitude, for what the present situation may become. "Care" signifies two quite different things: fret, worry and anxiety, and cherishing attention to that in whose potentialities we are interested. These two meaning represent different poles of reactive behaviour to a present having a future which is ambiguous. Elation and depression, moreover, manifest themselves only under conditions wherein not everything from start to finish is completely determined and certain. They may occur at a final moment of triumph or defeat, but this moment is one of victory or frustration in connection with a previous course of affairs whose issue was in suspense. Love for a Being so perfect and complete that our regard for it can make no difference to it is not so much affection as (a fact which the scholastics saw) it is concern for the destiny for our own souls. Hate that is sheer antagonism without any element of uncertainty is not an emotion, but is an energy devoted to ruthless destruction.[42]

This means that these emotional and visceral responses to experience are central to ethics, as they provide the spur to self-reflection and reconstruction, which in turn inspires social and political action to reform custom and alter the social order.

The goal of ethical judgment, however, is not to eradicate habit and custom, as we not only need them in order to make our way through the world, it is impossible to question all our habits and customs at once, meaning the process of moral improvement is always ongoing and necessarily partial. Dewey's goal was to raise individual action to the level of conduct, which requires a moral consciousness that is aware of the habitual and customary, while seeking out opportunities for reconstruction and improvement of one's character.[43] Moral conduct is contrasted with habitual behaviour to clarify the distinction between the merely habitual and

---

[41] Ibid., 125-130.
[42] Dewey, *The Quest for Certainty*, 215.
[43] Dewey, *Human Nature and Conduct*, 172-180.

accepted, and the moralisation of habit as conduct. The same process is needed, Dewey thought, at a social level, which inspires his insistence on the importance of democracy as an ethical form of community that makes it possible to constantly evaluate and reconstruct social customs, institutions and rights. Ethical intelligence is dependent upon making reflective and cooperative social action a part of everyday experience, upon the development individual character and democratic community.[44]

The final element of Dewey's ethical theory is the analysis of the political and social context in which ethical judgment is exercised. This involves consideration of the social structures that constrain ethical judgment, as well as an assessment of the ways ethical reconstruction can be enabled by social change. The analysis of political, economic and other social institutions, in turn generates a call for political action to enable democratic community.

Dewey was a keen social critic and clearly saw the negative consequences that established institutions had upon the development of ethical intelligence. Of special importance to him was the effect of the newly industrialised economy upon people's lives. Not only were the majority of people engaged in difficult, repetitive, dangerous and oppressive forms of work, the demands of the industrial economy resulted in disastrous urban living conditions. Even for those less directly exploited and brutalised by industrialisation, the rapid changes in social conditions abetted moral indifference, rising inequality and encouraged processes of centralisation that removed even the relatively privileged from positions of control over their own lives.[45] Even Dewey's critique of consumer culture has serious moral implications, as he saw it as undermining the possibility of ethical intelligence as the powerful habituating forces of consumption and distraction fulfilled impulses and desires that otherwise might inspire social reform.[46] This sort of engagement with social conditions, with the forces and structures that determine social institutions, laws and customs is vital to developing ethical intelligence. Dewey's more general theoretical analysis identifies key spheres of activity that must be considered, including the economy, schools, the media, government and technology – all of the institutions of

---

[44] Dewey, *Outlines of a Critical Theory of Ethics*, 188-190.
[45] Dewey, "The Economic Basis of the New Society," *The Political Writings*, eds. Debra Morris and Ian Shapiro (Cambridge: Hackett Publishing Company, 1993), 169-172.
[46] Dewey, *The Public and its Problems*, 139.

social life bear upon the individual and the nature of community, which means that judgment requires engaged analysis.[47]

While critics are correct to point to limitations in Dewey's own social analysis – for example his tendency to reduce racism and patriarchy to class exploitation – his ethics importantly establishes the need for such detailed analysis and gives the experience of exploitation, oppression and violence a privileged place in encouraging ethical judgment and motivating social change.[48] Additionally, West is right that Dewey's failure to engage with the best elements of the Marxist tradition is a weakness of his thought, but even on this count Dewey's theory has important virtues.[49] Importantly, Dewey rejected the historical determinism that hindered the development of Marxist thought and he analysed social forces in their diversity (looking to economic exchange, technology, moral customs, laws, political institutions, schools, the arts and the organisation of family life) without assuming that any one was *necessarily* primary – as such a determination required an analysis of the concrete conditions.[50] Also, he maintained an explicit link between ethical judgment and social conditions; appreciating both that existing conditions influenced moral custom and that ethical action was vital to motivating and effecting social change.

Dewey's focus on education provides the primary example of how social institutions are important sites for developing ethical intelligence. Given his focus on the psychological and social elements of moral action it is unsurprising that he focused on education as an institution capable of encouraging improved habits, and developing moral character. While his initial faith in the power of reform in education to effect wider social change was tempered by greater realism in his later works, the centrality of education remains in his ethics. Without going into the details of his educational theory, the important insight for my purposes is the role that education had in developing a democratic approach to intelligence.[51] If schools were to encourage cooperative and critical habits of inquiry, rather than obedience and

---

[47] Dewey, *Freedom and Culture*, 82-101.
[48] R.W. Hildreth, "Reconstructing Dewey on Power," *Political Theory*, Volume 36, Number 6 (2009), 780-807.
[49] West, *The American Evasion of Philosophy*, 108-110.
[50] Dewey, *Freedom and Culture*, 82-101.
[51] Dewey, *Democracy and Education*, 94-116.

conformity, the possibility of democratic community would be much improved through establishing equal respect for others and inculcating ongoing critical engagement as a habituated element of moral character. Throughout his career he advocated for the democratic organisation of institutions, including classrooms, workplaces, government and even cultural institutions, expressing the necessity of social reform to ethical improvement.[52] His experiments in education reform, however, lead to a key insight – changing education alone was inadequate, as individuals intellectually empowered but still caught within social institutions hostile to critical and democratic intelligence in ethical matters were liable to disappointment and social reproach.[53] This reality fed into Dewey's understanding of social reform both personally and intellectually. As a political actor he was engaged with a number of reform movements, including the labour movement, women's suffrage and racial equality.[54] These engagements were more than expression of Dewey's own personal political commitment, as the implication of his account of ethical intelligence was that inclusion and participation in social life was key to enabling ethical judgment and social change, which meant that efforts to increase democratic inclusion and expand democratic control over society were expressions of the ideal and method of his theory.

Democracy plays a central role in Dewey's social ethics as both a means of reform and an end to be pursued because it provides the best way to improve ethical judgment. Dewey thought this because democratic community directly involves individuals in the cooperative endeavour of improving their conditions of life.[55] So while social analysis of existing institutions is vital to ethical judgment in exposing the types of relationships created by existing customs and practices, the effort to reform them is guided by a democratic sensibility that insists that individuals experiencing the effects of social institutions are best placed to know how they should change, and that individuals must act cooperatively. 'The idea of democracy is a

---

[52] Richard J. Bernstein, "Dewey's vision of radical democracy," *The Cambridge Companion to Dewey*, ed. Molly Cochran (Cambridge: Cambridge University Press, 2010), 303-306.

[53] Robert B. Westbrook, *John Dewey and American Democracy* (Ithaca, NY: Cornell University Press, 1991), 104-111.

[54] Westbrook, for Dewey's political involvement with organised labour and the working class: 189, 445, and 479; for his less substantial direct involvement with women's suffrage and racial equality: 167.

[55] John J. Stuhr, "Old Ideals Crumble: War, Pragmatist Intellectuals, and the Limits of Philosophy," *Metaphilosophy*, Volume 35, Numbers 1 & 2 (January 2004), 88-91.

wider and fuller idea than can be exemplified in the state even at its best. To be realized it must affect all modes of human association, the family, the school, industry, religion.'[56] Cooperative ethical action is not only a practical good, though Dewey does endorse the Millian notion that the inclusion of more people in deliberation may encourage better results, it is also a condition of ethical knowledge developed through the application of intelligence. As we can develop knowledge through the successful reconstruction of specific situations as an individual experiencing a problematic situation, the same is true of cooperative social inquiry, but this requires the widest possible participation in the process of ethical judgment and action.[57] This means that while Dewey's insistence on the contingency and fallibility of all ideals means that a democratic ethos does not have any absolute or final privilege, it is more than a simple faith and represents a reasoned response to the problems of social ethics.

The situationist focus of Dewey's ethics can begin to seem infinitely demanding, as if each ethical judgment and action requires an investigation into the good necessary to the situation – but this is mistaken. It is clear that the critical element of ethical inquiry is not a constant state; it works as a guide to specific moments of dilemma, an ideal to inform everyday conduct and an orientation to be instantiated in social institutions. Much of our experience will be guided by habit and custom aimed toward established ideals – and Dewey's own democratic ethos functions in this way, it is not an imperative. The ethos of democracy is an ideal of cooperative interaction based on inclusion and equality in a social order that is differentiated but not exploitative; it includes a commitment to encouraging a democratic and experimental sensibility through education, to enabling participation throughout the different spheres of social activity and seeks to extend democratic political institutions that can control the social interactions that affect our lives. Such an ethos, however, does not have a necessary privilege disconnected from our experience of democracy's positive consequences as an ethical ideal – so while an ethos is not a knowledge claim that can be refuted through a particular piece empirical evidence, or a single rational argument, it is still subject to a broader sense of testing, it must continue to prove its worth as cooperative social intelligence and an attractive moral ideal.

---

[56] Dewey, *The Public and its Problems*, 143.
[57] Ibid., 147.

Dewey's vision of radical participatory democracy has two virtues that I want to highlight, both because they strengthen this vision and because they are virtues that are important for the reconstruction of human rights. First, democratic equality institutionalises the participation of those who are marginalised and excluded, who have an important critical position in the ongoing process of democratic improvement.[58] The exploited worker is better able to reveal the injustice of contemporary economic practices, women to reveal the oppression of patriarchy, and racial minorities in revealing prejudices and violent practices of exclusion; these and many other experiences are revealed through a thorough going democratic ethos. The second virtue is the commitment to ongoing reconstruction that democratic practice makes possible – individuals, groups and the community as a whole are enabled as makers of their own lives, as agents of social reconstruction who pull down existing institutions in order to create new ones. This is what Dewey understands by his idea of democracy as an ethic of growth and improvement; it opens the way to more meaningful experience through inclusive participation and constant critical praxis.[59] While it is correct to speak of Dewey' democratic faith, we must appreciate that his faith is a reflexive political and ethical commitment, not a dogma – the answer to the question of how best to live together is importantly not always already known.

IV. Plural and Pragmatic Human Rights: An Initial Reconstruction

Putting the situationist and pluralist ethical perspective developed here and in the last chapter together, I will suggest, provides a promising basis for a critical reconstruction of human rights. Where Dewey's ethics adds a fuller account of what values are – they are ends we pursue and the considered means to their fulfilment – and how we make value judgments, Berlin's deep pluralism emphasises that value judgments always engender loss and that democratic ideals must appreciate the divided and contested allegiances of individuals and communities. Further, in bringing these approaches together it is possible to rethink the role of universal ethical claims. Berlin opens up the possibility of understanding universal values as common and contingent ends that enable human beings to understand each other across their differences. This understanding of universal values, however, is limited it its ability to

---

[58] Charlene Haddock Seigfried, "John Dewey's Pragmatist Feminism," *Reading Dewey*, 193.
[59] Dewey, "Philosophy and Democracy," *The Political Writings*, 46.

guide action – though it may provide an account of common prohibitions and enable the understanding necessary to confront specific dilemma. Building upon this idea, Dewey's understanding of universals as generic abstractions from specific situations that serve as tools that enable further critical investigation is an important further development. Finally, both thinkers see ethical judgment as an oscillation between the need for committed action in the face of pluralism and contingency, and an appreciation that our values are never final and secure – accepting and trying to cope with the persistent return of disagreement and contestation.

In contrast to theories of human rights examined in earlier chapters, the account that I will develop in the chapters to follow focuses on human rights as a response to particular struggles and specific social problems. Even those who share elements of this position, such as Jack Donnelly, fail to embrace a situational account of human rights. When Donnelly argues that human rights offer universal protections, developed in response to the power of the contemporary nation and the dangers of a global capitalist economy, he does not acknowledge the particularity and contestability of this response.[60] This objection, however, implies a further critique than the now standard claim that human rights represent the values of Western tradition that is particular rather than universal. Human rights were developed as the responses of particular groups to concrete problems and any future value those rights may have must be proven in the experience of other communities responding to their own concrete problems – human rights must prove their worth everyday. Feminist critics of human rights have been central to both showing the limitations of existing human rights ideals and creatively developing the idea of human rights to address the specific problems that women face.[61] Further, past success is no protection against the partiality of received human rights, especially if one is attentive to those remainders sacrificed in committing to any particular judgment where there are plural and competing ethical goods. To suggest, as Donnelly implicitly does, that human rights serve to humanise the nation-state and embed the market in a vision of national social democracy, misses the important counter factual that other forms of resistance were possible and may not have lead the contemporary human rights regime, or to a human

---

[60] Donnelly, "Human Rights: A New Standard of Civilization?" Also, see Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, NY: Cornell University Press, 2003).

[61] For exemplary work on this see Mackinnon, *Are Women Human? And Other International Dialogues* and Ackerly, *Universal Human Rights in a World of Difference.*

rights at all. An historical example would be the marginalisation of social and economic rights by powerful states and within international institutions, which obscures the central place that economic and social issues have had in diverse rights movements. This is true of early rights movements in England, where the Levellers and the Diggers are often ignored,[62] as well as in the early days of developing the human rights institutions of the UN – looking at the background intellectual writings of the period reveals the influence of social and economic rights as central to the understanding of a just society at the time.[63]

Attending to the situations and struggles through which human rights were developed also reorients our political understanding of rights by focusing our attention on individuals and groups opposing existing social orders. It forces us to appreciate the disruptive heritage of rights claims that upset existing orders and sought to reform political life. A situationist and pluralist perspective also makes sense of the discontinuous nature of rights claims. Rather than insisting that human rights must be compatible with each other, surely a rationalist conceit, this perspective reveals a plural picture of human rights as the human rights tradition collects the consequences of a variety of social struggles under a single heading. Human rights are in a sense a collection of many dreams of universal political change, a potent tool for social action, but one without necessity and opening up a plurality of possibilities for future action. This ennobles a more radical political imagination, in which the national state and the cosmopolitan extension of state structures of governance are no longer the only political ideals that might move us to action in the name of human rights.

Human rights, from a situationist and pluralist perspective, are importantly open rather than determined by the necessity of normative reasons; the future development of human rights is uncertain, as the claims upon the social order made in the name of

---

[62] Neil Stammers, *Human Rights and Social Movements*, (London: Pluto, 2009), 48-69.

[63] United Nations Educational, Scientific and Cultural Organization, *Human Rights: Comments and interpretations* (UNESCO/PHS/3 (rev.)), Paris, 25 July 1948. Donnelly has contributed to this work, but importantly it has not significantly altered the theoretical account of rights as protections to common threats – he misses the ongoing political content of rights claims as attempts to transform social institutions and customs in response to diverse and specific problems. See, Daniel J. Whelan and Jack Donnelly, "The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight," *Human Rights Quarterly*, Volume 29, Number 4 (2007), 908-949. For a critical response to this work see, Alex Kirkup and Tony Evan, "The Myth of Western Opposition to Economic, Social, and Cultural Rights? A Reply to Whelan and Donnelly," *Human Rights Quarterly*, Volume 31, Number 1 (2009), 221-237.

"humanity" are not fixed and can potentially express a multitude of values. This democratic aspect of human rights is both an opening and a challenge – while human rights are malleable enough for many people to use it as a common language of universalism, it also means that human rights can be deployed in cynical and problematic ways. Not only is the rhetoric of universal rights a tempting object of cooptation by cynical political powers, but the logic of human rights – as claims made upon the basic terms of social relations in the name of a common human identity – can support substantive conceptions of rights that are regressive, exclusionary and violent. This implies that if human rights are to embody worthwhile ends and encourage democratic forms of society, locally as well as globally, this requires a political action and not just the modest powers of reasoned intellectual justification.

The contingency and pluralism within human rights, both historically and as expressed today in law, theoretical discourse and social movements, means that the contest over their meaning is unavoidable, and this will likely always be the case. Rather than seeking a consensus on rights, the perspective developed here suggests a pluralist sensibility that will link distinct human rights movements in response to a variety of struggles, without presuming that a final synthesis is necessary or possible at the global level. Where consensus is about the reduction of dissonant voices and the pursuit of harmony, a pluralist human rights is concerned to appreciate voices sounding in dissonance and to encourage new lines of melody.

> These primary concerns therefore mean that at the heart of interrogating the field of human rights through the conceptual framework of 'silence' lies a critique of the presentation of the human rights project as the overcoming of domination per se, and not as a project that acts, at the same time, to perpetuate certain forms of domination. It should be noted, then, that rather than judging the human rights project as either emancipatory or as domination we focus upon its essentially contested nature.[64]

This fundamentally changes the political expression of human rights and their ideal form, moving us away from a legal conception of moral principle in which moral reason gives the legitimate law to the unruly world of politics. In place of that

---

[64] Gurminder K. Bhambra and Robbie Shilliam "Introduction: 'Silence' and Human Rights," *Silencing Human Rights*, 9.

dynamic, human rights function more as an ethos that assumes that developing universal ethical concern may produce positive consequence, essentially widening the public concerned with the abuses people suffer, providing means of addressing global harms generated by interconnected social processes and providing a common language to express solidarity across plural political struggles. There are no guarantees that such an ethos will be beneficial or sustained, but it does potentially open the way for more democratic forms of action in defence of human rights, placing direct engagement and focused social movements ahead of the centralising processes of international institutions and the creation of a comprehensive international human rights law. The centralisation of human rights as law and rhetoric is inherently problematic as it cedes what rhetorical and political power human rights may have to established authorities, to heads of state and international institutions. The impotence of the UN to stop human rights violations and the willingness of powerful states to redefine, stretch and ignore established rights brings home the danger of separating human rights from a democratic politics of engagement and action, from their origin in revolutionary social movements.[65]

Finally, a situationist and pluralist starting point allows us to think more critically about the notion of humanity that is used when talking about human rights. Human rights are necessarily universal claims, but not all universal claims refer to the idea of a common humanity. Universal humanity as an important political identity is neither simple nor clearly defined, yet this is how it is often treated – defenders of human rights move quickly from the claim that human rights are those rights we have by virtue of our humanity and that common humanity is defined by dignity – or some other essential human quality. This logic misses the constructed and contested nature of humanity, we are not simply humans possessing dignity (or some other privileged quality) and human rights; the appeal to the social and political salience of a distinctly human identity must be understood as a political project. Yet, if it is a political project, more attention needs to be given to the work that human identity does. Dewey's pragmatism opens up this question in a way that Berlin's pluralism does not manage.

---

[65] These claims are further substantiated in chapter 7, where the further implications of this reconstruction of human rights are explored.

The human identity is a formally universal category, a generic abstraction; by definition it includes every one as a biological member of the species – though this is not without its own exclusions, particularly for those who are socially marginalised as not fully or properly human, nonetheless the basic logic of the identity remains. This makes it a politically significant category because the ability to give "humanity" significant meaning enables us to make rights claims without reference to established political identities. This is essentially how the appeal to the rights of man and human rights functioned historically; it enabled claims that could not be justified within the existing order of things. It made possible an ethical appeal beyond established principles, even as it depended upon the ambiguous redeployment of existing meanings, but reconstructed to do new work rather than to recreate past orders.

Where the idea of humanity becomes dangerous is when it is made absolute and regulative. In such cases, the appeal to humanity can be used to justify expressions of power that transgress existing limitation – such as the invocation of humanity by powerful Western states to justify invasion, warfare and interference in the affairs of other political communities. This is not to claim that national sovereignty should be absolute, but to point to the way in which humanity functions as a blanket justification for those that take up the mantle of defending, and implicitly defining, humanity. The situated and pluralist ethics I start from, however, denies the absolute meaning and privilege of humanity, instead insisting on recognition of the ambiguity of humanity as an ethical and political identity. This ambiguity is a feature of humanity not only because we affirm a plurality of values and ways of life that cannot be summarised in the notion of humanity, but also because humanity as an identity is built upon the specific experience of concrete individuals and communities – it is a generic abstraction, in Dewey's terms. 'What is generic and the same everywhere is at best the organic structure of man, his biological make-up. While it is evidently important to take this into account, it is also evident that none of the *distinctive* features of *human* association can be deduced from it.'[66] So, while identifying with humanity may allow us to open up new ways of experiencing our lives and enable new forms of knowledge, such that we form new communities that exceed state boundaries or find agreement on prohibitions against particular crimes such as genocide, forced

---

[66] Dewey, *The Public and its Problems*, 195.

displacement and political murder, the human identity we appeal to remains an abstraction that needs to constantly scrutinised.

In this regard, Rorty's view of human rights is prescient: human rights (along with an appeal to a common humanity) are a feature of our contemporary world.[67] Human rights are a tool we have developed both for understanding ourselves and for pursuing improved conditions of life. Where Rorty is less convincing, however, is his choice to describe human rights as an ironic metaphor rather than a tool of critical intelligence.[68] This is more than a contrast of language, as Rorty's account of human rights gives up the self-reflexive stance that Dewey's notion of a tool in the service of critical inquiry preserves. The tool of human rights, as way of understanding experience and working towards better conditions, is contingent and must be constantly reassessed. Also, Dewey's approach leaves space for critiques of human rights that open up the ambiguity of conventional human rights politics. While human rights have already done much to shift the reference point of political life away from state sovereignty and national identity, playing a significant part in the process of opening up international and global levels of ethical interaction between individuals, the moral ideal of human rights imposes its own static structures, as was shown in chapter two. A situationist human right ethic pushes us to consider, more creatively and critically, the potential to expand democratic communities in response to changing conditions of international life, but without presuming geographically rooted and singular loyalties, or the necessity of a common global form of political authority. Speaking of the strain put upon democratic community not only in the national state but also with the increasing internationalisation of human affairs Dewey said:

> But if it be reestablished, it will manifest a fullness, variety and freedom of possession and enjoyment of meanings and goods unknown in the contiguous associations of the past. For it will be alive and flexible as well as stable, responsive to the complex and world-wide scene in which it is enmeshed. While local, it will not be isolated. Its larger relationships will provide an exhaustible and flowing fund of meanings upon which to draw, with assurance that its drafts will be honored. Territorial states and political boundaries will persist; but they will not be barriers which impoverish experience by cutting man off from his fellows; they will not

---

[67] Richard Rorty, "Human Rights, Rationality and Sentimentality," *Truth and Progress*, 170.
[68] Ibid., 180.

be hard and fast divisions whereby external separation is converted into inner jealousy, fear, suspicion and hostility.[69]

These nascent international ideas of expanded ethical community through post-territorial democracy have been developed in recent works by Molly Cochran[70] and Daniel Bray.[71] I explore these ideas further in the next chapter through an engagement with William Connolly's international thought.

I explore the implications of the ethical theory developed here further in the chapters that follow but for now I have tried to give a sense of how the meaning of human rights changes if we start with a situationist and pluralist orientation. The final point to stress is that humanity, like any other political and moral identity, is developed experimentally and, ideally, through democratic inclusion. This means that even as it seems that changes in our social world – towards more global interaction and integration – push us toward accounting for political and ethical life in more universal way, the universal is not an imperative and humanity is not a higher moral identity. It is one way we have historically approached such problems and that tradition must continue to meet the challenges presented by contemporary experience, if its value is to be defended.

In the next chapter, I continue to develop the ethical theory presented thus far, but with a concentration on articulating a democratic political ethos. This requires addressing a number of limitations of what has been said thus far. To begin, Dewey's ethics need a clearer and more explicit account of the place of political power and social structures as barriers to the sorts of democratic reform movements supported by his situationist account, in an effort to do that I turn to the work of William Connolly, to provide a more critical perspective on the various forms of exclusion, magnetisation and oppression inherent to democratic politics. This focus on the most difficult challenges to democracy also reveals resource in both Berlin and Dewey's thinking to enable critical investigations. For example, Berlin's genealogical tendencies in tracing out the historical meaning of values and their political effects

---

[69] Dewey, *The Public and its Problems*, 216-217.

[70] Molly Cochran, *Normative Theory in International Relations*; also see, "Dewey as an international thinker," *The Cambridge Companion to Dewey*, 309-336.

[71] Daniel Bray, "Pragmatic Cosmopolitanism: A Deweyan Approach to Democracy beyond the Nation-State," *Millennium: Journal of International Studies*, Volume 37, Number 3 (2009), 683-719.

points to an historical and critical pluralism, and his psychological focus on the agonistic experience of choice is a resource for diagnosing exclusions and normalisation within existing identities. Likewise, a more critical Dewey can be developed around his practical analysis of customs and institutions as the backdrop against we seek moral reform, which marks out the importance of critical histories and structural analysis of institutions. While the work here is mostly setting out a theoretical perspective, the final chapters engage these tools of situationist and pluralist ethics to reconstruct human rights in more explicit terms than has been possible thus far.

Chapter 5
Agonistic politics: reconstructing human rights

'The new possibility shadows every single person and changes the nature of his life; for any new possibility that existence acquires, even the least likely, transforms everything about existence.'

-Milan Kundera, *Slowness*

I. Critical Engagements: Berlin, Dewey and Connolly

In previous chapters I have developed the pluralism of Isaiah Berlin and the situationist ethics of John Dewey as intellectual resources for reconstructing human rights in light of fundamental criticisms of conventional theories. As has been highlighted in these chapters, my interpretation of these thinkers runs counter to established readings, for example, the deployment of Berlin to defend the rational necessity of liberalism as a response to value-pluralism,[1] or the use of Dewey to endorse contemporary forms of liberal democracy as a *final* existential faith.[2] In what follows I engage with William Connolly's work on pluralism and democracy to further develop my critical reading of both thinkers, one that focuses on the ethical and political implications of deep pluralism and the challenge of developing an adequate politic ethics for a plural and uncertain world. In this chapter, I make use of two of his principal ideas in offering a reconstructed account of human rights: his critique of traditional conceptions of ethical and political community and his suggestion for how to develop a public ethos suitable to what he calls a politics of becoming.

Before moving to these specific aspects of Connolly's thought, more needs be said about the reasons why these thinkers are being read together and why a further engagement with Connolly is necessary. To begin, Connolly develops many of the same themes that animate the work of Berlin and Dewey, and while his direct engagement with either thinker has been limited, he does draw inspiration from common influences and is concerned with similar problems.[3]

---

[1] Crowder, *Liberalism and Value Pluralism.*
[2] Rorty, *Contingency, Irony, and Solidarity.*
[3] In the case of Berlin, Connolly has positively engaged with the work of Bernard Williams, who shares a great deal with Berlin. See, William E. Connolly, *The Ethos of Pluralization* (Minneapolis, MN: University of Minnesota Press, 1995), 31-35. In the case of Dewey, Connolly's sympathy is mostly

Connolly acknowledges his sympathy for Berlin's 'agonistic liberalism,' but their affinities run deeper.[4] It is the basic undecidability of questions of value and the reality that people hold different, and at times opposing, values, which cannot be reconciled in final and distinctively rational way, which links the pluralism of both thinkers. Further, they both reject attempts by positivism, in various forms, to discount the value of normative theorising.[5] In their defence of political theory both Berlin and Connolly appeal to the context in which normative language is employed and their shared pluralism leads them to important insights into the implications of the contextual use of normative language.[6] Because neither assumes that questions of value can be answered in a final or singular way, they avoid either a universalist or conventionalist position. Instead, they both struggle with the question of how best to live with other individuals and groups that hold plural ethical values and confess different sources of ethical commitment. Connolly's work reveals the way a pluralist orientation highlights the danger and violence latent in the conversion of difference into otherness, which haunts the pursuit of what he calls single-entry universalism.[7] This focus on the way that consolidating personal and social identity depends upon difference and engages resentments to normalise contingent identities and ethical faiths adds a needed critical edge to Berlin's acknowledgment that pluralism can engender a desire for spaces of common understanding, in which the contingency and plurality of our values is lessened. I have argued that this critical edge is not completely foreign to Berlin's pluralism, but Connolly's work more fully develops what is a weaker strand of his thought, which needs to be brought forward in reconstructing human rights.

---

expressed through his use of William James as a key inspiration for his pluralism. While it is important not to overstate the continuity between James and Dewey, the focus on uncertainty and change that Connolly highlights are currents of thought not only navigated by Dewey, but also central to his situationist ethics and defence of radical democracy, see Connolly, *Pluralism*, 49, 69-81.

[4] This sympathy is expressed in a footnote highlighting liberal thinkers that insist that the foundations of liberal thought are thoroughly contestable; see Connolly, *Ethos of Pluralization,* 201-202.

[5] William E. Connolly, "Politics and Vision," *Democracy and Vision: Sheldon Wolin and the Vicissitudes of the Political*, eds. Aryeh Botwinick and William E. Connolly (Princeton, NJ: Princeton University Press, 2001), 3-6.

[6] For Berlin's focus on the dependence of meaning, normative and otherwise, on historical and social context see his essays in *Concepts and Categories.* In particular, "Verification," "Empirical Propositions and Hypothetical Statements," "The Concept of Scientific History," and "Does Political Theory Still Exist?"

[7] Connolly uses this phrase to describe cosmopolitan orientations that depend upon the affirmation of a singular conception of humanity, a common human identity that is more essential and singular than the unruly pluralism of the world would suggest. See William E. Connolly, "Speed, Concentric Cultures, and Cosmopolitanism," *Political Theory*, Volume 28, Number 5 (October 2000), 596-618.

In a similar way Connolly's critique of nationalist political community not only supports Berlin's ambiguous judgment of nationalism as both necessary and dangerous, but also opens up the pluralist imagination to reconsider the boundaries of political community. Connolly acknowledges the necessity of belonging to a community and the importance of political recognition to nations, but he is also aware of the violence and exclusions required to establish and maintain both national and individual identities.[8] 'Modern political thought, in its most general drift, celebrates the political advantages of boundary over-coding by suppressing the violences accompanying these constructions.'[9] This insight is developed at greater length below, with particular focus on how Connolly's pluralist re-imagining of ethical and political community serves a reconstruction of human rights.

In the last chapter, I argued for the distinctiveness and potential of Dewey's situationist ethics, making use of agonistic democratic theory to defend Dewey's ethical philosophy against the charge that it is blind to the realities of power and control in social relations. Dewey's critiques often paint him as a naïve democratic evangelist, pushing a hopelessly optimistic account of democracy as social panacea[10] - the implication being that Dewey suggested that social intelligence, defined as democratic participation and informed discussion, will solve problems that are not actually amenable to reasonable argument. This charge depends upon Dewey's typically liberal and inadequate articulation of the reality and exercise of political power, or so the argument goes. I have pointed to the ways in which this critique is unfounded, given Dewey's insistence that ethical reflection and political action must take account of contemporary institutions upheld by custom and habit, which penetrate deeply into the structure of society and that conflict was a necessary aspect of reform. Dewey's focus on education and his appeal to experience are central to his response to the reality of power, because he believed institutions were upheld by customs and habits that naturalise contingent, and in fact deeply political, norms. Yet,

---

[8] William E. Connolly, "The Liberal Image of the Nation," *Political Theory and the Rights of Indigenous Peoples,* eds. Duncan Ivison, Paul Patton and Will Sanders (Cambridge: Cambridge University Press, 2000), 183-198.

[9] William E. Connolly, "Tocqueville, Territory and Violence," *Theory, Culture & Society,* Volume 11, Number 1 (1994), 23.

[10] Foremost among critics pushing this line of criticism in Dewey's own day was Reinhold Niebuhr in *Moral Man and Immoral Society: A Study in Ethics and Politics* (New York, NY: Scribner, 1934). For a fuller account of Dewey's critical reception see Matthew Festenstein, *Pragmatism and Political* (Cambridge: Polity, 1997), especially chapter 1.

there are weaknesses in Dewey's political ethics, effectively highlighted by Cornel West, who argues that Dewey does not appreciate the depth and multidimensionality of the divisions that characterise contemporary society and which may not be amenable to resolution through democratic consensus,[11] which also leads Dewey to focus his own political efforts on economic exploitation, rather than other forms of social oppression.[12] Turning to Connolly at this point provides a fuller account of how power generates and reinforces social divisions that exploit and depend upon the very desire for uniform identity that Dewey's ethics risks perpetuating if his call for democracy is interpreted as a call for deliberation instead of political action, this risk provides further reason to emphasise the pluralist impulses in Dewey's approach. Further, Connolly's analysis of assemblages and resonance machines points to the need to consider the unexpected and contingent ways in which forces of exploitation and oppression can combine in political institutions.[13] In both cases, these criticisms do not deny the significance of Dewey's thought but provide reasons to develop it in new directions.

It is important to understand Dewey's unique account of experience and its central place in his ethics and defence of democracy, despite Rorty's influential claim that Dewey's account of experience was a case of metaphysical-backsliding.[14] Engagement with Connolly highlights the critical potential in Dewey's ethics, as the problems in need of resolution emanate from the particular experience of situated individuals and groups, which forces ethical theory to be more attuned to a politics of becoming, to the ongoing contestation of norms and principles. Connolly's emphasis on contestation points to the limits of intellectual consensus to resolve all political problems and highlights the importance of what he terms the micropolitcs of daily life, in addition to macropolitical engagement, both of which focus our reading of Dewey's ethics towards his concern with altering habit and conduct as well as the institutions and organisation of society at large. Dewey's evolutionary naturalism is in

---

[11] West, *The American Evasion of Philosophy*, 101-102.
[12] Seigfried, "John Dewey's Pragmatist Feminism," *Reading Dewey*, 197-201.
[13] For example, the sort of multi-causal social theory that Dewey develops in *Freedom and Culture*, which opposed vulgar Marxist accounts of historical determinacy, has many resonances with Connolly's work on contemporary forms of evangelical capitalism. See William E. Connolly, *Capitalism and Christianity, American Style* (Durham, NC and London: Duke University Press, 2008).
[14] Richard Rorty, *Consequences of Pragmatism: Essays, 1972-1980* (Minneapolis, MN: University of Minnesota Press, 1982), 74-80.

many ways a forerunner to Connolly's own engagement with immanent naturalism, as both thinkers appreciate the importance of the biological and habitual in thought and action. Dewey's ethics reconstructs the relationship between moral ideal and political action, arguing that not only is the ideal pursued in response to a particular situation an "end in view" to resolve that specific situation, but that it is merely hypothetical, requiring concrete action, which resolves the situation at hand and sets the stage for further reflection and reconstruction. Dewey's ethic of democratic growth does not aim toward some pre-given standard or to a state of final democratic inclusion, but to an ongoing process of greater democratisation. The possibilities of a democratising ethos, responsive to a politics of becoming, for reconstructing human rights are explored below.[15]

In what follows, I make use of Connolly's ideas, and those developed in earlier chapters, but do not set out to distil Connolly's position on human rights. Instead, what I defend is a reconstructed idea of human rights that alters the problematic relationship between ethics and politics in conventional accounts, and by reworking that nexus enable a rethinking of the politics of human rights. The final section of this chapter offers a democratising ethic of human rights, which, if we reject the necessity of the ideal of the national-state or a comprehensive cosmopolitanism, makes it possible to more fully appreciate the contingency, multiplicity and ongoing contestation of ethically authoritative forms of political community and the content of human rights as articulations of political legitimacy.

II. Normalising Identities and Legitimising Communities

A central focus of Connolly's work has been to rethink the relationship between democracy and political identity. This project can be divided into two related but distinct lines of inquiry, the first, challenging the confluence of national identity and

_____

[15] David Owen has pointed to the tension between Connolly's Nietzschean influences, which encourage agonistic forms of respect between self-creative individuals, and his democratic commitments, which are opposed to Nietzsche's aristocratic view – in arguing that one can embrace a pluralist politics of becoming while remaining committed to democratic equality Owen appeals to Dewey's account of democracy as a politics and ethics of growth, of expanding capacities on an egalitarian basis. See David Owen, "Pluralism and the Pathos of Distance (or How to Relax with Style): Connolly, Agonistic Respect and the Limits of Political Theory," *British Journal of Politics and International Relations*, Volume 10, Number 2 (2008), 210-226.

territory as essential to democratic government, and the second, an attempt to rethink democracy beyond territoriality without relying on a single-entry cosmopolitanism, which he sees as dependent upon problematic notions of universal political identity. In the *Ethos of Pluralization* he claims that

> The stronger the drive to the unified nation, the integrated community, and/or the normal individual, the more powerful becomes the drive to convert differences into modes of otherness. And the more implacable the cultural drive to convert difference into otherness the less feasible it becomes to build majority assemblages of democratic governance that can actually govern a diverse population.[16]

By focusing on the source of this imperative for a privileged identity in the need to legitimise political authority, Connolly reveals the ground that is shared by most contemporary political theorists. Liberals, communitarians, cosmopolitans and nationalists all posit a moral ideal of political community that justifies coercive authority. Rather than continue the 'ontopolitical'[17] debate Connolly's focus is upon the reasons we desire and need such security, and in doing so he avoids retreading old ground and provides an important resource for thinking about human rights. Further to the project at hand, his re-imagining of democracy and pluralism are important additions to the political thought of both Berlin and Dewey, who are critical of the modern nation-state as an ideal political community, but struggle to articulate how else to think about new and expanded forms of political community, especially given that their pluralist ethical theory makes single-entry cosmopolitanism an unattractive option.

Connolly identifies the source of the desire for a privileged and normalised identity in the ambiguity inherent to political authority. Reflecting on the nature of sovereignty he references the paradox of authority articulated by Rousseau, in which the will of the political community justifies political authority, while at the same time political authority is necessary to constitute the political community.[18] This paradox creates the need for an external source of legitimacy for the particular political authority exercised over a given territory. Tracing the political process by which the

---

[16] Connolly, *Ethos of Pluralization*, xxi.
[17] Ibid., 1-4.
[18] Connolly, "Tocqueville, Territory and Violence," 22-24.

authoritative political community is constituted, he links the idea of territory to terror, pointing to the violence and power deployed in creating the nation-state, both in disciplining populations and in eliminating those that resist such discipline.[19] Unable to overcome the paradox Rousseau identifies or to avoid the necessary power and violence at the root of political authority, Connolly argues, conventional political theory instead obscures these facts. The role of a privileged identity is to give authority legitimacy, either through its concurrence with a national community or its protection of a sanctified liberal individuality – in this move the moral ideal gives the law to the polis while remaining incontestable, beyond the political.[20] Political authority is thereby rendered legitimate through this privileged and moralised identity, which requires that the contingency inherent in diverse democratic societies must be disciplined and democracy becomes a form of governance in which those that do not fit or refuse to adopt the appropriate identity are subjected to various forms of political control and delegitimised as political actors.[21]

The identity of the citizen – whether constructed as a rational individual exerting control over the political world or an authentic member of the political community attuned to a distinctive way of life – is sustained by its exclusions.[22] This means that the law-abiding citizen, the responsible member of society, the father who knows best, the "normal" individual is contrasted with the criminal, the welfare queen, the deadbeat dad, all variety of "abnormalities." These twin processes of normalisation and exclusion exert a discipline on both the internal plurality of those who embrace, or try to emulate, privileged identities (yet struggle to remain responsible, law-abiding, normal) but it also makes those who fail, or worse refuse, to embrace such identities, subjects of public resentment.[23] Connolly suggest that the need to affirm and consolidate an authoritative political identity converts difference into otherness, which is then subject to harsh forms of discipline, punishment and violence, as an expression of the resentment by those affirming the privileged identity against those who expose its inherent contingency. We see similar political frames emerge internationally, most egregiously in the representations of "failed" African polities in

---

[19] Ibid., 24-29. For the direct etymological linkage see, Connolly, *Ethos of Pluralization*, xxii.
[20] Connolly, *Ethos of Pluralization*, 21.
[21] Connolly, *Identity\Difference*, 65-66.
[22] Connolly, *Ethos of Pluralization*, 21-22.
[23] Connolly, *Identity\Difference*, 27-29.

which the powerless victim is terrorised by the savage politician, in need of rescue by Western saviours.[24] This is more than the resentment generated by changing social conditions, which increase insecurity, or the loss of social privilege, experienced by those affirming authoritative identities as a result of social movements to increase inclusion – which Connolly documents effectively in his analysis of the resentment and disaffection of white, straight, working-class men in America in the wake of movements for women's liberation, racial equality and gay rights.[25] It is a wider and more general anxiety generated by the necessity for authoritative identity as such, given the vital role it plays in legitimising authority.[26] Connolly argues that our experience exceeds all attempts to impose a singular or final identity and it is the confinement of this rich and overflowing experience of 'life as a protean set of energies and possibilities exceeding the terms of any identity or cultural horizon into which it is set' that generates resentment against the world, a world that refuses to accommodate fully, and certainly, the identities we affirm.[27] As experience is curtailed, as desire is sacrificed to the discipline of authoritative identity without final affirmation, people suffer the weight of their ideals without receiving the relief from uncertainty that was promised.

It is with this rich account of experience and a politicised reading of identity in mind that Connolly opposes conventional pluralism. He argues against a pluralism that 'celebrates diversity within settled contexts of conflict and collective action', in which 'diversity is valued because putative grounds of unity (in a deity, a rationality, or a nationality) seem too porous and contestable to sustain a cultural consensus.'[28] This conventional pluralism, still very much alive in political theory, continues to desire unity, seeing the condition of pluralism as the loss of a pre-modern enchantment or attunement with the world.[29] The "reality" of a modern experience that no longer sustains the ideal of an ordered world, in which humanity finds a secure place, pushes the conventional pluralist to resign herself to a condition of acceptable

---

[24] For a brief but egregious example of this, see Jeffrey Gettleman, "Africa's Forever Wars: Why the continent's conflicts never end," *Foreign Policy*, March/April 2010. Also, see Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights," 201-245.
[25] William E. Connolly, "Appearance and Reality in Politics," *Political Theory*, Volume 7, Number 4 (November 1979), 445-468; also William E. Connolly, *Capitalism and Christianity, American Style*.
[26] Connolly, *Identity\Difference*, 115-116.
[27] Connolly, *Ethos of Pluralization*, 28.
[28] Ibid., xiii.
[29] Ibid., 19.

diversity that requires artificial grounds, which cannot accept a world of deep pluralism.

This conventional political pluralism is what Connolly calls arboreal pluralism, it 'appreciate[s] the diversity as limbs branching out form a common trunk, fed by a taproot. The trunks might be Christianity or Kantian morality or the history of a unified nation or secular reason.'[30] What Connolly opposes in his call for pluralisation, rather than pluralism, is the way in which the quest for certainty, for authoritative identities and ideals, is replayed in the constant search for more plausible foundations rather than facing uncertainty. 'So invocation of overlapping consensus, ontological minimalism, nonfoundationalism and the primacy of epistemology' all focus on how to re-establish certainty, rather than attend to protean experience, while also serving the political function of limiting contestation and privileging existing identities and political forms.[31] In his analysis of the desire for certainty and the political function of authoritative identity, Connolly issues a challenge to rethink democratic politics in terms that respect the depth of pluralism in our experience and the uncertain forces of change that are restrained by conventional pluralism. This change in focus, from pluralism to pluralisation, leads to an embrace of a politics of becoming, rather than a defence of a politics of being.

Connolly focuses on the politics of becoming both to upset the assumption that national identity and territoriality are essential to democracy, and to justify a new public ethos - which will be addressed in the next section. By focusing on the way in which authoritative identity is unsettled by experiences that exceed its limits, and calling on us to embrace these differences rather than trying to discipline them, Connolly challenges conventional notions of national democracy by suggesting that a single underlying consensus is not necessary to democratic politics. In fact, it is the plurality of identities, final faiths, values and experiences that provides the substance of democratic contestation and affirming pluralisation reorients democracy as a form of politics; in doing this Connolly replace the arboreal image with a rhizomatic one that supports agonistic democracy and networks of consensus based on plural forms of identity. 'A rhizomatic pluralism would generate such an ethos from multiple

---

[30] Ibid., 93.
[31] Ibid., 8.

sources rather than from a single, exclusionary taproot. In rhizomatic pluralism the possibilities of collaboration around a particular issue increase as each constituency enhances the experience of contingency and social implications in its own formation.'[32] This account of pluralism generates a call for agonistic democracy as it expands the sites of political collaboration and contestation, while accepting that final and authoritative resolutions are impossible. This suggests that plural assemblages – networks of different social identities, final faiths and diverse individuals collaborating and contesting over a multiplicity of political questions – rather than privileged national identities be taken to as adequate to democratic politics. Rather than confining the identities and issues included in modern democracy, agonistic democracy pushes us to embrace the contestability of the very identities and social institutions upon which the modern state depends. For example, as economic, cultural and political bonds exceed the territorial nation-state democratic assemblages that include citizens and non-citizens will make claims upon existing authorities and seek to build new political institutions.

This alters the terms of sovereign power, no longer residing with the democratic nation, instead expressed not only in the consensuses and agreements that form in society (politics of being), but also as movements that contest the accepted order and express new forms of identity that challenge convention (politics of becoming).

> Sovereign is *that* which decides an exception exists and how to decide it, with the *that* composed of a plurality of forces circulating through and under the positional sovereignty of the official arbitrating body. Such a result may discourage those who seek a tight explanation of the economic and political causes of legal action (the realists), a closed model of legal process (the idealists), or a tight model of legal paradox (the paradoxicalists). But it illuminates the complexity of sovereignty. It has another advantage, too: it points to strategic issues and sites to address for those who seek to introduce a robust pluralism into the ethos of sovereignty.[33]

This affirmation of democratic sovereignty, Connolly argues, is especially important today as the diversity within societies increases and cross-border flows undermine the territorially bounded state - failing to embrace this deeper and wider pluralism tends

---

[32] Ibid., 94.
[33] Connolly, *Pluralism*, 145.

toward the assertion of fundamental identities and authoritarian politics that seek to consolidate political power in the name of privileged identities that are under threat by the forces of change.[34] This importantly includes secular faiths and identities based on rational consensus. Yet, this line of argument does not lead Connolly to unambiguously affirm a comprehensive cosmopolitan vision of global order.

As Connolly's critique of democratic nationalism obviously points toward some expanded notion of political community beyond the bounded territorial state, it seems that articulating a cosmopolitan vision would be the natural next step. And, in many ways, Connolly's appeal to the increasing speed and density of cross-border interactions, transnational flows and the distinctly global late-modern experience coincides with the analysis of many cosmopolitan thinkers.[35] Yet there is a crucial difference. Most cosmopolitans display a desire for moral principle to legislate and constrain this uncertain and new global world, whereas Connolly sees this ambiguous contemporary condition as opening up new possibilities for democratic politics and richer forms of identity. 'The contemporary world, then, where time moves faster and multicultural intersections have multiplied, forms a condition of possibility for emergence of a more generous pluralism.'[36] Because his central project eschews the quest for certainty his approach to cosmopolitanism is to expand his project of pluralisation and therefore focuses on how best to understand and react to the distinctive challenges of the contemporary world. Connolly's work therefore depends not only on a descriptive account of our contemporary condition as generating profound uncertainty, but also on an affirmation of such a condition. He embraces possibilities our contemporary condition presents us to shake off unitarian impulses of certainty and singularity in response to the protean nature of experience. This displays deep affinities with both Berlin and Dewey; not only does it reflect a deep pluralism that infuses our experience of the world, but it celebrates the liberation of contingency, the breaking of the chains of absolute certainty.

Mirroring the critique of the principal moral theories that support human rights in chapter 1, Connolly reacts against the conception of morality as a law that imposes

---

[34] Connolly, *Ethos of Pluralization*, 137.
[35] William E. Connolly, "Speed, Concentric Cultures, and Cosmopolitanism," 596-598.
[36] Connolly, *The Ethos of Pluralization*, 99.

itself upon the world, as this moral law depends, at least in the Kantian tradition, upon an unjustifiable apodictic certainty – not only that moral principle should take the form of a universal law binding upon everyone, but also that this universal law will find expression acceptable to everyone. Essentially, what this Kantian move does is appeal to a complex and contestable view of the world, without justification, which privileges the identity of the Kantian moral agent. This move is subject to the same critiques outlined above, regarding the assertion and defence of an authoritative form of political identity, but it also goes further because the terms of the identity are universal, not national, and the politics in question are global.

> Today the specific terms of that cosmopolitanism have not only become even more contestable, they carry with them elements of a dogmatic Western imperialism still in need of reconstruction. One key, in my judgment, is to relinquish the demand that all reasonable people in all cultures must actually or implicitly recognize the logic of morality in the same way Kant did. Or even as neo-Kantians do. Once this pivot of Kantian morality is treated as a contestable act of faith, it becomes possible to engage a late-modern world of speed and dense interdependencies in which cosmopolitanism involves the difficult task of coming to terms receptively and reciprocally with multiple and contending universals.[37]

As with his rejection of an authoritative identity or community as the lynchpin for a domestic politics, Connolly looks for a cosmopolitanism with plural and contestable universals, expressed in a more modest way and defined by multiple lines of identity and ethical sources.[38] So, in contrast to liberal forms of cosmopolitanism, our global condition should not (cannot) be ordered on the basis of single authoritative form of moral identity.

In the same article, Connolly goes on to consider cosmopolitan thinkers less concerned with articulating a founding moral law. Turning to Martha Nussbaum's work, Connolly highlights what cosmopolitans take to be at stake in articulating a universal morality. As is often the case, the alternative to a universal morality is 'some

---

[37] Connolly, "Speed, Concentric Cultures, and Cosmopolitanism," 602

[38] In this regard Connolly's cosmopolitan impulses are similar to those of Kwame Anthony Appiah, who focuses both on our contemporary condition and the reality of plural identities to argue for cosmopolitan as an orientation – though Connolly, I think, offers a more fundamental challenge to conventional ethical and political theory. See Kwame Anthony Appiah, *Cosmopolitanism: Ethics in a World of Strangers* (London: Penguin Books, 2006).

form of relativism, subjectivism, provincialism or amoral narcissism.'[39] So, even if the Kantian moral law is rejected as a foundation for the necessary universal morality there remains a need for consensus, a more practical and less ambitious certainty. The various iterations of this attempt at consensus have been examined in chapters 1 and 2, but the key point here is the way Connolly critiques this project. As he considers Nussbaum's attempt to offer a vague but thick universal account of moral identity, he exposes how she constructs her project around the necessity of moving beyond nationalist moralities and avoiding the dangers of moral uncertainty. What Connolly objects to is that there is 'too little appreciation in this account of how much each formulation of the universal itself is apt be shaped and conditioned by the specific metaphysically inflected experiences from which it is crafted.'[40] This is a problem because, first, her account of universal human capabilities closes down contestation of those universals, rather than enabling it, and, second, Nussbaum's insistence upon a single-entry universalism that already knows what the regulative universal ideal must be (or that there must be one such ideal) as a function of its role in constraining pluralism through the imposition of rational order, rather than enabling pluralisation.

Again, Connolly contrasts a rhizomatic image to a more conventional way of imagining political cultures. Nussbaum imagines cosmopolitanism through an image of concentric circles linking a singular subject to local and universal spheres. While Connolly has sympathy with the insight of this concentric ideal, so far as we do have a moral identity that is defined by nearer relationships of family and community, and more distant relations to nations and humanity, what he wants to point to is the way that each level of identification could also be analyzed through a rhizomatic image that sees contestation, plurality and remainders in each identity. Because Nussbaum accepts the concentric image of culture, her own universalism must be 'above the reach of metaphysical contestation' if it is fulfil its 'regulative function.'[41] In opposition to this he argues for a double-entry universalism that is based on the contestability and multiplicity of universals, which arises as a consequence of the pluralism and uncertainty that defines our experience of the world at a deep level. Given this critique of both nationalist and cosmopolitan democracy, two central

---

[39] Ibid., 604.
[40] Ibid., 606.
[41] Ibid., 608.

questions emerge for Connolly and for my own project. First, what forms of political community and identity are possible and desirable in our contemporary condition of pluralism? And, second, what virtues does a pluralising ethics of contingency suggest? It is to these questions that I turn now.

III. Ambiguous Humanity and Democracy as a Pluralising Ethos

Beginning from pluralist premises and a rejection of the quest for certainty changes the imperative of political community. To begin with, Connolly suggests that the neither a homogeneous identity nor an insular and slow political culture is necessary for democracy, whether national or cosmopolitan in focus.

> Network pluralism sustains a thick political culture, but this is a thickness in which the centre develops into multiple lines of connection, across numerous dimensions of difference. Network pluralism is irreducible to national pluralism, enclave (fragmented) pluralism, or procedural images of secular public culture. It takes the shape of multiple lines of connection across difference such as ethnicity, religion, language, gender practice and sexuality. These lines of flow slice through the centre as diverse constituencies connect to one another, pulling it from concentric pluralism toward a network pattern of multidimensional connections.[42]

Connolly is describing both a feature of contemporary interaction and a new ideal of deterritorialised community. The same networks of identity that exceed national identity cross over territorial borders and provide forms of identification sufficient for political action. What this suggests is that we can (must) be content with temporary and contingent assemblages that form around particular issues and movements; we should accept that this form of political organisation is sufficient. Connolly does not suggest that we can do away with the state, at least not in the near term nor by a conscious act of will, but that by embracing the plural foundations that motivate ethical commitment and respecting the contingency of formations of political identification we can reduce the harmful impacts of nationalist political identification and begin to develop a cosmopolitan orientation based on multiple universals and shifting political assemblages.

---

[42] William E. Connolly, "Cross-State Citizen Networks: A Response to Dallmayr," *Millennium: Journal of International Studies*, Volume 30, Number 2 (2001), 352.

A network pluralism, as described by Connolly, would neither contain democratic politics to the nation-state nor transpose it to a global cosmopolitanism authoritatively governing the world – importantly, it also rejects a progressive vision of transformation from one form of order to the other. In place of these political visions, Connolly suggests that plural identities cross state borders without generating a single universalism; instead they result in a multitude of universalism and transnationalisms. Further, the institutionalisation of these identifications is partial, shifting and ambiguous – both as a description and an ideal – because the sources of these emergent communities are themselves contingent. While the nation-state is undermined by the break-up of national identity and the increasing influence of external political forces, whether the demands of a global capitalist class or global social movements supporting human rights, Connolly's response is not to re-institutionalise or re-found authority.[43] The growth of institutions of global governance extends the points of positional sovereignty, while post-territorial forms of political identity alter the terrain of effective sovereignty. This alters the paradox of democracy, renders it more complex, plural and contingent, and Connolly's project is to both understand this new condition and to encourage more effective democratic politics, 'It speaks to those who appreciate the ambiguities circulating through state sovereignty, discern the global dimension of sovereignty, and seek levers of citizen action at each node through which the complexity of sovereignty circulates.'[44] His sense that democratic and inclusive forces are less attuned to and effective in acting in our contemporary context is expressed in his diagnosis of what he calls the negative global capitalist antagonism machine, which implies that oligarchic and exclusionary forces have been more successful in exploiting our increasingly plural, unstable and post-territorial political world through appeals to resentment, fear and conflict.[45] The pluralist response to this must be different in tone and sensibility, leading Connolly to search for a pluralising global resonance machine inspired by care for protean and fragile existence.[46]

---

[43] Connolly, *Identity\Difference*, 204-205.

[44] Connolly, *Pluralism*, 160.

[45] William E. Connolly, "The Evangelical-Capitalist Resonance Machine," *Political Theory*, Volume 33, Number 6 (December 2005), 869-886.

[46] This seems to be the central concern of his forthcoming work: William E. Connolly, *A World of Becoming* (Durham, NC: Duke University Press, 2010). For a preview of aspects of this work see, William E. Connolly, "Capital Flows, Sovereign Practices and Global Resonance Machines," *Innovating Global Security Lecture Series*, Watson Institute, Brown University (19 February 2009), http://www.watsoninstitute.org/events_detail.cfm?id=1287 (accessed 1 December 2010).

The affirmation of pluralism, Connolly argues, can be encouraged by the uncertainty of our contemporary condition, as individuals and communities are drawn together across borders.

> As the historical drive to secure a single regulative idea of global engagement is shaken by a world spinning faster than heretofore, a small window of opportunity opens to negotiate a positive matrix of interacting cosmopolitanisms. The effort depends upon numerous parties relinquishing the provincial demand that all others subscribe to faith in the transcendental, universal, immanent, deliberative, revealed or rational source they themselves confess.[47]

This is a juncture where Connolly and Dewey can be productively brought together, as Connolly's cosmopolitan ideal is essentially situationist. This implies that forms of cross-border identification and action will be specific to particular situations and problems, and the potential for the creation of more lasting political community is generated through the successful resolution of these situations. Speaking of reconstructed community beyond the territorial state, Dewey said,

> if it be reestablished, it will manifest a fullness, variety and freedom of possession and enjoyment of meanings and goods unknown in the contiguous associations of the past. For it will be alive and flexible as well as stable, responsive to the complex and world-wide scene in which it is enmeshed. While local, it will not be isolated. Its larger relationships will provide an exhaustible and flowing fund of meanings upon which to draw, with assurance that its drafts will be honored. Territorial states and political boundaries will persist; but they will not be barriers which impoverish experience by cutting man off from his fellows; they will not be hard and fast divisions whereby external separation is converted into inner jealousy, fear, suspicion and hostility. Competition will continue, but it will be less rivalry for acquisition of material goods, and more an emulation of local groups to enrich direct experience with appreciatively enjoyed intellectual and artistic wealth.[48]

Connolly adds a more contemporary sense of how this situationist political ethics might begin to generate global forms of political community, which Dewey was pessimistic about, despite his appeal to work toward such a community. By

---

[47] Connolly, "Speed, Concentric Cultures, and Cosmopolitanism," 614.
[48] Dewey, *The Public and its Problems*, 216-217. For a similar argument, though made via a slightly different reading of Dewey see, Daniel Bray, "Pragmatic Cosmopolitanism: A Deweyan Approach to Democracy beyond the Nation-State," *Millennium: Journal of International Studies*, Volume 37, Number 3 (2009). 683-719.

suggesting that solidarity can be formed across diverse foundations and that these networks of identification can build into assemblages that can pursue general ends without demanding conformity within identities or ends, Connolly offers a more realistic pluralising and resonating assemblage, rather than Dewey's more parochial great community, which retained elements of a bounded conception of democratic community.[49]

The primary conclusion I want to draw from this engagement with Connolly's thought is to rethink the political and moral identification that defines human rights. What his work highlights is that the terms of a distinctly human identity are not sufficiently interrogated, despite the way in which a common human identity is deployed as if it were unproblematic.[50] In chapter 2, I argued that the moral ideals we hold define the political shape that human rights take, and a key part of these moral ideals is the importance of human identity. Many thinkers assert the significance of human identity, as if it is simple and unproblematic. And while the logical universality of "human" as a descriptive category is relatively unproblematic, the humanity that is affirmed in discussion of human rights goes beyond this formal question. Should human beings be freed from their provincial contexts and allowed to fulfil their moral autonomy? Should the authoritative moral community be protected by human rights? These central questions of the human rights debate all employ a notion of human identity that is static and essentialist.

Connolly highlights how identity is generated and maintained by privileging particular aspects of experience and naturalising them. This is extremely important for human rights as the formal universality of the category means that the experience from which a human identity is forged will be contradictory, contingent and changing.

---

[49] Ignas Skrupskelis provides an analysis of some of the tensions in Dewey's cosmopolitan impulses. While I would contest many elements of his reading of Dewey's thought, Skrupskelis does highlight important tensions. See Ignas K. Skrupskelis, "Some Oversights in Dewey's Cosmopolitanism," *Transactions of the Charles Peirce Society*, Volume 45, Number 3 (2009), 308-347.

[50] Jack Donnelly is prime example of this, as he extols human rights as those rights we have as human beings while focusing insufficiently on how the idea of 'humanity' is formed, how it functions in particular moral frameworks and what are the limitations, or remainders, generated by this universalised identity. Even as he acknowledges that human rights depend upon a contentious account of human nature, this contention is defused by appealing to common threats and an existing consensus on human rights norms – a move from metaphysical uncertainty to practical consensus that eliminates the need to focus on the ambiguities of "humanity" as a political identity. See Jack Donnelly, *Universal Human Rights in Theory and Practice*, 10-21.

Given the desire for certainty expressed in conventional moral theory, it is no surprise that defining an authoritative human identity is seen as vital to preserving a universal morality; the "reality" of humanity is rife with uncertainty and ambiguity. A reconstruction of human rights that begins from an embrace of deep pluralism and seeks to support ongoing pluralisation must guard against the powerful assimilative drive built into any attempt to define humanity as a determinate identity. This danger, however, also contains a possibility, which points to the second contribution that Connolly makes to the question of human identity.

In keeping human identity open and contested a reconstruction of human rights committed to pluralism presents unique opportunities for political action. Contesting a particular privileged identity requires some alternative, and the ambiguous category of humanity is important and attractive because it enables claims based on one's humanity, not one's historical and institutionalised community membership, gender identity, ethnicity, etc. – the human identity, potentially, preserves a space for new claims because of its formal emptiness. The idea of human identity can support the sorts of plural networks and diverse assemblages that participate in cross-border movements, which Connolly sees as important counters to statist politics, if we explicitly conceive of humanity as a pluralising rather than essentialising concept. Yet, there is an important blind spot in Connolly's work that raises a challenge to the account of human identity offered here.

Given Connolly's rejection of the desirability and need for a universal consensus to enable either cosmopolitan identities or cross-border politics, how is understanding between plural universalisms possible? This problem is further highlighted by Connolly's explicit rejection of convergence as a regulative ideal. Responding to Fred Dallmayr, he says,

> as he presents and appreciates it, the 'fusion of horizons' postulated by Gadamer does not signify the assimilation of others to 'us', but it does signify the growing 'convergence of our and their perspectives through a process of reciprocal learning'. Convergence is the key word. From my perspective, convergence is only one ideal to pursue among others. A political culture of multidimensional diversity will also be one in which the quest for convergence gives ground to the pursuit of multiple connections of respect across persisting differences, issuing in

> what might be called a political culture of positive connections through relations of agonistic respect.[51]

But the further question, raised by this appeal to agonistic respect rather than convergence, is how that respect is generated - how do we accept differences that we disagree with, without turning that difference into otherness? I agree with Connolly that the idea of convergence is problematic, but agonistic respect requires some form of common understanding, nonetheless.

Berlin's account of human universals becomes important here. As I have argued, his idea for universal concepts and categories that make human experience something that can be shared can be read in a way that is not an empirical account of a singular natural nature but rather is closer to an historical account of the contingent and plural categories of understanding necessary for diverse experience to be made communicable. The concepts and categories through which we understand the idea of humanity are necessary even for a pluralist conception of human identity, but with important qualifications. These categories are empirical in two ways: first, they represent the historical ways in which humanity has been defined and understood - meaning we can look to cultural history to know what these have been taken to be, and second, they are open to change - both expansion and reduction. Connolly, in fact, reflects this view in earlier work, stating that 'without something like our basic ideas about persons and responsibility' our social relationships could find no grounding.[52] Yet, his later moves into deconstruction and genealogical methods seem to undermine the idea of such basic concepts.[53] What I want to suggest is that to have the plural universalisms that Connolly defends and to see human identity in the way I have outlined above, we do depend upon projected universal concepts and categories that define what is human. This, however, means that we must be aware of how we understand these categories, giving even more weight to Connolly's insistence that genealogy is a necessary method for thinking through ethical ideals. And, most importantly for supporting agonistic respect, we should be aware that the necessity of these universals does not exempt them from contestation. So, while understanding the

---

[51] Connolly, "Cross-State Citizen Networks: A Response to Dallmayr," 351.

[52] William E. Connolly, *The Terms of Political Discourse* (Oxford: Martin Robertson, 1983), 197.

[53] Morton Schoolman, "A Pluralist Mind: Agonistic Respect and the Problem of Violence Toward Difference," *The New Pluralism: William Connolly and the Contemporary Global Condition*, 37.

values, faiths and experience that diverse people express and affirm – to understand them as valuable forms of difference, not irrational or immoral otherness – requires basic concepts that define the meaning of humanity, these concepts are plural and contestable themselves.

A central critique I have pressed against contemporary human rights theorising has been that the moral theory employed is inadequate, both generally and within the global context of human rights. In the previous two chapters I have developed a pluralist and situationist ethical framework, which thus far is substantively undefined. This lack of explicit content is a consequence of the change in ethical thinking I have argued for – not only are the values employed in political ethics plural, they are also dependent upon the situation in which ethical dilemmas occur. This approach does not attempt to justify foundational commitment in some moment of apodictic certainty and in this it differs from the various moral approaches based on a law-like founding principles. In this approach to ethics a good deal of ground is already shared with Connolly's work, and in what follows his thought will be used to begin filling out a distinct human rights ethos, which suggests virtues and orientations with which to approach particular problems rather than imperatives and rules.

In his critique of contemporary normative political theory Connolly brings to light the important but neglected question of the ontological perspective assumed in such work.[54] He does this in part because it reveals the ground shared by thinkers usually seen as diametrically opposed, but also to reveal the way in which deep pluralism involves its own ontological perspective, its own sense of the nature of the world. What he reveals about contemporary political theory is that they share a modernist ontology in which human beings find themselves estranged from a world that does not accommodate their desires.[55] In response, contemporary thinkers seek to recreate the certainty they assume was present for past believers in rational Enlightenment, the Christian God or a divine natural order – they attempt this work in various ways, trying to synthetically generate the certainty they project into the past. The most important thing that this line of analysis leads to, for Connolly, is the will to limit

---

[54] Connolly, *Ethos of Pluralization*, 17.
[55] William E. Connolly, "A critique of pure politics," *Philosophy and Social Criticism*, Volume 23, Number 5 (1997), 1-26.

pluralism inherent in these onto-political constructions. While the world today may seem plural, contingent and deeply uncertain, these various onto-political constructions reclaim certainty through a chastened rationalism, in which human beings exert moral control over the uncertain world, or through a modest faith in attunement to higher and more certain forms of being.[56] According to Connolly, this insistence on certainty gives rise to the hostile reaction such thinkers have to postmodern traditions of deconstruction and genealogy, which undermine the very possibility (and desirability) of this quest for certainty.[57] It is this desire for redemption of the present that limits what pluralism can mean within this essentially monist approach to morality.

In defending the reality of pluralism Connolly shares considerable ground with Berlin, as both thinkers argue that there are undercurrents within the Western philosophical tradition that embrace rather than fight against the plurality and uncertainty inherent in the world. Drawing upon William James, among others, Connolly argues that the world is imperfect, filled with litter and ambiguity, that nature is not a Newtonian clock driven by determinate forces, instead its more organic and defined by both probabilities and unpredictable change, and that even time is plural, defined by various experiences of duration, which form variable flows defined by different intensities and speeds.[58] This account of deep pluralism has been explored in relation to Berlin's pluralism, and the diagnosis of the quest for certainty that haunts normative political theory shares obvious resonance with Dewey's work – but the most important idea to draw out of Connolly's consideration of onto-politics is how it reveals the way one's orientation to the world affects the ethos one affirms. The pluralism defended by Connolly and throughout this work can only reflect a particular way of experiencing the world – in this respect there is no final argument for the reality of a plural and contingent world, it is an orientation, an affirmation, even a faith, but Connolly's analysis importantly reveals that this is also true of those perspectives that seek certainty, and a virtue of pluralism is that it pushes us to

---

[56] Connolly, *Ethos of Pluralization*, 18-21.
[57] Ibid., 25-26.
[58] Connolly, *Pluralism*, 68-92 and 97-130.

recognise our commitments as a contestable, embodied, reasoned and habituated orientation to existence.[59]

This last point leads to an important distinction that Connolly makes in *Ethos of Pluralization* between pluralism and pluralisation (which serves as a background to his democratic ethos), as he wants to resist an account of pluralism tied too tightly to present conditions, pluralism as a politics of being is insufficient, and that is why he argues for pluralisation as a politics of becoming.

> A pluralizing democracy is the site of tension or ambi-valence between politics as general action to sustain the economic and cultural conditions of existing plurality and the dissonant politics of pluralization. When this constitutive tension is maintained, a democratic culture thrives. Better, a democratic ethos is one in which this productive tension is always coming into being through the energization of that side of the equation that has most recently fallen into neglect.[60]

What this entails is that the plural and diverse identities that define any present configuration, even where difference is not converted into otherness, pluralism should not be naturalised, nor should further pluralisation be inhibited. Not only does this focus work against the latent conservatism Connolly identifies in more limited accounts of pluralism, but it also sets the stage for his more expansive public ethos – which is a democratic ethos that looks to expand inclusion into democratic processes by not only opening up political identity but also by layering democratic virtues and practices over and across the nation-state as a privileged political space.

Democracy can allow for this ongoing contestation to be worked out in a way that pluralises political culture, but this requires that even when consensus is reached or when one side of a democratic contest prevails that we pay attention to what is lost, to the remainders. This language of remainders comes from Honig, but the general point is highlighted in Connolly's democratic ethos, which acknowledges that to affirm a value, faith or political position, even when negotiated democratically, entails a loss that can lead to resentment and violence, especially if the political culture does not

---

[59] Ibid., 20-36.
[60] Connolly, *Ethos of Pluralization*, 97.

acknowledge this loss or tries to prevent future renegotiations of dominant identities and political structures. This entails abandoning the prevailing separation between ethics and politics, present in much contemporary thinking about human rights, and also rethinking the determinate force that ethics is assumed to exert upon politics. Any decision reached, even if done in an ethically exemplary way, imposes norms and standards upon us that some of us may reject or resent, whether that occurs sub-consciously or consciously. Connolly says,

> The virtues commended here do not take the politics out of ethics, nor do they rise above politics. Rather, they lend an ethical dimension to the experience of identity, the practice of faith, the promotions of self-interest, and the engagements of politics. They speak to a world in which people draw upon different final sources of ethical sustenance and bring those sources with them into politics.[61]

Connolly's pluralising democratic ethos confronts us with the unavoidability of the use of power in ethics, with the political tools of compulsion, authority and force, but these take on different characteristics in a pluralist politics.

> Agonistic democracy, where each of these terms provides a necessary qualification to the other, furnishes the best political medium through which to incorporate strife into interdependence and care into strife. This virtue provides a powerful argument on behalf of democracy. It also provides considerations pertinent to the shape of the ideal of democracy assumes in the late-modern age.[62]

Connolly gives us no refuge from this reality, no utopias of ideal theory, but instead responds by seeking to cultivate a democratic sensibility that is fundamentally concerned with the shape that our political ethos takes through our enactment of it, at both the macro- and micro-political levels.

Throughout his recent works Connolly has developed two virtues he thinks are central to a pluralising democratic ethos, these are agonistic respect and critical responsiveness. He defines them as 'civic virtues that require both internal constituency cultivation and public negotiation.'[63] This description, of civic virtues,

---

[61] Connolly, *Pluralism*, 122
[62] Connolly, *Identity\Difference*, 193.
[63] Connolly, *Pluralism*, 126.

highlights the bicameral orientation that Connolly endorses, which calls on us to acknowledge and develop our own pluralist orientations, and to recognise this dynamic in our social and political interactions. These public virtues apply first and foremost to our interactions with others, with difference, and for this reason are not commands that go to the core of an authoritative ethical identity, and can be shared by those confessing different existential faiths.[64] These virtues, however, are also more than public virtues, as they require attending to the micro-politics of ethical experience, to practice these virtues requires personal reflection, adjustment of one's desires and visceral reactions, it requires us to reconstruct our habits and social customs.[65] Yet, this bicameral orientation does not require that everyone confess the same pluralist faith that Connolly expounds, it instead aspires to be a public democratic ethos for a time of increasing pluralisation.

The first virtue, agonistic respect concerns the relationships between what Connolly calls 'interdependent partisans,'[66] or those that share a political space but support different values and orientations. The relationship entailed is importantly different from the one implied by liberal toleration, where the parties are defined as majority and minority groupings, in which the minority's difference is tolerated by the power-holding majority. The terms of agonistic respect require that neither partisan is intent on placing her own position beyond contestation. This far more reciprocal relationship requires trust and a less formal account of equality than tolerance – partisans are not just formally equal, as the 'respect between them is deep precisely to the extent that each can respect the other in drawing its respect from a source unfamiliar to it,' which requires partisans to acknowledge that those they disagree with may be as rational, honest, committed and well-intentioned in their expression as they are themselves.[67] This orientation, to seek respectful terms of ongoing contestation, not only reconfigures the political ethos that informs contemporary plural formations, but it also provides a general orientation for how one encounters new sources of pluralisation in cultural life. Yet, a question lingers, which Connolly puts to himself, asking, 'how could such a connection be forged, without falling into

---

[64] Ibid., 33.
[65] Ibid.
[66] Ibid., 123.
[67] Ibid.

disconnected individualism, devolving into substantive commonality, or dissolving entirely into a set of common procedures?'[68]

This returns us, once again, to the question of how understanding is possible in a plural world. Connolly acknowledges that established understandings of obligation and right may go some way to providing the terms through which agonistic respect is expressed.[69] Yet, it is in those times when common understandings prove insufficient in the face of new conditions that agonistic respect is most necessary. Connolly begins by suggesting that the doubts and uncertainties felt by all sides can generate a generous and reciprocal spirit that makes it possible to sustain agonistic respect. As we are able to see the fragility of our own position, the alternative values endorsed by others, hopefully, becomes more understandable – the idea is that sharing and acknowledging the uncertainty of our own commitments makes it possible to respect and negotiate terms of coexistence with people who hold different views. This require that we make positive use of the pain that is generated by agonism; rather than responding to difference with resentment or violence, we respond with modesty regarding our own convictions and generosity in understanding those of others. This is convincing to a point, but I do want to further develop the idea of agonistic respect on two points.

Above, I considered how Connolly's account of plural cosmopolitanism requires some account of universal terms of understanding, particularly in the case of human identity. The difficulty in achieving understanding returns when we consider agonistic respect, because it is unclear what, if any, limits there are to achieving understanding between partisans that defend incommensurable and, possibly, hostile faiths. This is particularly important if agonistic respect requires some form of equality between partisans, and seeks to avoid the subsumption of difference under the terms of the more powerful party. As was argued above, some account of universal concepts and categories is necessary to enable understanding. The problem, however, is deeper, as the possibility of understanding does not speak to contestation between parties who remain hostile and refuse to pursue understanding – it raises the question of what the limits of agonistic respect are. Responding to this obstacle requires bringing out a

---

[68] Ibid., 124.
[69] Ibid., 41-42.

strand of Connolly's work more fully: he focuses on the situational nature of contestation, as the negotiation of agonistic respect occurs in response to specific situations and is motivated by specific values and goals, but I want to suggest more needs to be made of the situationist perspective as it provides additional support in responding to the question of how understanding can be encouraged between partisans that may seem irreconcilable.

Here Dewey's situationist ethic provides a useful addition to the virtue of agonistic respect, as the appeal to contingent universals necessary when common understandings fail is put into an experimental and reflective context. For example, if sustaining agonistic respect depends upon an understanding that cannot be generated from a common culture – between secularist and religious groups that hold their beliefs deeply and have little or no common experience, for example – then it may be necessary to appeal to universal concepts or categories that each group holds. Finding a comprehensive understanding or convergence between these opposed views would be extremely difficult, as entire world views would seem to be at stake. However, a situationist focus would seek convergence in relation to specific issues, in the current example, perhaps designing school curriculums that deal with questions of religion and science, in which case the chances of convergence and respect are greater despite incommensurable universals. For example, the religious person might appeal to the evolutionary universality of religious faith, to justify the inclusion of religious studies to the secularist, despite the unacceptability of such justifications to his own faith. The secularist, in contrast, could appeal to the divine command that we should pursue an understanding of God's world, even as she found such logic unpersuasive. In each case generating sufficient common ground to support agonistic respect is possible in concrete situations, rather than between opposed worldviews as such. Finding workable solutions in this way requires deeper engagement than conventional liberal toleration. Connolly hints at such a situationist approach, but connecting these impulses to Dewey's ethics adds important practical insights into the virtue of agonistic respect. There may be times when such understanding is impossible and partisan antagonism is generated, but Connolly suggests that in such moments the committed pluralist will not only seek out terms for respect, but where that is impossible infuse their political actions with a an care for difference that preserves the

possibility of future respect and does not compromise the pluralist commitment to the fragile plurality of human experience.[70]

The second point of development has to do with the experience of doubt and uncertainty that is so central to the generosity that motivates agonistic respect. There are two weaknesses in Connolly's account; first, he often speaks of partisans as though they were identity groups holding opposed world views, this is certainly not a necessity generated by his critique, as he focuses insightfully on the plurality that exists within social identity, but he repeatedly invokes an image of contesting faith groups. Related to this is a second weakness, the sources of doubt and uncertainty are presented as if they only occur when one's beliefs are challenged or on a subconscious level, both of which are important sources of doubt and uncertainty, but miss the way in which the personal experience of pluralism, actively asserting and holding to particular values, can lead to a pluralist consciousness that is an important source for generating agonistic respect. Berlin's value-pluralism is particularly useful here; by highlighting the existential element of choice in affirming our values, which presumes that the chooser (or maker) of values is aware, and feels the weight, of other values, Berlin revealed a vital source of generosity that can help to sustain the agonistic respect Connolly suggests. Further, focusing on the psychological importance of choosing, of affirming, as a source of generosity reinforces Connolly's own insights into the plural and ambiguous composition within, and not only between, faith groups.

The second civic virtue, critical responsiveness, has a different aim than agonistic respect and is more focused on enabling a politics of becoming. Connolly defines the politics of becoming as emerging

---

[70] For an insightful and practical exposition of "militant pluralism" see, William E. Connolly, "Militant Pluralism and Exclusionary Extremism: Reflections on Imam Feisal Abdul Rauf," *The Contemporary Condition*, 3 October 2010, http://contemporarycondition.blogspot.com/2010/10/militant-pluralism-and-exclusionary.html (accessed 1 December 2010). 'Militant pluralists will try to recruit moderates as they also reach out to minorities outside their own comfort zones, listening to their grievances and aspirations, engaging them on their faiths, sexual practices, ethnic commitments, household arrangements, gender priorities. A militant pluralist will also seek to understand more profoundly things in the life circumstances of exclusionary movements that push them toward extremism. Often enough, circumstantial arrangements of repression, punishment, extreme inequality, and misunderstanding are mixed together. But a militant pluralist will band together periodically with pluralists from different faiths, gender practices, ethnicities and sexualities to stop exclusionary extremists from carrying the day. We expose their tactics in our churches and neighborhoods; challenge the assumptions built into their attacks; cultivate and deploy our own media skills, and shift our role practices in this or that way. And when the issue is on the line, we take more stringent actions.'

out of historically specific suffering, previously untapped energies, and emerging lines of possibility eluding the attention of dominant constituencies. In successful instances the politics of becoming moves from a netherworld below the register of positive acceptance, identity, legitimacy, or justice onto one or more of those registers. To cross that threshold is to shake up something in the established world. It is to propel a fork in political life, throwing a wrench into the established code of obligation, goodness, identity, justice, right, or legitimacy.[71]

Critical responsiveness encourages a particular response to these moments of rupture, to the new claims that are made upon the structure of social life. The politics of becoming are disturbing because they upset the accepted norms, obligations, rights and recognitions of the established order, and indict these very standards as part of the problem. What Connolly seeks is a generous and *care-full* response to these emergent claims upon the social order, which he thinks are increasingly common in our contemporary time where the lines and tempos of interaction are increasing, leading to greater interdependence and deeper pluralism. He describe critical responsiveness as 'careful listening and presumptive generosity to constituencies struggling to move from an obscure or degraded subsistence below the field of recognitions, justice, obligation, rights, or legitimacy to a place on one or more of those registers.'[72] These rather vague notions involve the very practical need to check one's own reactions of disgust or resentment in response to difference, a recognition of the visceral register of micro-politics, and a duty to be aware that responding to these demands for recognition or legitimacy generate a need for new or revised standards of judgment – this requires an awareness that "our standards", as they are, are not enough and that some further work is needed. Further, whether we end up supporting or opposing the demands placed upon the social order and our identities, the judgment made should be held with modesty, acknowledging the newness of the situation and the potential inadequacy of our response.[73]

The virtue of critical responsiveness is as vital as that of agonistic respect, even as if it initially seems less clear what this virtue actually beyond the somewhat woolly injunction to listen to the excluded more carefully and act with more generosity in political life. A situationist ethics goes someway to making this virtue clearer and

---

[71] Connolly, *Pluralism*, 121-122.
[72] Ibid., 126.
[73] Ibid., 168.

more practical. What Berlin, Dewey and Connolly all share, in their pluralist dispositions, is a suspicion of the adequacy of any existing social order. Because they acknowledge the messy imperfection of the world, the loss that shadows each value we affirm and celebrate, the physical and psychological violence and humiliation done to human beings by universalisms that command, constrain and oppress – even when the hand of that universalism is a liberal state, the command to leave your faith at home, to hide your sexual and romantic desires, or to accept your everyday economic subservience, oppresses all the same – all three thinkers engage the experience of the excluded, marginalised and those made "other." Critical responsiveness encompasses this orientation, and tying this responsiveness to a situationist ethics leads to concrete ethico-political practices. The key question is whom do we listen to? A situationist ethics runs the risk of being confused with a crudely instrumentalist approach to political ethics if far the problems it address are defined by the most powerful individuals and groups, and for this reason a critical situationist ethics must begin from a commitment democratic inclusiveness. This commitment presumes that each person (or group) should have, at the very least, the space to articulate his claims upon the social order. This is not, however, a requirement for a morality of equal individual autonomy or a regime of absolute legal rights; as Connolly has shown again and again, these projects will always generate new exclusions – the key difference of the approach endorsed here is its ongoing character. So, in response to this question, we should take special care to make space for and take seriously the demands made by the marginalised, excluded, and degraded. We should hear the clamour of the politics of becoming not as a plea for some final resolution but rather as a call to refine the conduct of political life.

To further connect Connolly's civic virtues to Dewey's situationist ethic, the virtue of critical responsiveness is embodied by being alive to, seeking out and providing forums where problematic situations can be brought to public attention. This involves an awareness of our own experience, to those instances where we experience a breakdown between the customs and habits that support the ends we uncritically affirm – where, for example, the mythologies of hard work and responsibility that support capitalist economic relations break against the reality of everyday humiliation, deprivation, boredom and resentment revealed by the experience of the

poor and working class.[74] Further, it requires an attention to the experience of others, empathy for their problematic experiences. For example, the ability to question our own naturalised desires and understanding of intimate relationships, in order to make space for and support the claims of those fighting for social protection, equal privilege and public recognition of different desires and patterns of intimate relationship – an effective example deployed by Connolly.[75] Finally, and perhaps the most challenging task, is the effort to be alive to the significance of situations of exclusion and oppression that are difficult to see, where these exclusions are of violent and threatening people, so that critical responsiveness is potentially overwhelmed by fear and the desire to punish in a way that makes it difficult to be responsive or generous.

Connolly illustrates the difficulty of this sort of responsiveness with an outstanding examination of the trial of Dontay Carter.[76] What Connolly does by examining the case is to reveal the way in which Carter's actions, violent and terrifying as they were, could be understood and, in their way, provide a powerful expression of a social condition that is intolerable in its inequality, violence, deprivation and marginalisation. Further, by questioning the desire to punish that motivated the trial and public discourse surrounding it, Connolly reveals the way in which the social order is implicated in not only the violence done to Carter and poor African-Americans in urban ghettos, but also in the silencing of their experience.[77] Critical responsiveness can, and should, aim to reveal exactly these forms of social oppression, not in order to emancipate the victims on one's own terms or to replace their voice with one's own, but to alter the social order so that such exclusion and violence is neither rendered invisible (unspeakable) and justified (natural).[78]

---

[74] Connolly's personal reflections on the experience of the poor and working class are insightful and numerous throughout his writings, for example see, Connolly, *Capitalism and Christianity, American Style*, especially the preface.

[75] Connolly, *Pluralism*, 127.

[76] Connolly, *Ethos of Pluralization*, 41-74. In Baltimore in 1992, Dontay Carter, a 19-year-old African-American man, kidnapped multiple middle-aged white men, nearly killed one and murdered another. He then escaped police custody before being arrested again and standing trial – he was found guilty and sentenced to two life sentences, plus 119 years. Connolly analyses the reaction to his crimes and trial to highlight the function of practices of responsibility as revenge taken against those who reveal the injustices and hypocrisy of society.

[77] Connolly, *Ethos of Pluralization*, 64.

[78] Cornel West highlights this aspect of Dewey's situationist ethics when he notes that Dewey thought the experience of women and other oppressed groups would contain insights and knowledge that was unique, reflecting his epistemological pluralism, but also the political importance of ensuring the expression of critical intelligence is available to all. West, *The American Evasion of Philosophy*, 96-99.

Connolly's account of open political identities, whether defining the authoritative community or the "normal" individual, along with his democratic ethos provide key elements that I pull into the account of human rights I turn to next. Where Berlin and Dewey provided the initial reorientation in ethical theory towards pluralism and a situationist political ethic, Connolly's work takes the reconstruction forward by providing more substantive direction for an account of human rights as a democratising political ethos. The key points I develop below are that (1) human rights we should see human rights as an orientation that seeks to increase democratic inclusion and enables the ongoing contestation over the basic terms of political life at the global level, (2) that this human rights ethos must respect the ambiguity of human identity, which entails that there will be plural articulations of human rights and the institutions that support them should not necessarily be singular or aim toward absolute authority; and (3) that human rights make claims upon the basic structures of political legitimacy, by contesting privileged identities and the given boundaries of political community.

IV. Prelude: Human Rights as Democratising Ethos

To briefly summarise the reconstruction of human rights initiated here – as this can only be an opening. I begin with a pragmatic account of rights that defines them as claims made by and upon the individuals that make up the political community, defining legitimate social order. They place constraints and qualifications on coercive social power and define reciprocal social duties of members of the political community. This could be a claim that an individual has a right to some immunity or good (a right to free expression or a fair trial, for example), or it could be a claim that the legitimacy of coercive power rests on certain conditions obtaining in society (such as general access to welfare or employment). The substantive point is that rights claims are a basic part of social order. Rights are a defining condition of political legitimacy so far as they call for power to be justified in terms beyond the mere possession of power. What is not implied is that this basic logic of rights tells us what kind of political actor claims a right, nor against which social actors and orders they are claimed against, and it tells us little of what goods, immunities, privileges or conditions it claims as necessary for the legitimation of coercive social power.

While much of the time rights claims will be made within a settled context, such that interpreting a right or asserting a new one does not place much strain upon the social order as such, a pluralist approach to human rights rejects the conventional project of answering this basic question of political authority and belonging in a singular and final way. Instead, it appeals to a democratising ethos that combines a concern for human fragility and diversity with an appreciation that all political orders are expressions of power that create exclusions. Human rights provide an ambiguous identity that we can appeal to in the ongoing struggle over the central political questions about the requirements of legitimate authority and forms of political community. This struggle, however, is not a progressive realisation of some underlying human unity, but instead results in a pluralised and contingent human rights politics, in which the demands we can make of political authority are unsettled and then reconstructed, while at the same time the confines of political community and the levers of sovereign power are contested and reconfigured. Agnostic pluralism does not provide a relief from uncertainty, but it does encourage an ethics of care and engagement rather than a morality of anxiety and limitation.

In the following brief section, I offer a summary account of the idea of human rights as a democratising ethos. In chapter 6, I look to the drafting of the UDHR as a foundational but ambiguous moment in the development of international human rights. In examining the ideas that defined that document I substantiate the claim that human rights can be understood as a democratising ethos – along with this effort to clarify my position, I also suggest that the re-reading the UDHR as a democratising ethos encourages a more critical orientation to the human rights project. In chapter 7, I consider how my reconstruction of human rights effects how we understand the practices and institutions of human rights, suggesting that more focus should be given to the political act of claiming rights, particularly through social movements that challenge the basic terms of political legitimacy in world politics.

Interlude
Human Rights as a Democratising Global Ethic

'Everything should be placed on the open table so that we can openly debate questions of power and powerlessness, and how to reformulate the human rights corpus to address pressing crises. Perhaps we will decide that human rights is not the right language for this struggle. Perhaps it is. In any case we will never know until we take off the veil. What is clear today is that the movement will lose its relevance unless it can address – seriously and as a priority – human powerlessness in all its dimensions.'

-Makau Mutua, *Human Rights and Powerlessness*

I. From Imperative to Ethos

How, then, does a pluralist and situationist ethic, drawing on Connolly's account of civic virtue, translate into a theory of human rights. The conventional debate over human rights is generally concerned to set out the structure of those claims and their substantive content. What I want to suggest is, first, that the structure of rights can be articulated in a more basic fashion, which is amenable to the situated and plural accounts of political ethics that I have been concerned with thus far. Second, I argue that the content of rights is largely dependent upon the identities and meanings through which they are claimed, which further suggests that a theory of rights will have to acknowledge the contingent and ambiguous nature of these claims. This account of rights explicitly contrasts Connolly's account of a politics of becoming to the politics of being, to which rights are usually tied, by suggesting that rights claims are neither static nor discovered by uncovering some fundamental truth. Therefore, the ethical function of rights must be rethought, we must move from a vision of rights as moral imperative to one in which the claiming of rights is a political act supported by a particular ethos – an orientation towards ethical matters that guides our responses to both the existing world of rights and future claims.

Dewey argued that rights are prescriptive ends pursued in social life that give our common life structure – rights and duties define what members of a community can claim of others and what can be demanded of them.[1] This account of rights, however, is importantly read on two levels, the customary and the explicitly ethical. Customary

---

[1] Dewey, *Outlines of a Critical Theory of Ethics*, 167-180.

rights serve as the background conditions that we generally do not reflect upon, they are the rights we inherit, our experience is sustained by them, but ethical reflections on rights and duties comes about when the social relationships held in place by custom and habit are disturbed and the prescription of behaviour uncertain. And human rights address the social relationships of world politics, and in the process serve several functions, including providing a universal moral orientation, a the logic and language for existing standards of international/global political legitimacy, an increasing institutionalised legal framework and a critical rights activism.[2] The account of rights developed here essentially addresses itself to rights as an ethical orientation (democratising in nature), a political dynamic (activist and transformative) and an emergent and plural institutionalisation (a human rights public of diverse movements responding to specific problems with support and solidarity but also allowing a great deal of diversity). Human rights 'constitute different constellations of diverse subject positions in, and through, agency-in-structure.'[3] Hence the need for reflection and the articulation of new rights to reconstruct social relations – whether this involves the community placing new responsibilities upon or granting new rights to minority classes or individuals, or new demands from those within society upon the basic terms of the social order. The actual content of human rights is open to diverse expression, both in cases of social transformation and in the more prosaic process of ongoing political renegotiations of the existing order.

This way of thinking about rights comes out of an ethical perspective that does not find inherent ends revealed through reason or in the nature of humanity (or the world at large), but rather finds its ends in experience and our attempts to improve experience, to improve our social lives. The substantive ends pursued can only be articulated in a provisional and tentative way. First, I have argued in favour of a democratising conception of rights that opposes exclusion and powerlessness, and which supports the inclusion of people in the political communities that determine their conditions of life, which allows them to exert control over the social forces that affect their lives. Further, this democratising account of rights calls for a more open

---

[2] Upendra Baxi, *The Future of Human Rights* (Oxford: Oxford University Press, 2007), 6-13. This varied functional architecture of human rights in world politics is not a comprehensive system and human rights actually play contradictory roles – for example justifying the hegemonic structures of global governance and inspiring resistance.
[3] Ibid., 6.

politics, in which identities and authoritative communities can be challenged and reconstructed; at base it calls for a more radically democratic politics. This is an ethos, however, not an imperative. Any fuller account of what sort of rights and duties should be institutionalised as human rights must be a response to a specific situation in particular contexts. The position developed here cannot provide an ideal list of substantive rights, it can offer a point of critique for existing rights regimes and suggest specific responses. For example, it could support Makau Mutua's call for a greater focus on economic powerlessness and exploitation when considering the place of human rights in African polities, as the legacy of colonialism and the current realities of economic imperialism are pressing problems that require substantial social transformations.[4] The exact nature of the reconstruction, however, would depend upon an analysis of the specific question being considered, as well as the orientation of inquirer considering it. This highlights an important further point: the analysis of the social and ethical function of rights is not necessarily connected to the democratising ethos I favour here, because even as I am able to give reasons for embracing this ethos, there is no final authoritative warrant for its superiority – only its persuasiveness and, importantly, its consequences should it serve as a basis for practical action.

A dominant view of human rights is that they are intended to address a limited set of very serious forms of injustice and violence, basically defining the limits of legitimate authority: such that, if a social order violates core human rights to life, against torture or makes use of other extreme forms of violence, then it cannot be legitimate. This account is problematic in two ways. First, it suggests that human rights can only be claims to certain protections or goods that can be reliably provided by existing political authorities, and second, it does not have an adequate sense of how pervasive human rights have become in world politics, the way in which their claims have grown and now influence politics in numerous and, at times, contradictory ways. The first problem emerges when we want to keep human rights as minimal and basic as possible, defining them as a negative account of legitimate authority that can prescribe minimal universal norms. What this fails to appreciate is that a plurality of universals can be embodied in human rights claims. So, while the

---

[4] Makau Mutua, "Human Rights and Powerlessness: Pathologies of Choice and Substance," *Buffalo Law Review*, Volume 56, Number 4 (2008), 1027-1034.

argument that human rights claims can be made against a small and widely agreed set of injustices is acceptable as far as it goes, I want to defend the use of human rights to make both more fundamental and far reaching claims upon the social order. For example, where critics reject social and economic rights because providing work or welfare is not something every political authority can reliably provide, this misses that social and economic human rights can be read as claims made upon the structure of society, challenging the very structures of contemporary capitalism that make it so difficult for political communities to provide equal access to economic resources. The second problem arises because we are too focused on human rights as an issue of state legitimacy in relation to citizens. Human rights are not only addressed to state authorities nor solely concerned with the relationship between national citizens and national sovereigns. Human rights have become standards of legitimate authority for an ill-defined international community, importantly dominated by powerful states and international institutions, but also including variegated institutions of global governance, global civil society groups and multinational corporations, all of whom are implicated in contemporary human rights politics. This is why the attention that Connolly gives to the limitations of the nationalist political frame and his account of a pluralist and rhizomatic cosmopolitanism are important resources in reconstructing the political expressions of human rights, which will be taken up in the chapters that follow.

II. Contestable Humanity: Rights Claims and Political Community

Beyond an analysis of the social and ethical function of rights, the account of human rights offered here focuses on the way the appeal to humanity functions as a political and ethical identity used to justify social transformations. Human rights claims can be made on behalf of a variety of political actors against a variety of political authorities, for example individuals may claim rights of protection from state violence that place duties upon international organisations, rather than their government; or indigenous groups may make claims upon corporations demanding a contribution towards, or even provision of public services. The articulation of new rights claims in this global context serves to redefine the lines of political authority and community. And while these claims are not made in a social vacuum – human rights are all too often constrained to a state-centric frame of reference – attending to

human rights politics as a politics of becoming is vital to the end of encouraging a more pluralist and democratic world politics. Connolly highlights the way in which rights can be claimed by individuals and classes of people who are excluded, marginalised and degraded as they seek to reform and reconstruct the social order, pushing us to create space for this understanding of rights at the global level, where human rights are all too often defined by hegemonic powers and politicised conceptions of humanity, which impose upon difference and support a hierarchical world order by denying the contestability of both humanity and the structures of state and international authority. Conceiving of human rights as a democratising political ethos, which affirms pluralisation and contestation as ends, opens up these questions and reframes the politics of human rights.

Bonnie Honig brings a number of Connolly's insights to an explicit consideration of human rights.[5] She begins by returning to the paradox of politics and argues that a similar dynamic is expressed when a new human right is initially claimed, as each claim calls a new social world into being which has yet to be institutionalised as an authoritative claim.[6] This reveals the exercise of political power at the heart of rights claims, analogous to the power Connolly identifies in democratic sovereignty. Further, Honig rejects the various attempts to resolve this paradox of politics, either confining political authority to a past condition of consensus and unity or projecting it upon a future harmony still to come. She develops Connolly's ideas further by critiquing the chrono-logic of rights, which is deployed in cosmopolitan accounts of rights that rely on a implicit progressivism, in which each expansion or innovation in the human rights regime is part of the unfolding of a comprehensive moral order.

> Looking backward, we can say with satisfaction that the chrono-logic of rights required and therefore delivered the eventual inclusion of women, Africans, and native peoples into the schedule of formal rights. But what actually did the work? The impulsion of rights, their chrono-logic, or the political actors who won the battles they were variously motivated to fight and whose contingent victories were later credited not to the actors but to the independent trajectory of rights as such?[7]

---

[5] Bonnie Honig, "The Time of Rights: Emergent Thoughts in an Emergency Setting," *The New Pluralism: William Connolly and the Contemporary Global Condition*, 85-120.
[6] Ibid., 104.
[7] Ibid., 94.

In contrast to this account, Honig suggests that rights claims exceed the confines of the existing political order, expressing the politics of becoming (or enactment); they give a democratic and activist orientation to human right. Rather than pursuing a judicial model of human rights, where each successive iteration is interpreted and harmonised with established right, Honig highlights the role human rights can have in brining about new goods, putting degraded political identities on the register of recognition and respect, and encouraging a democratic world politics that remains open to pluralism and the unexpected newness that is generated by the interaction of difference on multiple registers.

This implies that human rights exceed the legalised discourses and practices of the international human rights regime, reconnecting human rights claims with the political contestations and social movements that have lead to the establishment of new rights. What this exposes is the expression of power necessary in seeking to change the social order, such that the emergence of social and economic rights, or the women's human rights movement were not fulfilments of the human rights vision, complete from the start, but contests to reconstruct the legitimacy of social orders that sustained economic dependence and poverty, or the exclusion and abuse of women. For this reason, new (or even reiterated) human rights claims can engender panic within the established order, which is why if human rights aspire to something more than rhetorical coverage for the claims of the powerful, they need to appeal to some further ethical justification. The account suggested here incorporates the civic virtues outlined above, in hopes of defending human rights as an inclusive democratising ethos.

This democratising politics of human rights relies upon an appeal to the contested and ambiguous concept of humanity, as discussed in the previous chapter. It is the formal universality and substantive emptiness that makes humanity such a powerful identity, containing potentialities for both emancipation and assimilation. What results from this reconstruction of human rights is not an ever more magisterial international human rights regime institutionalised through cosmopolitan global governance, nor a state-centric order of minimal rights claims, but rather a human rights assemblage or human rights public. The end of human rights is not consensus; on this model human rights generate a space for contesting existing identities and sites of political

authority. Human rights, if imbued with a situated and pluralising ethos and motivated by democratising virtues can alter political practice at multiple levels and across communities. The coherence and potential of this reconstruction of human rights is explored in the chapters that follow, first by looking to the history of human rights and the drafting of the Universal Declaration of Human Rights, and then in the final chapter a fuller account of how human rights function in world politics is offered and their potential value to a democratising political ethos is evaluated.

III. Rights Lost: The Remainders of a Democratising Ethos

This account of right, especially in the human rights context pursued here, leads to two concerns. First, a worry that the normative (rather than simply coercive) power of rights is undermined, and, second, that a theory of rights that focuses on the contestation of important and well-established rights undermines political stability and authority, which are rightly reinforced by the legitimacy of those rights enshrined in a stable legal order. These are important objections to the account of rights offered here. The response, however, is relatively straightforward.

Do other accounts of human rights make it easier to assert the moral legitimacy of political authority? Do such accounts reinforce the stability of the legal and political order? In both cases the answer is yes, of course. The point of articulating a democratising account of human rights is that it undermines that certainty, because it is a false certainty and the will to secure such certainty is harmful. The articulation of a final and complete account of rights is a concealment of the power and contestation inherent to the logic of asserting an authoritative order for the world. Further, it stifles the act of contestation and impedes social change. So, to acknowledge that rights are ambiguous in their normative power and in their role upholding established orders is to face the political and ethical questions raised by rights claims directly, particularly the expansive claims made by universal human rights, to insist that universal human rights prove their value and are not presumptively given absolute or final authority. The goal of a democratising account of human rights is to see how far it possible to reconstruct rights for a pluralist world of increased interaction, deep pluralism, emerging political identities, and ever more complex problems generated by social forces that exceed the control of established social orders. There is little else that can

be offered to those who mourn the loss of certainty, other than to acknowledge the risks inherent in opening up social life to critical examination and reconstruction, and to make clear that this democratising impulse is a response to the power of static ideals of moral universalism and political authority, and as a situated response it is contestable and corrigible in the light of further experience.

Chapter 6
Ambiguous humanity: revisiting the Universal Declaration of Human Rights

'No contemplation of open and diverse human rights futures may remain innocent of their many histories. Pre-eminent among these remain the myths of origin that suggest that human rights traditions are "gifts of the west to the rest." The predatory hegemonies of the "West" itself compose, recompose, and even revoke, the "gift."'

-Upendra Baxi, *The Future of Human Rights*

I. From Moment of Consensus to Opening the Debate: Rereading the UDHR

Thus far, I have offered an initial reconstruction of human rights, which emphasises their role as claims calling for the ethical transformation of the social order. My analysis suggests that human rights make use of the category of humanity to make a moral claim upon the legitimate political organisation of social life. This opens up a contest over the significance of humanity as an identity and places the question of legitimate social organisation into a global context, which puts domestic and international structures into question. In this chapter I turn to the drafting of the UDHR, looking both at the historical records documenting that process and the significance it has in how we understand the contemporary human rights regime. My intention is to offer evidence, so far as possible, that my reconstruction of human rights highlights and reflects important elements of the drafting of the UDHR, which are often missed by other historical interpretation; along with that, by reading the drafting process through the perspective I have developed, I hope to illuminate the significance of this reconstruction. I focus on how (a) human rights function as claims upon political structures in the name of the ambiguous category of 'humanity', (b) how these claims are made in response to specific problems and in the pursuit of particular ideals, and finally on (c) the ongoing nature of the political and ethical contest over the meaning and significance of human rights. These aspects of human rights can be seen in the historical act of declaring such rights and focusing on these aspects alters our understanding of the UDHR's wider significance.

The conventional debate over the UDHR generally oscillates between two positions: on one side it is seen as a moment of founding for the human rights regime,

based on an achieved consensus,[1] while on the other hand it is seen as a unique moment of political imposition by the post-war liberal powers, particularly the United State, intent upon remaking the international order.[2] Christine Cerna expresses the fundamental tension when she says,

> Forty-five years ago, on 10 December 1948, the international community adopted by consensus, the Universal Declaration of Human Rights, still the preeminent document in the growing corpus of human rights instruments. Today, a group of nations is seeking to redefine the content of the term "human rights" against the will of the Western states. This group sees the current definition as part of the ideological patrimony of Western civilization. They argue that the principles enshrined in the Universal Declaration reflect Western values and not their own.[3]

The UDHR has a special status for both human rights supporters and critics, but here my primary task is to upset both historical narratives and the understanding of human rights that makes this dichotomous framing possible. Before turning to my own reading of the UDHR as an important early moment of ethical contestation and political reconstruction, I look at the traditional narrative framing in more detail.

Many histories of the UDHR have been written, all of them acknowledge the political context of the drafting to some degree,[4] but the connection between how we understand that history and the theory of rights that informs that understanding is generally unexamined.[5] The standard interpretations generally look for a moment of

---

[1] Christina M. Cerna, "Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts*," Human Rights Quarterly*, Volume 16, Number 4 (1994), 740-752.

[2] Makau Mutua, "Standard Setting in Human Rights: Critique and Prognosis," *Human Rights Quarterly*, Volume 29, Number 3(2007), 552-555.

[3] Cerna, "Universality of Human Rights and Cultural Diversity," 740.

[4] Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York, NY: Random House, 2001); Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia, PA: University of Pennsylvania Press, 1999; Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (Philadelphia, PA: University of Pennsylvania Press, 2003). and Susan Waltz, "Reclaiming and Rebuilding the History of the Universal Declaration of Human Rights," *Third World Quarterly*, Volume 23, Number 3 (June, 2002), 437-448.

[5] See Jenna Reinbold, "Political Myth and the Sacred Center of Human Rights: The Universal Declaration and the Narrative of 'Inherent Human Dignity,'" *Human Rights Review*, Volume 12, Number 2 (2011), forthcoming, for an examination of the history of the UDHR that understands the core idea of dignity as the founding myth that justifies the political practice of human rights (available through online first at http://www.springlink.com/content/y13672p6w3w15653/, last accessed 28 March 2011). Also, in contrast to Reinbold, Johannes Morsink offers a more conventional philosophy

consensus or imposition, depending on whether one sees human rights as justified moral principles or an illegitimate political project. For supporters, the UDHR represents a break from a terrible era of world politics based on narrow state-interests, nationalism, colonialism and racist ideology, and provides the cornerstone for the foundation upon which a new order could be built. 'The human rights instruments and covenants, as conceptualised in [the] UDHR and other major UN conventions, exhibit common narrative standards based on the widest attainable consensus among nations with diverse cultural traditions, religious doctrines, and ideological systems.'[6] The consensus that the UDHR is presumed to have achieved, reflecting both the content and the process, serves as a basis for the development of the international human rights regime that followed.

> There appears to be consensus within the UN and among states, academics, and human rights advocates that the UDHR is the most significant embodiment of human rights standards. It has been described as "showing signs of having achieved the status of holy writ within the human rights movement." Elsewhere, the UDHR has been described generously as the "spiritual parent" of other human rights documents.[7]

Even where care is taken to acknowledge the limits of the original consensus in 1948 – due to the exclusion of colonised peoples and the objections of Muslim and communist states – the lack of consensus is presented as a political failing, not a failing of the rights regime as such.

> Given that eight countries abstained out of an international body made up then of only fifty-six states – most of which were from the West or politically "Westernized" – the Universal Declaration of Human Rights was thus not born "universal," even for those who took direct

---

of human, which is importantly linked to how we understand the history of the UDHR. See, Johannes Morsink, "The Philosophy of the Universal Declaration," *Human Rights Quarterly*, Volume 6, Number 3 (August, 1984), 309-334. The key point is that that no historical study of the UDHR is innocent, as what we find, and how we understand what we find, depends on what we think human rights are. Johannes Morsink's recent book essential does the opposite of what I want to do – he tries to apply a cohesive philosophy to the contemporary human rights movement, whereas I want to employ the history of the UDHR to undermine the desirability and necessity of such comprehensive accounts. See Johannes Morsink, *Inherent Human Rights: Philosophical Roots of the Universal Declaration* (Philadelphia, PA: University of Pennsylvania Press, 2009).

[6] Nayeefa Chowdhury, "The Quest for Universal Human Rights: A Brief Comparative Study of Universal Declarations of Human Rights by the UN and the Islamic Council of Europe," *The International Journal of Human Rights*, Volume 12, Number 3 (2008), 349.

[7] Mutua, "Standard Setting in Human Rights: Critique and Prognosis," 553.

part in the process of its elaboration. There is no denying, therefore, that those who had not participated in the negotiations and who labeled the Declaration as a "Western product" did indeed have a point. Having had no voice in the negotiations period from 1946 to 1948 because they were, largely, Western colonies, Afro-Asian countries had a valid reason to question the legitimacy of the Declaration's authority over every cultural or political system. To a lesser extent, the same logic applied to the European socialist states, which abstained in the vote despite the inclusion in the document of the social and economic rights they had firmly defended. Nevertheless, all of them quickly lost the grounds for their objections.[8]

Even where failings are admitted, the intention and content is redeemed by the universality the UDHR later attained.

More sophisticated analyses of the UDHR point to the way in which its radical break with traditional attempts to moralise world politics was resisted by both "Western" and "non-Western" states – reading it as the founding document for a new universal movement that is still in the process of being realised. Within this line of thinking overcoming the biases of the state-centric system are key.

Only by reiterating that human rights treaties are constructed outcomes of negotiations that demand change in all discriminatory and repressive cultures, can we stop the selective adoption of human rights and challenge all states that give lip service to human rights but continue to violate the rights of their citizens, support repressive regimes, or uphold corporate interests over human rights and dignity.[9]

While the UDHR itself does not represent a perfect or final consensus, it is the corner stone for a more fully consensual human rights regime. The theme of consensus is carried over to the 1992 UN Vienna Declaration on human rights.[10]

Drawing representative from the existing major cultures, religions, and sociopolitical systems, with delegations from over 170 countries, in a world virtually without colonies, the Vienna Conference was the largest international gathering ever convened on the theme of human rights. Its final document, the Vienna Declaration and Programme of

---

[8] José A. Lindgren Alves, "The Declaration of Human Rights in Postmodernity," *Human Rights Quarterly*, Volume 22, Number 2 (2000), 481-482.
[9] Zehra F. Kabasakal Arat, "Forging a Global Culture of Human Rights: Origins and Prospects of the International Bill of Rights," *Human Rights Quarterly*, Volume 28, Number 2 (2006), 437.
[10] World Conference on Human Right: Vienna Declaration and Programme of Action, United Nations document A/CONF.157/23.

> Action – adopted by consensus without a vote or reservations, although with some interpretive statements – unambiguously affirms, in Article 1 that: "The universal nature of these rights and freedoms is beyond question."[11]

The Vienna Declaration, then, provides the fuller consensus needed to justify a world order based on human rights. Yet, this second moment of consensus essentially confirms the universalism of the UDHR and washes away the imperfections of the original drafting's association with illegitimate political interest.

The contrast to this narrative of consensus and progress is that of imposition and political interest. In this narrative the US, and Western states more generally, used their political dominance after WWII to impose a new international order upon the rest of the world. Importantly, this was resisted by communist states at the time and made possible, at least in part, by the marginalised status of many of the world's peoples still living under colonial rule.

> The narrow club of states in the UN at the time seriously compromised the normative universality of the movement's founding document. Antonio Cassese, the former President of the International Criminal Tribunal for the Former Yugoslavia, wrote that the West imposed its philosophy of human rights on the rest of the world because it dominated the United Nations at its inception.[12]

Therefore, rather than providing a moral basis for this new world politics, the UDHR serves as the first imposition of a distinctly Western and liberal conception of individual rights. The critique runs deeper than an accusation of political imposition. By justifying the content of human rights through an appeal to a distinctly human essence, Western powers infused the new order with their own universalising ideology. 'The official documents of human rights, therefore, embody a specific cultural world-view: that of the modern Western world, but more insidiously, in the very assumption of "human" that this also entails.'[13] The appeal to human nature and human dignity, defined in Western liberal terms, justified the imposition of human rights norms on everyone and also undermined the possibility of opposition or dissent.

---

[11] Ibid., 482

[12] Mutua, "Standard Setting in Human Rights: Critique and Prognosis," 554.

[13] Sonia Tascón and Jim Ife, "Human Rights and Critical Whiteness: Whose Humanity?" *The International Journal of Human Rights*, Volume 12, Number 3 (2008), 318.

It is the moral justification of human rights and the new international order, not simply the act of exercising Western power, which is objected to as an illegitimate imposition.

This critique retains its force even when one does not assign nefarious motives to the drafters of the UDHR. 'Ultimately the assumption of the natural dignity of human beings became part of the UDHR despite the attempts by the drafters to keep the language neutral on this topic.'[14] The central idea here is that there is an irresolvable contradiction in the idea of human rights – it requires an appeal to an essential feature of humanity to justify its universal legitimacy. 'Though the UDHR is based on an essentialist view of the human being, the drafters were aware of the difficulties that come with such a basis. This historical moment reveals the depth of the problem that we are still trying to reconcile.'[15] This understanding can lead to rejections of the human rights regime as such or to calls to limit the consensus to a purely practical one – essentially reiterating Jacques Maritain's famous reflection on a UNESCO sponsored meeting to discuss human rights:

> It is related that at one of the meetings of a Unesco National Commission where Human Rights were being discussed, someone expressed astonishment that certain champions of violently opposed ideologies had agreed on a list of these rights. "Yes", they said, "we agree about the rights but on the condition that no one asks us why." That "why" is where the argument begins.[16]

Whether critics see room for practical agreement on human rights based on the UN framework, first developed in the UDHR, or think that the regime is wholly compromised by its biases, the presumed universality of the UDHR is seen as an imposition – a moment to be overcome not celebrated.

My goal in what follows is to consider the UDHR without relying on either narrative. In part this involves returning to wider historical narratives of human rights and primary texts from the drafting of the UDHR, but more importantly it involves

---

[14] Serena Parekh, "Resisting "Dull and Torpid" Assent: Returning to the Debate Over the Foundations of Human Rights," *Human Rights Quarterly*, Volume 29, Number 3 (2007), 763.

[15] Ibid., 764.

[16] Jacques Maritain, "Introduction', UNESCO, *Human Rights: Comments and interpretations* (Paris: UNESCO, 1948), 1. UNESCO/PHS/3 (rev).

rethinking what human rights are, based on the argument offered thus far in this work. Crucially, seeing human rights from a situated and pluralist framing reduces the importance of consensus. By connecting the aspects of agreement and imposition involved in the drafting and adoption of the UDHR through an alternative theoretical understanding of rights – which appreciates the context in which these human rights ideals were expressed as moral principles and that the declaration of rights was also a political act without final moral authority – we are able to see the historical moment of the drafting and adoption of the UDHR differently. I want to suggest that we can see its significance with different eyes and hear the voices of the drafters with different ears.

The central claim of this chapter is that the UDHR is a key document in the *opening of a debate about human rights* that revolves around two key theoretical issues: (1) the meaning of human dignity and its implications for the substance of human rights, and (2) the effect of human rights claims on the legitimate structure of world politics. To understand why these two issues emerge and why the UDHR responds to them in the way that it does, we need to appreciate the context of the drafting – namely as a particular response to the post-WWII reconstruction, which was issued as a call to uphold the dignity of shared humanity in the face of nationalist and racist ideologies, and as a challenge to the supremacy of state sovereignty as the organising principle of world politics. This importantly did not involve a rejection of the state system, but rather in a call for its moralisation (often primarily through legalisation), as tepid support for a permanent human rights courts, the lack of direct UN reporting mechanisms, the limitation of non-state UN representation and a focus on securing state citizenship demonstrate. Placing the UDHR drafting in context undermines the traditional narratives of a consensus that provided the basis for further progress, as if the guaranteed promise of the future was necessarily contained in the past. An unwillingness to see human rights as part of an ongoing contestation over the meaning of humanity as a political identity and the legitimate structure of world politics lends support to critics who see it as a limited political project imposed by powerful states.

There is support for the view that the drafters saw themselves as providing a foundation to build a new and moral world politics, but there is also significant

evidence that they saw themselves opening up a new discussion on the question of human dignity and the shape it might give to an evolving world politics. I am not concerned with revealing the true intentions of the drafters but pointing to the way their debates exemplified the ambiguous and contested nature of human dignity and demonstrated a self-conscious reconstruction of world politics.[17] I suggest that the drafting debates are an early and influential discussion of human rights, a point of reference and significance, but not a new founding for the final articulation of a moral politics. Looking at the drafting debates suggests that some of those involved had a sense of the contingent and ongoing nature of their task and a realisation that what they accomplished was a temporary settlement in an ongoing contest in an emerging human rights politics – these are the elements I focus on here.

I first look at the historical context that led to the UDHR. Then, I turn to the specific debates that took place during the drafting process concerning human dignity, arguing that this idea was seen to both open up a new politics and to require an appeal to an essential nature. Finally, I turn to the liberal political order that was supported by the UDHR, and highlight the fact that the settlement the drafter's reached was quite consciously seen as a specific and limited response to emerging problems and not the final word on the shape of the international order. In conclusion, I argue that focusing on the contestation over these two aspects of the UDHR opens up an alternative narrative about this important historical moment and provides some measure of credibility for the reconstruction of human rights offered here.

II. Contesting History's Meaning and the Meaning of Human Rights

How one understands the history of the UDHR depends in part on how one understands the historiography of human rights. The history of human rights is a fairly

---

[17] This statement of intent raises the question of the status of the claims made in this chapter – most simply, I do not intend to provide a more authoritative or accurate account of the history of the UDHR. What I do claim is that by approaching that history with a particular perspective, historical events take on a different significance than is generally acknowledged in the narratives surrounding the UDHR. This does not imply that I only find what I am looking for in the historical inquiry, but that the ideas we have about rights will influence what we see and what meaning we grant those historical facts. Importantly, this general approach to the history of human rights allows for surprise, as the historical facts, contestable and partial as they are, have the power to unsettle the concepts and categories with which we approach history – in this regard the work conducted here serves to challenge and refine the understanding of human rights developed thus far.

new project and for this reason has been written by activists, journalists, social scientists and political philosophers as often as it has been written by historians.[18] As a result the story of human rights is often written in broad stokes and results in a narrative with a grand backdrop of moral universalism or the progressive move from natural rights to universal human rights, which gives meaning to the more prosaic character of human rights as a distinct concept developed through a concrete set of events.[19] More rigorous historical works, which examine how the idea and discourse of human rights emerged, as well as the distinctive move to a universal and international conception of these rights after the Second World War, have begun to challenge the grand narrative approach.[20]

Historiography is important for my analysis in this chapter because it goes to the heart of why the UDHR is such an important symbolic moment. Acknowledging the ambiguity of the historical background to the UDHR allows us to appreciate the plural influences at work in the development of human rights. Does the UDHR represent an important step in the ongoing development of the idea of human rights as moral universalism?[21] This is a story of universal rights as the foundation of legitimate political authority, which is very much a story of western political development spreading to the rest of the world.[22] Or is it a disruptive event, one that grows out of a movement advocating for international human rights in opposition to an international order dominated by the inviolability of state sovereignty?[23] Here, the declaration is a chapter in the story of the revision of the European international order, where

---

[18] Kenneth Cmiel, "The Recent History of Human Rights," *The American Historical Review*, Volume 109, Issue 1 (February, 2004). Online at http://www.historycooperative.org/journals/ahr/109.1/cmiel.html, last accessed 25 January 2011.
[19] The most successful and historical of these studies is Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen*. A less historically compelling study with an emphasis on the continuity of moral universalism and human rights is Micheline Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era*.
[20] Exemplars of this approach include Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA and London: The Belknap Press of Harvard University Press, 2010); Lynn Hunt, *Inventing Human Rights: A History* (New York, NY: W. W. Norton, 2007); Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia, PA: University of Pennsylvania Press, 1999); and Jeffrey N. Wasserstrom, et al. (eds.), *Human Rights and Revolutions* (Plymouth: Rowman & Littlefield, 2007).
[21] Lauren's *The Evolution of International Human Rights* is the most comprehensive and convincing statement of this position.
[22] John Charvet and Elisa Kaczynska-Nay, *The Liberal Project and Human Rights: The Theory and Practice of a New World Order*, 42-78.
[23] This account is made in compelling fashion in Reza Afshari, "On Historiography of Human Rights: Reflections on Paul Gordon Lauren's *The Evolution of International Human Rights: Visions Seen*," *Human Rights Quarterly*, Volume 29, Number 1 (2007), 1-67.

sovereignty is tamed through international organisations and treaties that articulate a concept of universal human rights as fundamental to a new international order.[24] Finally, the UDHR is also taken as a milestone in the diverse developments in democratic politics. Tales of popular social movements, working to realise a variety of political goals through universal appeals, suggest that the UDHR emerges from, but is not reducible to, a plurality of disparate histories that can nonetheless be seen as an identifiable democratic tradition.[25] These histories include rebellions that informed the English revolutions,[26] the broad social changes enabling the French and American revolutions in the name of the "rights of man",[27] the Haitian revolution as a distinct but largely unacknowledged contribution to the development of universal rights,[28] the labour movement,[29] the women's rights movement,[30] and the independence movements that lead to decolonisation.[31] These different ways of telling the human rights story each get at important elements of the ambiguous and contested concept of human rights, and which history seems most convincing is, in part, a consequence of how one understands what human rights are. The dominant account, leading to the view of the UDHR as a foundational moment of consensus, has been one of an expansive history of moral universalism that culminates in the utopian project of human rights in the 20th century.[32] Rather than simply endorsing one view of human rights, I want to suggest that the diverse histories that it is possible to tell are a result of the ambiguity of the idea itself, while at the same time suggesting that attending to

---

[24] Afshari, "On Historiography of Human Rights," 6-9. Also, Daniel Philpott, "Global Ethics and the International Law Tradition," in William M. Sullivan and Will Kymlicka (eds.) *The Globalization of Ethics*, 17-37; and Chris Brown, *Sovereignty, Rights and Justice: International Political Theory Today* (Cambridge: Polity, 2002), 19-56.

[25] Lauren, *The Evolution of International Human Right*, 37-70. William Korey, *NGOs and the Universal Declaration of Human Rights: A Curious Grapevine* (New York, NY: St. Martin's Press, 1998), 29-50; and Fuyuki Kurasawa, *The Work of Global Justice: Human Rights as Practices* (Cambridge: Cambridge University Press, 2007), 1-22.

[26] Neil Stammers, *Human Rights and Social Movements*, 40-69.

[27] Lynn Hunt, *Inventing Human Rights.*

[28] Siba N. Grovogui, "No More No Less: What Slaves Thought of their Humanity," *Silencing Human Rights*, 43-60.

[29] David Montgomery, "Labor Rights and Human Rights: A Historical Perspective," *Human Rights, Labor Rights, and International Trade*, eds. Lance A. Compa and Stephen F. Diamond (Philadelphia, PA: University of Pennsylvania Press, 1996).

[30] Diana Grace Zoelle, *Globalizing Concern for Women's Human Rights: the failure of the American Model* (New York, NY: St. Martin's Press, 2000), 9-30.

[31] Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights," 205. Also see, Roland Burke, *Decolonization and the Evolution of International Human Rights* (Philadelphia, PA: University of Pennsylvania Press, 2010).

[32] Moyn, *The Last Utopia*, 1-11.

a history of human rights as democratising claims on social power supports and enriches the theoretical reconstruction I have been pursuing.

Whatever historical framing is used, a distinctive concept of international human rights (as opposed to the idea of "rights of man" or inherent rights claimed in a nationalist context) only begins to feature in modern international law in the late 19th century, most notably in the Geneva Conventions addressing the lawful treatment of wounded and captured combatants, as well as non-combatants and civilians. An explicit reform agenda, aimed at undermining the traditional balance of power system emerges as a significant political force after the First World War, and while there was not a formal human rights treaty, the League of Nations and the International Labour Organisation (ILO) did express concern for the rights of individuals and peoples as an important part of maintaining international peace.[33] In the inter-war period and during the Second World War the idea of human rights, and specifically an international law of human rights, gained real momentum among intellectuals, activists and civil society organisations, particularly in the Anglophone sphere. Numerous associations, including labour unions, religious societies and political campaigners, embraced the idea of an international law of human rights and pushed reluctant states to uphold human rights. For example political groups such as the Commission to Study the Organization of Peace, American Association for the United Nations, as well as religious groups like the Federal Council of Churches and the American Jewish Committee actively worked at the San Francisco conference drafting the UN Charter,[34] and labour organisations were active from early on, including the American Federation of Labor, which submitted a draft declaration to the committee that produced the UDHR.[35] Individually, H. G. Wells, Franklin and Eleanor Roosevelt, Jacques Maritain, W.E.B. Du Bois and Kwame Nkrumah were influential public advocates of human rights of the time, despite ranging in their views from utopian socialism to Pan-Africanism.[36] The idea of human rights gained a degree of acceptability among governments as well, not just among the major Allied powers

---

[33] Lauren, *The Evolution of International Human Rights*, 71-102. See also, Jan Herman Burgers, "The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century," *Human Rights Quarterly*, Volume 14 (1992), 447-477.
[34] Korey, *NGOs and the Universal Declaration of Human Rights*, 30-33.
[35] Morsink, *The Universal Declaration of Human Rights*, 168-169.
[36] Lauren, 147-54.

using them to justify their war with the Axis power.[37] In particular Latin American countries were early supporters of human rights law, as well as former British settler colonies such as Australia and New Zealand,[38] while the ongoing anti-colonial and nationalist struggles were supportive of efforts to affirm the right of self-determination as a central human rights concern.[39]

Focusing on this immediate context, in which the UDHR emerges as the first official and global human rights document, explains the institutional form that the post-war human rights movement took and the lasting significance of the UDHR. As the UN became the primary international organisation for the creation of a reformed international politics, it likewise became the institution within which human rights laws would be drafted and agreed to – though many regional human rights treaties would emerge later, they very much took their cue from the UN. As important as it was, this relatively new movement to institutionalise international human rights through international organisations that could reform and tame the older system of sovereign states, it was not an independent or comprehensive development. The modern human rights regime, from the beginning, was contested and ambiguous reflecting the broad notion of equal universal rights, as well as rights to self-determination that served as the basis of legitimacy for the representative nation-state, along with statist concerns to preserve order and protect sovereignty. Along with these traditional understandings of human rights, the discourse that emerged around universal emancipation supported and enabled a plurality of political movements that were potentially more disruptive, highlighting deep-seated and wide-spread patriarchy, racism and imperialism as limitations on what individual and collective rights that preserved so much the status quo could achieve. These broadening notions of universal right, both radical and reformist, were in conflict with the prevailing notion of sovereignty. The significance of the state sovereignty ideal was reflected in the limited power of human rights protections within the UN charter and the reticence of states to accept the authority of institutional mechanisms for human rights protection that operated above the state level.

---

[37] Ibid., 136-46 and 154-65.
[38] Ibid., 166-77.
[39] Morsink, 92-129.

This incoherence of the emergent human rights regime is often taken to reflect the persistent force of statist structures and the influence of politics, but this is only because it is assumed that true human rights will be coherent, indivisible even, rather than ambiguous and at times working at cross purposes – it is this reading that leads Samuel Moyn to argue that human rights do not come into their own until the end of the 20th century.[40] This is true so far as human rights are defined in terms of a universal utopian vision, as well as an institutional regime with relative coherence and mechanisms of implementation, but again pluralising the idea of human rights, and focusing on them as an ethico-political tool for responding to concrete social problems upsets this logic.

The dominant story of both the post-war human rights movement and the founding of the UN is one of responding to the tragedy of the Second World War. While I do not want to promote the idea that the post-war order was a great victory for the forces of justice and order – a political mythology that is challenged by the injustices sustained and created by this new order[41] – I do want to suggest that the war was the vital political and social event that gave the human rights movement substantial force and made the UDHR a possibility. Certainly, there had been many destructive wars before and the First World War had similarly shaken the old Westphalian faith, but the breakdown of international political order in the Second World War was more extreme, and importantly only part of a massive social disruption. The failure was a social one, in the broadest use of the term, as the Western world found its technology turned against life itself with a staggering ferocity, its moral superiority proved an illusion and its institutions of political authority under siege at home and in the colonised world. The contributions of women and minority groups in the war effort created populations with broader experience and knowledge, and with newly enabled desire to see their sacrifice redeemed in domestic political changes. Politically the centres of power had shifted to the US and the USSR, the process of decolonisation

---

[40] Moyn, 173-175.
[41] Mutua, "Standard Setting in Human Rights: Critique and Prognosis," 552-7 and 619-29. Mutua provides a critical account of the immediate post-war settlement and an overview of persistent challenges to the UN human rights regime as well as an account of problems emerging from increased international organisation.

was underway (despite the insistence of men like Winston Churchill),[42] the project of rallying the world in a fight of freedom against tyranny inspired those subject to different tyrannies to continue their fight – including African-Americans, Black South Africans, the working class throughout Europe, Latin American states and nations still struggling with the ongoing imperial ambitions of the US – and the old international order was consciously being remade for this world of new powers and new states. 'Everything, recalled Sutan Sjahrir of Indonesia in *Out of Exile*, "was shaken loose from its moorings. … All layers of society came to see the past in another light."'[43]

The rights tradition was certainly not the only political and ethical tradition that could have responded to the question of political legitimacy created by the horrific disorder of the Second World War – and in fact the ambiguous relationship between socialism and post-colonial nationalism emerges because these ideologies were not compatible with the liberal rights tradition that defined dominant understandings of human rights in the post-war period. Universal rights were the currency of social and political reform in Western European countries – democratic revolutions were fought in the name of the civil and political rights of man; the working classes struggled for voting rights, labour rights and social welfare; minorities claimed rights of self-determination and demanded equal rights under the law; women struggled for emancipation using the vernacular of rights.[44] This is not to suggest that all struggles for social change were expressed in a language of universal right, but it is important to note not only the dominance of the rights tradition within internationally dominant states, but also that the idea of universal human rights spread and pluralised rapidly. Where white, Christian, middle-class, property owning men demanded political and civil rights in one social revolution, suddenly Catholics, Protestants, Jews, Women, minorities and the lower classes were making their own claims in the name of human

---

[42] Winston Churchill was quoted as saying, 'Gandhism and all it stands for must ultimately be grappled with and finally crushed,' in Louis Fischer, *Gandhi: His Life and Message for the World* (New York: Mentor, 1982), 135.
[43] Lauren, 149.
[44] Ishay, 85-172. Also, Afshari, 9-35, though he is keen to point out the difference between these domestic and single issue rights movements were qualitatively different from the idea of human rights. On the development of women's rights, see Arvonne S. Fraser, "Becoming Human: The Origins and Development of Women's Human Rights," *Human Rights Quarterly*, Volume 21, Number 4 (November, 1999), 853-906.

dignity or God given rights.[45] A similar process began during and after the Second World War among disadvantaged groups in Western states, and among colonised peoples – especially when the rhetoric of human rights became a rallying cry for the Allied power in their mass mobilisation for the war effort.[46] The implication of this is not a defence of a liberal human rights triumphalism. Human rights movements have the power they have in light of the disruptions of social order in which they can act as both cause and effect, but their success is in no way ordained or presumptively always for the better. The development of human rights has often been played out as a struggle of the oppressed or weak against the dominant and strong, which is often obscured, but rights are not the necessary language of such struggles and human rights are often used by dominant powers to reinforce their legitimacy. The dissident position is usually worked out from a perspective of exclusion or marginality and always fragile, as established powers are able to co-opt or rollback social change.[47]

The actual drafting of the UN Charter challenges any sense that a utopian vision of peace and justice was the dominant one for post-war international politics. What is surprising is that the call for universal rights was given as much space in the charter as it received. In San Francisco, however, the influence of smaller powers, prominent individuals, emerging NGOs and public opinion proved sufficient to give the idea of universal rights an ambiguous but prominent place in the new charter. Along with the efforts of NGOs, a conference of twenty-one American states held before the San Francisco convention expressly opposed the Dumbarton Oaks agreement.[48] Three of the participants in the Inter-American Conference on War and Peace – Cuba, Chile and Panama – also provided early drafts for a human rights declaration they hoped to see taken up the UN.[49] The rights movement, however, was marginalised in the structure of the new agency – relegated to the responsibility of Economic and Social Council it seemed highly unlikely that human rights would emerge as an institutional and political force sufficient to challenge the power of the five permanent members of the Security Council, who tended to defend the imperatives of state sovereignty.

---

[45] Hunt, 146-75. This process is very well illustrated in Hunt's analysis of the case of the French Declaration of the Rights of Man.
[46] Lauren, 147-154.
[47] Stammers, *Human Rights and Social Movements*, 160-189. For a similar analysis also see Upendra Baxi, *The Future of Human Rights* (Oxford: Oxford University Press, 2007).
[48] Lauren, 170.
[49] Morsink, 2.

The drafting of the UDHR started shortly after the UN charter came into effect and took place over two years. The initial process was characterised by a great deal of disagreement over what sort of action the new UN Human Rights Committee, created within ECOSOC, should undertake. Recommendations were made for a declaration of common principles, for a legally binding international bill of rights and even for a complementary international human rights court.[50] To address the question of what kind of document or institution to produce for the UN system, UNESCO conducted a survey of prominent thinkers from around the world for their thoughts regarding human rights.[51] Along with the UNESCO project the Drafting Committee of the Commission on Human Rights was inundated with suggestions and drafts for an international bill of rights.[52] Latin American governments submitted important drafts, with the draft from the government of Panama proving influential, and also the American Law Institute produced a draft declaration and a number of important studies related to the issue.[53]

The declaration itself is properly seen as primarily the work of two men. John Humphrey, an international lawyer from Canada, who served as secretary for the Commission. His draft drew on the hundreds of pages of material submitted to the Commission on Human Rights, a survey of existing national constitutions and included an extensive bibliography of sources.[54] René Cassin, the French representative and an international law expert of reputation, then used this draft to produce the document that was used in further deliberations. The final document is structured so that key principles that apply to the whole document, namely its universal and equal application to all people regardless of their political status, appear first. The different rights are then articulated in groups, with political, civic, economic, social and cultural rights all appearing in turn. The final provisions then

---

[50] Ibid., 12-20.

[51] Mary Ann Glendon, "Knowing the Universal Declaration of Human Rights," *Notre Dame Law Review*, Volume 73, Number 3 (1998), 1155-1157. The resulting document, *Human Rights: Comments and Interpretations*, contains a broad survey of views and an account of the limitations, prospects and understanding of natural and human rights at the time.

[52] Morsink, 1-4. Lauren, 199-211.

[53] Morsink, 5-6. Also, for the American Law Institute published its work as William Draper Lewis and John R. Ellingston (eds.), "Essential Human Rights," *The Annals of The American Academy of Political and Social Science*, Volume 243, January 1946.

[54] Morsink, 28-35. This account has served to establish Humphrey's vital role in the drafting in contradiction of Cassin's own assertions that he was the chief author.

underline the intentions of the document by stating a general right to a secure and peaceful international order.[55]

Initial deliberation took place in the Drafting Committee and its working groups, before being considered by the larger Commission on Human Rights and the Economic and Social Council. Each article was extensively debated and most significantly revised before the UDHR reached the General Assembly for a vote in 1948. Further changes resulted from the deliberations in the General Assembly as well. While the document that emerged was altered in many ways it retained its basic structure and was widely accepted as a needed response by the UN to the political horrors of the recent war. Nazi aggression, the Holocaust, the imperial ambitions of colonial powers old and new, the war crimes tribunals in Nuremburg and Tokyo, the slow deconstruction of colonial structures all figured into the political imperative surrounding the declaration.[56] Human rights advocates all too often sell the General Assembly vote as an example of unanimous consensus, and while it is the case that no state voted against the UDHR, there were a number of important abstentions. The emerging socialist bloc in Eastern Europe abstained – despite their role in negotiations, never wholly supportive but not completely hostile to the project – largely out of an opposition to the emphasis of civil and political rights in the UDHR that challenged the state's authority. Other abstentions were included Saudi Arabia, for whom the right to religious freedom was unacceptable, and South Africa, who took issue with the challenge that the strong and clear statements against discrimination presented to the apartheid regime.

With this broad historical setting in place, I want to turn to the details of the debates that went into the drafting of the UDHR. In what follows I examine the importance of the idea of an essential human dignity to the UDHR, suggesting that it should not be understood as either a moment of consensus or an illegitimate imposition. I then turn to the political reforms suggested, rejected and embraced in the UDHR drafting in order to consider the implications of human rights as an idea that is transformative for world politics. Again, I want to avoid easy conceptual distinctions, in this case between cosmopolitan and national orders, and emphasize the situated

---

[55] Glendon, "Knowing the Universal Declaration of Human Rights," 1162-1173.
[56] Morsink, 36-91. For a broader overview see Burgers, "The Road to San Francisco," 447-477.

nature of the drafters' response to the post-war era and the possibilities human rights open up for reconstructing political order today.

III. Human Dignity: Impartial Imperative or Situationist Ideal

> ARTICLE 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

The importance of the idea of human dignity is key to interpretations of the UDHR's significance. Parekh sums up the issue, saying 'Ultimately the assumption of the natural dignity of human being became part of the UDHR despite the attempts by the drafters to keep the language neutral on this topic.'[57] Supporter and critic alike agree that "human dignity" in the UDHR points to essential or natural human characteristics that justify rights, where they part company is on whether a neutral and consensual definition was achieved or is possible at all. There are two problems with this understanding. First, the focus on a neutral account of dignity, or its absence, is required by a particular way of understanding rights – as has been argued in earlier chapters, a moralistic understanding of rights construes them as moral principles that determinately limit the boundaries of legitimate politics. If we reject this view and look at the articulation of human rights as contingent ethical ideals intended for specific contexts, then the contestation and ambiguity of human dignity is as important as the supposed consensus on an essential meaning. This highlights the second problem with conventional understandings of human dignity in the UDHR; they only focus on particular aspects of the drafting process: those bits favouring either a narrative of achieved or imposed consensus, as one's inclination demands. In this section, I focus on why the drafters thought human dignity was so important to the UDHR and the future of human rights, as well as the contestation of that meaning – this leads me to argue that rather than achieving a consensus on the essential features of human nature, the UDHR is a key early moment in an ongoing discussion of human dignity in the context of world politics.

---

[57] Parekh, "Resisting "Dull and Torpid" Assent," 763

Anyone reading a history of the UDHR or the transcripts of the drafting process will be struck by how much time was spent suggesting, debating and revising individual articles. Yet, an important philosophical conversation surrounded this more practical work and constantly re-emerged as a point of discussion. As P.C. Chang, the primary Chinese representative, stated in a meeting of the Commission on Human Rights intended to define their task, 'I am afraid when we are asserting rights, rights, and rights, we are apt to forget the standard of man. It is not merely a matter of getting things, getting things, but also: what is the objective of being a man?'[58] Contrary to the idea that dignity was a necessarily vague concept, the discussion of human dignity was seen by even the less philosophical drafters, such as Coronel Hodgson represented Australia, to be a vital part of the declaration, as it served as the justification in the preamble it needed to amount to more 'than a series of pious objectives.'[59] Despite trying the patience of some, in particular Hansa Mehta who represented India, there was a clear sense that these philosophical issues mattered. Charles Malik, of Lebanon, responded to Mehta's impatience by underlining that ideology informed all thought and insisting that the Committee on Human Rights deal with such matters in the open.

> Then, the honourable representative from India said that the Charter already contains a mention of human dignity and worth and that we should not enter into any ideological maze in our discussion here. Well, unfortunately, whatever you say, Madam, one must have ideological presuppositions and, no matter how much you fight shy of them, they are there and you either hide them or you are brave enough to bring them out into the open and see them and criticize them. Furthermore, it is precisely my intention to give meaning to that vague phrase, human dignity and worth, which is used in the Charter to give it content and, therefore, to save it from hollowness and emptiness.[60]

The discussion of dignity was important in revealing the different views of why human dignity justified the human rights being declared, but it did more than that. By focusing the drafters on the task of, as Chang put it, 'making the standard of man

---

[58] Verbatim Record of 31 January 1947, Commission on Human Rights (Charles Malik Papers, Library of Congress, Manuscripts Division). All references to verbatim records are taken from this source.

[59] Coronel William Hodgson, Verbatim Record of 9 June 1947, Drafting Committee.

[60] Charles Malik, Verbatim Record 4 February 1947, Commission on Human Rights. Also, Charles Malik, *The Challenge of Human Rights: Charles Malik and the Universal Declaration*, Habib C. Malik, ed. (Oxford: Charles Malik Foundation, 2000), 37.

respected,'[61] the focus on human dignity clarified the problem they were addressing. The declaration of these new human rights was intended to affirm universal moral principles for international politics based not on the authority of states but the value of the people of the world. Early on Chang grasped the novelty of what they were doing, saying, 'we are dealing with something which has not been dealt with before, namely the international aspect of equality.'[62] The awareness of their work as a response to a particular situation was widely shared, especially when discussing the foundational notions of human dignity.

While it possible to overstate the importance of Nazi atrocities to the UDHR drafting,[63] the wider context of the Second World War was the immediate backdrop. In particular, there was a sense that the defence of human dignity provided by a new human rights institution was called for by the mistreatment of, and extreme demands placed on, individuals.[64] Assistant Secretary General, Henri Laugier, opened the 1st meeting of the Commission on Human Rights with a clear evocation of this purpose:

> With your boundless devotion to the cause of human rights and to the cause of the United Nations, let us here gather strength for our fight from the recent memory of the long darkness through which we have come, where tens of millions of human beings died so that human rights might stay alive, from the memory of all those men and women who have found in their dignity alone the strength to sacrifice their lives in order, obstinately, to proclaim, amidst the depths of surrounding darkness, the presence and the permanence of the stars.[65]

The work of defending human dignity was seen as a deeply moral task demanded by concrete political tragedy. In particular, there was a sense that a common humanity had to be affirmed and that individuals protected from the power of the state. Cassin expressed both of these commitments often:

> We have seen and lived through a period when human society has been practically destroyed by the application of a concept of race,

---

[61] Verbatim Record of 31 January 1947, Commission on Human Rights.
[62] Verbatim Record of 4 February 1947, Commission on Human Rights.
[63] Susan Waltz, "Universalizing Human Rights: The Role of Small States in the Construction of the Universal Declaration of Human Rights," *Human Rights Quarterly,* Volume 23, Number 1 (2001), 53.
[64] Lauren, 204-205.
[65] Verbatim Record, 27 January 1947, Commission on Human Rights, 27 January 1947.

or concept of the nation, or concept of the volk, I will call it; and it is a most important fact that we should have lived to see this possibility of men crushing and denying the rights of man, both as communities and as individuals. I think we must insist upon this fact: that we must finally reach the fusion of the idea of man as a community and man as an individual.[66]

The State, in other words the collectivity, has asked the maximum from millions of people, the greatest thing they could offer - their lives.[67]

This focus on the dangers of the totalitarian state, while clearly resonant with the liberal tradition, was drawn from the specific context the drafters were responding to, in which states had turned against their citizens in a shocking way.[68] Further, the sacrifice demanded of citizens by states during the war also played a key role in understanding both rights to membership and welfare provisions as central to human dignity.[69] This is important because the conception of human dignity under discussion was not an attempt to derive abstract philosophical principles, but practical moral reasoning at work, in which the drafters sought to articulate a moral ideal to guide future action. Human dignity was debated against a backdrop of real offenses – all encompassing interstate war, mass slaughter, enormous civilian casualties, nationalist and racist ideology, statelessness, economic depression – and the debate reflected that situation even as it revealed an persistent pluralism of views.

Malik, Chang and Cassin were the primary representative that developed the ideas that framed the drafting process.[70] This, however, did not mean they were of one mind on the meaning of human dignity. In an early Human Rights Committee meeting, Malik[71] focused on the idea of conscience as the ability to change one's mind:

---

[66] Verbatim Record, 31 January 1947, Commission on Human Rights.

[67] Verbatim Record, 23 June 1947, Drafting Committee.

[68] This is a fundamental tension that emerges in later human rights development once the concerns of post-colonial states to ensure self-determination gained prominence in both UN conventions on human rights.

[69] This connection is made most strongly by René Cassin (France) and Hernán Santa Cruz (Chile). Verbatim Record, 23 June 1947, Drafting Committee.

[70] Glendon, "Knowing the Universal Declaration of Human Rights," 1157-1159. Not only were they the most philosophically inclined members of the drafting committee, the three men also were part of the working group that did the detailed work of preparing the actual draft. For a detailed account of the drafting process see Morsink, *The Universal Declaration of Human Rights*, 4-35.

[71] Charles Malik was the youngest member of the Commission on Human Rights and was a novice in diplomatic matters, having only recently been drafted as the representative for Lebanon – leaving his previous position as a philosophy professor. While Malik was a Christian, he also strongly identified as

> If we have any contribution to make, it is in the field of fundamental freedom, namely, freedom of thought, freedom of conscience and freedom of being. And there is one point on which we wish to insist more than anything else, namely that it is not enough to be, it is not enough to be free to be what you are. You must also be free to become what your conscience requires you to become in light of your best knowledge. It is therefore freedom of becoming, of change that we stress as much as freedom of being. [72]

This lead him to focus on the protection of persons from the pressure and power of the modern state, to accord a special place to the organs of civil society in which we make our common life, and the preservation of a space for free thought, opposition and even rebellion against established authority.[73] Further, he was among the strongest advocates of human rights because he thought they ensured that the people determined the state, which not only reflected his concern to protect individuals from the state, but also to protect small states from imperial powers. 'We intend to say that the people are active and take the initiative in the determination of the State. It is not as though you come to the people, offer them something, and they consent to it. It is our intention that originally the people, themselves, take the initiative in determining what the state should be.'[74] So, while it is accurate to point to Malik's emphasis on 'natural rights,'[75] we see that his understanding of their justification was hardly orthodox and attempted to preserve what he saw as valuable in human being *and* becoming.[76] There is a tension in Malik's view, or perhaps blindness, in asserting that

---

an Arab and was particularly concerned with the special threats faced by small states in an international society dominated by powerful states and imperial powers. Educated in the USA and Germany, he completed his PhD under the supervision of Martin Heidegger and Alfred North Whitehead. While he was a strong supporter of human rights and an opponent of Soviet communism, he was not a conventional liberal or westernised elite – he remained committed to Arab independence and saw himself as a fundamentally religious figure. For more on Malik's biography and thought see Joe Hoover, "Remembering Charles H. Malik" *The Disorder of Things*, 9 February 2011, http://thedisorderofthings.wordpress.com/2011/02/09/remembering-charles-h-malik/#more-1873 (accessed 29 March 2011).

[72] Malik, *The Challenge of Human Rights*, 16-17.

[73] Ibid., 26.

[74] Verbatim Record, 23 June 1947, Drafting Committee.

[75] 'Obviously, the very phrase means that man in his own essence has certain rights; that therefore, what we are going to elaborate must answer to the nature and essence of man. Therefore, it must not be accidental. It certainly must not be changing with time and place. The Bill of Rights must define the nature and essence of man. It will reflect what we regard human nature to be.' Malik, *The Challenge of Human Rights*, 58.

[76] In particular, he was keen to emphasize that he was not defending an atomistic or pre-social individualism, but rather concerned reconstruct the dignity of persons in light of the power of social and political orders. 'It can be shown that as the masses rose, man, humanity necessarily declined. When you become an atom in a massive ocean of identically like atoms, without structure, without distinction, without ontological differentiation of function, then you lose your sense of essential

the most important freedom to protect is a person's freedom to change and become, while also asserting that we can build a social order upon man's essential nature that does not limit that very freedom. Yet, despite this rhetoric of human nature, Malik continuously put the protection of the freedom of the person into the context of his times.

> Who is this person? This person, Mr President, is the living, dying man who suffers and rebels, is scared, is often undecided, makes mistakes, the man who thinks, hesitates, decides, and gossips, and who needs to be lifted when he falls. It is the being even who blushes, laughs, and changes his mind when he knows better. This being, Mr President, in his own personal dignity and self-respect is in danger of being drowned and obscured by political and ideological systems of all sorts.[77]

Whatever the consistency of his metaphysical beliefs about human nature, Malik's defence of human rights was based on an opposition to forms of social order, both domestic and international, that failed to respect persons as feeling, thinking and creative beings increasingly subject to the power of the nation-state, at the cost of intermediate ties, and devalued by contemporary conditions and ideologies – whether individualist or collectivist. This view was firmly rooted in his experience of that time.

Along with Malik, P.C. Chang[78] was the most philosophically inclined participant. In addition to clearly articulating the task the drafters had before them in terms of human dignity, Chang also made important contributions to the idea as it developed in the UDHR. His primary thought was that conscience, as an essential aspect of dignity,

---

inalienable human individuality. The international work of human rights and fundamental freedoms is a faint effort to recover this lost individuality, to the end that the individual person should realize his own natural dignity, namely the rights and liberties with which he, as a man is endowed by nature.' Malik, 135.

[77] Ibid., 60.

[78] Peng-chun Chang was originally an educator, playwright and literary critic, who earned a doctorate at Columbia University under the supervision of John Dewey. He was involved in the fight against Japan after they invaded China in 1937 and it was during and after the war that he was recruited to the Chinese diplomatic service, first as a spokesperson charged with disseminating information Japanese atrocities, then later as a ambassador to Turkey and Chile. He was known to be a strong advocate of Chinese culture, keenly interested in cross-cultural dialogue and a committed secularist. Like Malik he was concerned to establish greater equality between states and was deeply effected by Western and Japanese dominance of China. For further details see Glendon, *A World Made New*, 33 and 132-133. Further details on Chang are can be found in Ruth H.C. Cheng and Sze-Chuh Cheng, eds., *Peng Chun Chang 1892-1957: Biography and Collected Works* (Privately Published, 1995).

involved what he called 'two-man mindedness.'[79] The idea of two-man mindedness implies sympathy as fellow feeling, but also something deeper and more demanding, what Chang described as 'extending our consciousness to others.'[80] This involved both recognition of mutual duties between all human beings and a respect for the values of others. 'The definition of man is to be human-minded – namely, that whatever he does, he thinks of the other person as if the other person were in his place.'[81] This entailed not only the acknowledgment of a common humanity, but an insistence that this enabled forms of understanding that could cross cultural barriers and should inspire consideration for others. Chang, for example, was instrumental in insisting that reference to a monotheistic deity be kept out of the document, as this would undermine the potential universality of the document.[82]

The idea of two-man mindedness develops dignity in a different way than Malik's notion of conscience, as Chang points to an orientation that individuals should, and can, take toward their relationships with others. This involves, as he said, 'the feeling of the sense of human dignity in the individual, that is, as an individual feels when he thinks of equality. He feels that he is as good as anybody else.'[83] Yet, along with that the individual recognises the perspective of others and adjusts his behaviour in light of social duties and obligations. Therefore, along with asserting the freedoms and rights of the individual, the consideration of human rights requires determining the social ties and obligations that exist internationally. The practical consequences of this in the UDHR included recognition that individuals have obligations to the community and that states retain a degree of privilege as the political embodiment of distinct ways of life, which was reflected in several articles and shared by a number of those involved in the drafting process. Both C.H. Wu, the alternate Chinese representative, and Ronald Lebeau, from Belgium, supported Chang's focus on both individual freedoms and duties.[84] 'In the eighteenth century the human being was the individual whereas in our opinion, the human being nowadays is the person who participates in

---

[79] Verbatim Record, 17 June 1947, Drafting Committee. At the suggestion of Wilson, Chang attached his idea to the word "conscience".
[80] Ibid.
[81] Verbatim Record, 31 January 1947, Commission on Human Rights.
[82] Glendon, *A World Made New*, 47.
[83] Verbatim Record, 4 February 1947, Commission on Human Rights.
[84] Verbatim Record, 1 February 1947, Commission on Human Rights.

the normal life and existence of society.'[85] Also, Romulo, from the Philippines, shared a concern to 'take into account all the different cultural patterns there are in the world, especially in respect to popular customs and legal systems.'[86]

The French representative René Cassin[87] was the third major intellectual figure among the drafting committee. While he often expressed his agreement with both Malik and Chang, his own words reveal that whatever intellectual alignment he may have had with these men was coloured by his own particular views. More than perhaps any other participant Cassin had a sense that the UDHR must respond to the horrors of the Second World War and ought to ensure dignity by affirming the oneness of humanity and guarantee the legal personality of every individual:

> But the fundamental that there is a unity in human society, society composed of human beings which can be compared to one another, which has the same natural aptitudes whatever this would be, this is the most important thing which must be placed in our resolution.[88]

> This is a point which we have not yet examined and I think it is appropriate. Since we are studying the fundamental rights of man, to state that not only must everybody be free physically, but to state also that every human being normally possess rights and obligations, and, therefore, has "legal personality."[89]

While he affirmed Chang's notion of two-man mindedness by asserting that 'that idea of reciprocal duties is at the foundation of the concept of fraternity,' one wonders if it contained the same sense of struggling to extend one's consciousness to understand the perspective of another. Cassin's further remarks suggest he was less aware or concerned with how a universal account of human dignity might impinge upon others. The violent particularlisms that characterised the Second World War were at the

---

[85] Ronald Lebeau, Verbatim Record, 1 February 1947, Commission on Human Rights.
[86] Carlos Romulo, Verbatim Record, 1 February 1947, Commission on Human Rights.
[87] René Cassin was a secular French Jew who had served as a soldier in WWI before studying the law. WWII interrupted his career as a professor of law when he went to England to join De Gaulle's resistance and served as the general's chief legal advisor. His support of human rights was influenced by the murder of many family members by the Nazis and his conviction that the French rights tradition, focused on the equal legal standing of all citizens should to be expanded to the international levels. See Glendon, *A World Made New*, 61-64. Further details can be found in Marc Agi, *René Cassin 1887-1976* (Mensil-sur-l'Estrée: Perrin, 1988).
[88] Verbatim Record, 4 February 1947, Commission on Human Rights.
[89] Verbatim Record, 20 June 1947, Drafting Committee.

forefront of his mind and while he argued that 'it is quite obvious that we cannot, in our International Organization, affirm or assert concepts or ideas which would be special to any one nation or to any one category of man,'[90] he expressed little doubt that each individual must hold their human rights as a recognised legal person before a representative international political authority.

It is perhaps Cassin's familiar grounding in a liberal universalism that has lead many to see the entire UDHR as a wholly "Western" project. This does a disservice to Cassin's thought, as he was remarkably cosmopolitan in his view, asserting that human rights break open the state, exposing it to scrutiny and interference. Further, he modulated the very French idea of "Fraternity" into a global register, looking beyond any republic to a human community that must be protected through the establishment of legal rights. Other liberal members also backed up this individualistic view. Charles Dukes, the British representative, stated that 'the British conception of human rights rests fundamentally on a belief in the dignity and importance of the individual man. It is a conception which the United Kingdom will always defend.'[91] Dr Jose A. Mora, from Uruguay, echoed this sentiment, arguing that the individual should be placed at the centre of international law in order to undermine the absolute authority of national sovereignty.[92] Likewise, Eleanor Roosevelt spoke in individualistic terms, though it is worth noting that she, like the other "liberal" representatives, were concerned with economic and social rights as well as civil and political ones, taking it to be central to the dignity of individual that a person had health, welfare, food and income.[93]

It becomes clear in examining the debates over the drafting of the UDHR that there was no simple consensus on what dignity meant and that the contesting ideas informed the resulting list of rights – as well as further plans for institutionalisation – in different ways. Yet, this contestation did not result in the victory of a single

---

[90] Verbatim Record, 31 January 1947, Commission on Human Rights.
[91] Ibid.
[92] Ibid.
[93] The tenor of liberal or "Western" political thought at this time was very different that what we associate with later forms of philosophical liberalism or political and economic neo-liberalism. The UNESCO survey on human rights, *Human Rights: Comments and interpretations*, illustrates this broader intellectual background well, as does the collection on human rights from the American Law Institute, published as "Essential Human Rights," *The Annals of The American Academy of Political and Social Science*.

ideological view or the creation of a practical but empty consensus. Instead, we see a vigorous debate in which key lines of thought emerge that will play crucial roles in the development of human rights. There was an agreement that the Second World War, taken as a diverse whole, revealed a grave threat to human beings in the forms of deprivation, war, murder, expulsion and abuse – and, importantly, the state was inadequate to the task of preventing these abuses, and was in many cases a direct perpetrator of them. This lead to a common commitment to a shared humanity, yet even this common picture of human dignity was painted in many hues. Further, there was a shared sense that new political institutions were needed to protect people from the power of the state, again for different reasons and leading to different suggested reforms, examined in more detail in the next section.

Attending to the ambiguity of these early debates gives us more than a richer history of the ideas that motivated the early stages of the human rights project, they also provide an impetus for reconsidering how ethical and political theory relates to such events. It is all too common to read the lack of consensus as a failing, or part of a process that, ideally, will lead to consensus – we see this tendency because of how we understand the relationship between moral principles and political action. The effort to capture a sense of the debates over human dignity highlights a situated approach to ethical theory and allows us to understand the contestation we see in ethical terms. However, it is important to keep the political aspects in mind, as a closer engagement with the debate over the UDHR provides us with a productive example of how human rights are understood and deployed in world politics, and how it can lead to entrenched ideas and powers being articulated in universal terms without critical reflection. Therefore, keeping an eye on the always-political content of ethical reasoning encourages a critical response.

A number of contemporary questions emerge from revisiting the debate over human dignity. What does human dignity mean now? Can the plural and contestable accounts of humanity lead to single and coherent set of institutions? These are key questions. For now, I only want look to the way these questions alter the debates over human rights: moving away from the assertion or rejection of an essential humanity to a contested understanding of the moral significance of shared humanity, which is expressed in various forms. And institutionally, how should we judge the

contemporary international human rights regime? Or even further, should we be looking to other spaces of human rights activity? These lines of thought and openings for inquiry are given further examination in the final chapter.

IV. Human Rights' Dreams Deferred: The Limits of Reconstruction in World Order

> ARTICLE 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

The second aspect of the drafting I want to discuss is the self-conscious reconstruction of the structure of international politics that the participants took on. This was an unavoidable feature of their work as articulating an international set of human rights implied that new demands would be placed on all states. Therefore, the foundational distinction within legal and political thought between domestic and international spheres was thrown into question. Even though these elements of the debate were necessary to the idea of human rights, they did not lead to any one necessary set of reforms. Recognising the contingency in the shape that the reconstruction of international politics took is an important insight that speaks against seeing the legacy of the UDHR as either a progressive dream of a legalised global order too long deferred or evidence of the inevitable persistence of a state-centric order.

Conventionally, the story told about the place of human rights in the immediate post-war era is one of political weakness. Not only was the inclusion of human rights in the charter of secondary concern to the major powers, but also the emerging Cold War rivalry marginalised the importance of human rights within the larger UN organisation,[94] until the promise of human rights was finally realised after the end of the Cold War. These historical accounts are accurate so far as they go, but they are importantly retrospective and I am primarily interested in how the drafters understood their role in reconstructing international politics, separated from their eventual effectiveness. Also, this conventional account assesses the place and importance of human rights from the perspective of a particular set of state representatives, both

---

[94] Lauren, 233-270.

within nation-states and acting as representatives within international organisations.[95] Returning to the original debates over the UDHR give us an insight into the contest over the role that the UN would have, and the specific challenge that was issued to state authority. Importantly, it places the progressive view of human rights under suspicion by emphasising the situated context of reconstruction and the contingency of particular successes and failures. The appeal to the UDHR as a founding document to a still emerging international human rights regime is one-dimensional and ignores plural lines of possible development. Revisiting these debates, however, also undermines an account that sees human rights as marginal to international politics or only the tool of powerful states – the conceptual power of human rights is in a sense beyond such easy control, even as the lines of development are ambiguous and plural.

Perhaps the most surprising thing about the debates over human rights, especially given conventional accounts of human rights as marginal or subservient to more statist concerns, is that everyone involved acknowledged that declaring and institutionalising human rights was a necessary part of the post war reconstruction. Also, there was a clear recognition that such a reconstruction would undermine state sovereignty and that the international community had a newly articulated duty of concern for individuals. These facts were seemingly taken as given starting points. Yet, there was a great deal of opposition over what the practical implications of these changes were, and how far the traditional international order was, and should be, undermined by a declaration of human rights. Important points of contention were on the necessity of an international court of human rights, the legal implications of a binding convention, the direct reporting of human rights abuses to the UN and whether UN human rights institutions would be staffed by state representatives or individuals unrestrained by their role in state governments.

Hodgson and Mehta were strong advocates for a human rights court. They saw that such a court was essential to establishing an effective international bill of rights

---

[95] This is especially important in understanding the modest progress made in reforming international politics by the UN human rights institutions, as the representative drafting the UDHR were working during an exceptional time when it was not clear what standing the UN or the new human rights mechanisms might have within the international order. This was true even of the representatives, who were given unusual freedom as the UDHR drafting started – in fact the status of the representative on the drafting committee was a key issues raised by the Soviet delegation, who insisted that individuals represented their states directly and were not authorised as independent representatives within the UN.

backed by political institutions that superseded the state.[96] Cassin, likewise, was a strong advocate of legal institutions that would institutionalise the legal personality of the individual. During the first meeting of the Drafting convention it was decided that the work of the Commission on Human Rights should focus on three tasks: drafting a declaration of principles, drafting a binding convention, and finally drawing up provisions for the implementation of human rights – this final task was the least successful.[97]

The opposition to such a court or strong independent institutions for enforcement was varied. It is easy enough to read the opposition of the UK, USA and USSR as political opposition intended to preserve their power. Yet, in each case there was a principled case against such a court. The USSR was most opposed. They not only opposed the creation of international legal institutions that would place the individual above the state in international law, but cogently pointed to the danger that such a move could potentially institutionalise a standard of civilisation that recreated the logic of imperial and colonial authority.[98] They were hardly alone in their concern that a strong international regime would be dominated by Western powers, potentially threatening international stability and undermining the right to self-determination. Chang and Romulo were both hesitant to embrace a comprehensive international legal regime, and Malik was keen to emphasize the protection granted to small states by emphasising the right to self-determination for peoples in the Declaration.[99] The UK and US were less motivated by a fear of colonial imposition and rather more concerned with weakening the authority of the state, though they clearly supported the idea that human rights provided standard for the legitimacy of sovereign authority.

Early during the first meeting of the drafting committee a distinction was made between a declaration and a convention, which generated two further controversies. The original split was done to overcome controversy regarding the legitimacy and process of the committee in writing a binding legal document, with the USSR being sceptical and questioning the standing of the Drafting Committee to do more than

---

[96] Verbatim Record, 1 February 1947, Commission on Human Rights.
[97] UN Commission on Human Rights, *Report of The Drafting Committee to the Commission on Human Rights* (Geneva: ECOSOC, 1947). E/C.4/21.
[98] Vladimir M. Koretsky, Verbatim Record, 12 June 1947, Drafting Committee.
[99] Verbatim Record, 12 and 13 June, Drafting Committee.

recommend articles for discussion and the degree to which the representatives were obliged to express the official position of their government.[100] Other major powers were also cautious in establishing a binding legal document that infringed on state sovereignty. The US position, for example, was complicated by Roosevelt's personal support for a strong human rights institutions and official US hesitance to produce or agree to a document that defined state obligations beyond those in the UN charter.[101] Even smaller states were concerned with the potential effects of a human rights treaty that would alter existing international law; in discussing the work to be taken on by the Drafting Committee, Dr Ghasseme Ghani, the Iranian representative to the Commission on Human Rights, worried that a strong human rights document could undermine the stability of the established system.[102] These concerns led to the decision to prepare both a declaration of principles and a convention, implying different procedures reflecting the different status the documents would have. From this a second disagreement emerged.

Those countries favouring a strong legal document responded to this divide between declaration and convention by giving priority to the drafting of a convention. Hodgson and Mehta were strong supporters of a convention, as was the UK, represented by both Dukes and Geoffrey Wilson, who were keen to specify any declared rights precisely in order to establish any changes to the legal rights and duties of states.[103] In the end, however, the primary focus was given to a non-binding declaration. The reasons for this were complicated. Partly it was a matter of political expedience, writing a non-binding document proved less difficult, and partly a result of the difficulty of drafting even a declaration that could garner wide support, as the later stages of the drafting process proved contentious. Importantly, it was only because the declaration did not require the Commission on Human Rights to resolve the issue of the legal standing of a convention that made it possible for a widely accepted international document to emerge. The surprising value of the UDHR as a

---

[100] Koretsky, for example, attempted to reopen debate on this point in the Drafting Committee even after the Commission on Human Rights decided that a binding document could be proposed, though it would subject to state ratification. His intervention on this point goes on for 30 pages of in the transcript. Verbatim Record, 12 June 1947, Drafting Committee.

[101] Glendon, *A World Made New*, 71-72.

[102] Verbatim Record, 31 January 1947, Commission on Human Rights.

[103] Dukes make his position clear in the Verbatim Record, 31 January 1947, Commission on Human Rights; and Wilson gives his support for a binding convention in Verbatim Record, 12 June 1947, Drafting Committee.

statement of principle capable of inspiring further political action was most clearly perceived by Eleanor Roosevelt.[104] For many, this early failure to have an enforceable legal document was a major weakness of the early human rights efforts of the UN, yet it also helped to initiated a broader human rights politics in which the ideas and language of rights was taken up in new contexts.

Other major controversies were over the shape the new UN human rights institutions would take. In particular, there was disagreement over whether the Commission on Human Rights should set up mechanisms for individuals to directly report human rights abuses, and over the official standing of representatives in various human rights bodies, whether they would be state representatives or individuals free to express their own opinions and pursue their own ends. Yet, what on one level is a bureaucratic debate is also fundamental to the emerging human rights institutions and their degree of independence from state authority.

Roosevelt was a strong supporter of individual reporting mechanisms, motivated by the copious correspondence she received both as a private individual and as member of the Commission on Human Rights. Speaking of communications she had received, she said, 'I am conscious of the fact that human rights mean something to the people of the world, which is hope for a better opportunity for people in general to enjoy justice and freedom and opportunity.'[105] For her, and other supportive representatives such as Cassin and Malik, the UN could do vital work by providing a forum for individuals to appeal to when they were abused or neglected by their government. Debates within the Commission, however, were rendered peripheral by judgments higher up within the UN structure that communication of alleged rights abuses would be made anonymous before the Commission received them and that the Commission could only consult these communications to inform their work, not press for public redress within the UN.[106] This stunted effort at reform was partly inspired by the experience of the Second World War, where the states had turned against their citizens in horrific ways, but also by a developing sense that responsibility to fellow human beings suffering in far flung locations required global institutions. This

---

[104] Glendon, *A World Made New*, 173-174.
[105] Verbatim Record, 27 January 1947, Commission on Human Rights.
[106] UN Commission on Human Rights, *Summary Record of the Twenty-Sixth Meeting* (Geneva: ECOSOC, 1947), E/CN.4/SR/26.

emergent cosmopolitan structure, however, did not survive the early debates and the new human rights institution deferred to state authority, a compromise fully institutionalised in later conventions in which monitoring was done through country reports prepared by state authorities then passed on to the UN.

The debate over representation risks seeming even more arcane, but it was a key issue. In the early sessions of both the Commission and the Drafting Committee there were many questions regarding the status of representatives, did they represent themselves or their government. Further, the question of who could be involved in the drafting of human rights documents was raised, particularly, whether outside experts or UN officials not representing governments could draft binding documents, it was decided that they could be consulted but authority rested solely with state representatives. The USSR was particularly emphatic, though the US shared this view (which complicated Roosevelt's position). Further debates were over who would participate in the human rights institutions that were being set up. Malik and Cassin, in particular, were supportive of having individuals capable of expressing their own views in these institutions, as well as the inclusion of experts and relevant organisations.[107] Again, these matters of procedure would have major effects on the kind of institution the UN became and how much power the suggested human rights standards had independently of nation-states. The interests of state sovereignty won this struggle as well and further entrenched a UN approach to human rights that was dominated by the rights of states, but the contest was hardly decisively ended – the UN in later years has adopted reforms to increase the inclusion of non-state representative and to improve their responsiveness to human rights abuses reported to the its various human rights bodies.[108]

While the success of more fundamental reconstructions of international political order was limited, small and important changes were made. Further, the contests seen in these early debates have continued to be important for the development of human

---

[107] The debates and votes over the issue can are carried out in across the 10th, 11th and 12th meetings of the Commission on Human Rights. Verbatim Records, 1 and 3 February 1947, Commission on Human Rights.

[108] In contrast to Moyn's claim that the human rights project was stillborn in 1948, I would suggest that this analysis highlights the fact that the human rights that state actors were willing to accept and which rights advocates were able to pressure states to accept were different and far more minimal than the reinvigorated account of human rights that emerged in the 1980s and 1990s.

rights. Two key changes are worth focusing on. Whatever the failings of the early human rights institutions and documents to overcome the priority given to state sovereignty, there was a revolutionary change that gave international legal status to individuals. Cassin was the most clearly aware of the significance of this change, and the most vociferous advocate of institutionalising it as thoroughly as possible. Also, the legal person that emerged was defined as importantly equal; the focus on non-discrimination in the UDHR is hard to underestimate at the time. Not only was it a response to the racist ideologies of the defeated Axis powers but it challenged a variety of practices that embarrassed the victorious powers as well. The UDHR's insistence on non-discrimination gave support to the decolonisation movement, bolstered the women's rights movements, challenged racist policies in South Africa and the Unites States, and empowered those opposed to nationalistic politics. While the legacy of this institutionalised legal individual is not purely positive, these changes were historic and altered international politics in profound ways.

Also, the UDHR enshrined the equal sovereignty of states, while also making the respect of that sovereignty dependent upon respect for human rights. At the time these were seen as important victories for colonies fighting for self-determination and small states, long made insecure by the actions of powerful states. Further, the focus on legitimate sovereign authority spoke against the unmitigated power of state officials and was optimistically seen as a challenge to despotism, totalitarianism and systematic forms of oppression and deprivation. The idea of conditional sovereignty has experienced a renaissance with the emergence of the Responsibility to Protect discourse, but those drafting the UDHR recognised it as a central part of the UN system from the beginning. It is important, however, to appreciate the sorts of politics it was thought would invalidate a state's sovereignty at that time. Those involved were far more concerned with the systematic forms of abuse enabled by the notion of absolute state sovereignty and the deprivation and insecurity brought about by modern economics and war, these concerns were especially shared by Malik, Santa Cruz and Cassin during the drafting process.[109] This resulted in a focus on political reform in favour of democratic representation, the elimination of oppressive forms of

---

[109] Verbatim Record, 23 June 1947, Drafting Committee.

international control (colonial and imperial), the importance of the provision of social and welfare rights, and establishing the guarantee of citizenship.

In the end, my concern is less with the role of the UDHR in establishing the UN human rights regime that actually emerged and more with the sort of questions about international order that it enabled. Two features of this debate are particularly important. First, this sort of self-conscious reconstruction of international politics is a necessary consequence of human rights as an idea. Cassin was right that giving the individual central importance in international politics, by claiming rights in the name of a common humanity, fundamentally transforms those politics[110] – but the final shape that reconstruction takes is not certain. This is the second feature of the debate I want to emphasise: neither the victory of state interest in the early period nor the revitalisation of UN human rights institutions after the Cold War are necessary developments. This is a particularly important point for human rights supporters that see the UDHR as a foundational document upon which a grand edifice has progressively been built up – our current human rights politics is not the unfolding of some process begun in 1948. Its development is clearly influenced by the ideas and institutions that did emerge but the opening for reconstruction created by human rights does not close. Just as the debate around dignity is ongoing and developing in diverse ways, so to is the human rights politics that was begun in earnest with the drafting of the UDHR. This insight is developed further in the next chapter, where I argue that looking to social movements as an alternative human rights politics, rather than that of international law and international institutions. Examinations of the UDHR and the UN human rights institutions that emerged later usually lead to either an affirmation or rejection. What I want to suggest is that critical responses can reject human rights outright as irredeemably compromised, or they can focus on the radical and ongoing critical potential of human rights claims on the structures of world politics

---

[110] Verbatim Record, 31 January 1947, Commission on Human Rights. 'I think we must insist upon this fact: that we must finally reach the fusion of the idea of man as a community and man as an individual. There may be important intermediate stages, such as the existence of the state, but I think there is not one state in the world which does not at present recognize the necessity for the observance of human rights.'

Looking to the historical origins of human rights – both as broad tradition of political thought and as a specific international development in the post-war era – suggests that the understanding of rights as ethical claims that justify the reconstruction of social relationships is in some measure plausible and also it allows us to rethink conventional understandings of human rights. The key lines of inquiry developed here, looking to the plurality of values that are supported by an appeal to human dignity and the different lines of political development it enables, suggest that human rights are an ambiguous project.

For those that are critical of the Western origins of human rights – the negative effects of which are exemplified in coercive practices of intervention justified as securing human rights, hierarchical relationships in international politics justified in terms of development and good governance rather than civilisational superiority, and the privileging of a individualistic liberal subjectivity over all others – rereading the history of the UDHR should give pause to any inclination to do away with human rights. Acknowledging that human rights open up a discourse over the significance of humanity as a political identity and confront us with the challenge of creating a legitimate international order also acts as an invitation to join in that contest and not to cede the emancipatory potential of human rights to dominant powers. If we return to Upendra Baxi's warning that 'No contemplation of open and diverse human rights futures may remain innocent of their many histories,' then finding that human rights are an always-contestable project undermines the myth 'that suggest that human rights traditions are "gifts of the west to the rest."'[111]

Human rights true believers, on the other hand, should be cautious of their own capacity for myth making, especially if human rights politics are to retain their capacity to challenge existing power. The promise of a remade international politics that places the protection of individuals at the centre of legitimate authority is hardly a dream realised and the Janus-faced embrace of human rights by dominant states risks the dangers of institutionalisation, highlighted by Stammers, in which the transformative demands of rights are reduced and made acceptable to existing power. Along with a wariness of established powers keen to make strategic use of human

---

[111] Baxi, *The Future of Human Rights*, xxix.

rights, we must also be alive to the danger of a lack of self-reflexivity in supporting human rights. Returning to the controversies surrounding the UDHR, and understanding those contests as the start of a new human rights politics rather than a founding moment, suggests that we need to attend to the fact that each articulation of human rights standards or change in political structures excludes and limits at the same time, such that a liberal human rights vision, for example, may run counter to the vision of human rights inspired by socialist aspirations or the struggles of indigenous peoples. Whether we see the pre-eminence of human rights as a negative or positive development in international politics, reading the drafting and adoption of the UDHR as something less than the very beginnings

Chapter 7
The practice of human rights: reconstructing the political spaces of rights

'I got another plan, one that requires me to stand
On the stage or in the street, don't need no microphone or beat
And when you hear this song, if you ain't dead then sing along
Bang and strum to these here drums until you get where you belong
I've got a list of demands written on the palm of my hands
I ball my fist and you're going to know where I stand'
-Saul Williams, *List of Demands (Reparations)*

I. The Argument Thus Far

In the previous chapter I examined the history of the drafting of the UDHR in order to highlight the contestation and plurality at the core of that most conventional of human rights documents. Part of the importance of this is recovering aspects of the problem the drafters confronted and the terms of their response, which have been obscured and reframed by later developments. Neil Stammers argues that the history of human rights is vital to understanding what human rights are and what they do, as there is a general tendency to read the present onto the past and to accept the history that fits our most powerful contemporary narratives.[1] We see this in the interpretations of the UDHR that frame it as a founding moment of consensus or as one of political imposition. My examination of the UDHR hopefully serves the task of attending to the details of the history of human rights in some small way.

There is a larger significance, however, which relates to another goal of the previous chapter, which was to demonstrate an alternative way of understanding human rights as a political ethics that eschews certainty of principle and is responsive to social changes, while at the same time orienting our concern beyond existing political subjectivities and geographies. Underlying this reconstruction of human rights is an alternative approach to political ethics, which begins from the persistence and reality of pluralism, as well as the ongoing contestation that this entails. In this final chapter, I want to broaden that analysis of human rights in order to better appreciate the implications and potential appeal of the political ethics I have

---

[1] Stammers, *Human Rights and Social Movements*, 8-39.

developed throughout the larger work. To begin this reflection I respond to two questions. First, *how does attending to contestation and plurality reconfigure our understanding of contemporary human rights as an institutionalised practice and an established ethical ideal?* And, second, *how do we evaluate contemporary political ethics of human rights?* This requires a consideration of both the best way to understand the social phenomenon of human rights and also what human rights contribute to a global political ethics. To begin I focus on the space that human rights occupy between morality and politics, which points to the need to map that space before attending to an evaluation of human rights. I briefly explore how the most convincing defences of human rights answer these questions, in order to provide a contrast to my position, before moving onto my own account and qualified affirmation of human rights as a political ethics.

Dominant accounts of human rights, examined in detail in Chapter 1 & 2, suggest that human rights act as a fundamental moral law, establishing what must and must not be done in political life. These rights provide the basis for a liberal order, whether minimalist or maximalist in nature. The sources of this moral law are diverse and the search for justification fractured. Rational consensus, actual political consensus, an appeal to basic human needs or the conditions for human flourishing have all been suggested as justifications, reflecting the diversity within conventional accounts of human rights – drawing from utilitarianism, social contract theory, deontology and virtue ethics. Within that diversity, however, the logic of interaction between morality and politics is maintained. Further, as the presumed autonomy of morality is used to constrain political activity within the limits of "legitimacy", there is little questioning of the basic terms of political life. The separation of the moral and political grants a corresponding autonomy to politics, particularly to the institutions that structure social life: states are accepted as the best (or necessary) form of social organisation, constitutional democracy defines the limits of legitimate political arrangements, a liberal economy (more or less socialised) of global exchanges is accepted (or endorsed), and cultural life is defined in individualist terms (whether focused on cosmopolitan or nationalist sentiments). The political ethics exemplified by conventional accounts of human rights does not uphold the whole social order, but it does provide an important control upon political life, whether by defending the

objective superiority of liberal politics (both domestic and internationally),[2] by supporting an expansion of the protection of rights through cosmopolitan liberalism,[3] or, at a minimum, ensuring that the liberal state and international order is not morally objectionable – even if other reasonable alternatives may exist.[4]

Even critical theorists that reject the conventional moral justifications of rights (giving no quarter to natural rights, social contract theory or bare consequentialism) are at pains to maintain the jurisdiction of the moral over the political. Benhabib, for example, does much to overcome the problem of exclusion in moral universalism by insisting that moral equality be maintained through inclusion in the communicative processes that determine moral principles, and to expand the political processes that produce the law.[5] Both Benhabib and Linklater imagine a world in which the state is not discarded but in which the power of its borders to create exclusions and justify violence is reduced. Their common cosmopolitan vision is of increasing the number and effectiveness of institutions that support democratic inclusions, and human rights play a key role in this vision. Human rights protect individuals from harm while also ensuring participation in decision-making processes, echoing the role the principles of discourse ethics play in protecting moral equality, and in so doing they separate the moral from the political and ensure that any contestation of moral principles is limited to ensure legitimacy. For this reason, human rights, if they are to be defended, provide the necessary foundation for an expanded political community of cosmopolitan scope.[6]

Yet the cost of this solution is the separation of rights-holders, as universal citizens, from any actual place or community in which politics can be conducted.[7] The

---

[2] John Charvet and Elisa Kaczynska-Nay, *The Liberal Project and Human Rights*, 350-364.

[3] Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009).

[4] Rawls, *The Law of Peoples*. Also: Cohen, Joshua. "Minimalism About Human Rights."

[5] Benhabib, *Situating the Self* addresses the limitations of discourse ethics; in later work Benhabib critiques the liberal state and considers the implications of her defence of human rights internationally. See Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton, NJ: Princeton University Press, 2002); and Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge: Cambridge University Press, 2004).

[6] Benhabib in particular responds to the challenge to human rights laid out by Hannah Arendt: that rights are meaningless outside of membership in political community. See Hannah Arendt, "The Decline of the Nation-State and the End of the Rights of Man," *Human Rights: An Anthropological Reader*.

[7] David Chandler, "Critiquing Liberal Cosmopolitanism? The Limits of the Biopolitical Approach," *International Political Sociology*, Volume 3 Issue 1 (March 2009), 53-70.

moral universalism in this cosmopolitan orientation, separated from any particular political reality, opens the door to questionable uses of power to defend human rights with coercive intervention as moral sentiment is invoked to justify violence and coercion, but too often with insufficient appreciation of the way in which political interests exploit such moral appeals. Because legitimate forms of political subjectivity and community are reduced to generalised universals they are emptied of all but formal content. While the formalism of moral principles may support the beautiful revolutionary dreams of well-intentioned philosophers, they are more problematic in practice,[8] as cosmopolitan moralism is prone to being made politically meaningful by the designs of powerful actors able to assume a mantle of un-contestable moralism for politicised ends.

We see this same dynamic in the limited political imagination opened up by this approach. First, when individuals enter into an ideal discourse the presumed moral perspective is essentially a modern rational and secular individual, who is able to dictate the terms of consensus – to demand the adaptation of difference to "mutual" terms. But because the moral perspective is empty at the same time that all actual moral questions involve real people, the demand for consensus as the sole source of legitimation becomes a demand for conformity with a particular vision of the good of social life embodied in the equal autonomous individual, which Robbie Shilliam convincingly examines in terms of the moral demand that everyone become modern, European, and individual.[9] Further, the political order that results from this cosmopolitan dream looks surprisingly an expanded internationalism that would seem to require only a partial revision to our current politics. One would be forgiven for a cynical tone when asking, "does cosmopolitan democracy amount to anything more than expanded voting rights within the European Union?"[10] Are we so sure of the legitimacy of liberal democratic nation-states that the best solution to global problems

---

[8] In part it is this problem of universal morality and politics that leads to Kant's dependence upon the notion of a progressive history, which is inherited by thinkers like Habermas and Benhabib. Because legitimacy is guaranteed by the formal nature of rights as moral claims it is necessarily order preserving, making it necessary to link a rightful condition with a substantive account of freedom, which in the end is guaranteed by a secularised form of providence.

[9] Robbie Shilliam, "Decolonizing the grounds of ethical inquiry: a dialogue between Kant, Foucault and Glissant," *Millennium: Journal of International Studies*, Volume 39, Number 3 (2011), 1-17. Available through online first at http://mil.sagepub.com/content/early/2011/03/09/0305829811399144, last accessed 28 March 2011.

[10] Benhabib, *Another Cosmopolitanism*, 46-47; and Andrew Linklater, *Critical Theory and World Politics*, 105-107.

is expanding it regionally and globally? It would seem that the presumptions of dominant political actors are simply carried over to the question of what a moral world politics requires.[11] This is a fatal problem for critical theorists on their own terms, as the project is to offer some ground beyond the particular for the evaluation of social life. Their defence of human rights requires this if they are to amount to any more than the historical ethical values that one finds in the development of western liberal powers.

This suggests that the problem is with the question asked – as defenders of human rights play into the hands of their critics in articulating the requirements of a theory of human rights in terms of an undeniable universal justification that results in regulative principles of political legitimacy. It presumes that truth is inherently moral, or that morality is inherently true in a special sense. This is a fundamental point of difference with the pluralist and pragmatic approach offered here – the truth of our moral values is not only multiple, but contingent. This plurality and contingency is not the result of some essential collective identity or moral tradition which ensnares us in various relativist traps, nor an individualistic scepticism that ends in solipsism – rather it is the result of understanding moral values as inherently human and social creations that express ways of living, rules for action and attitudes towards others that are always developing. It insists on inverting the question of how we justify a universal moral principle from a particular source. Instead, the question is how does a universal moral principle assist us in responding to particular situations. The universal is only a socialised generalisation with no more secret power or deeper truth than its conventional place in social action as a guide to future action and its ability to withstand constant questioning in the process of applying moral intelligence. Moral principles, including universal claims, are tools for social action – or in some cases weapons wielded in battles for social change – they must prove their worth and should be subjected to ongoing reconstruction.

This is a vital distinction – the defences of human rights I have criticised in this work seek to articulate a universal that can constrain diversity. The disagreement

---

[11] See Alex Prichard, "David Held is an Anarchist. Discuss," *Millennium: Journal of International Studies*, Volume 39, Number 2 (2010), 439-459, for a discussion of how Held fails to consider long-standing critiques of the modern state and instead affirms the necessity of the state as an institution of governance, and its necessary transcendence by expanded institutions of global governance.

(nearly all the action in fact) is about how to make the universal more inclusive, more rational, more consensual – more complete. This discussion misses the real problem, which is that *ethical life is plural*. The situations we face, when we have to act and in acting affirm some valued end, do not admit of single solutions – each decision closes off another possibility and every assertion of a universal is the generalised expression of a partial desire – if not an enforceable political power. The act of valuation cannot be granted a final certainty or an exclusive warrant.

The problems of diversity and pluralism are importantly different and there is perhaps no more common mistake in contemporary reflection on human rights than to confuse these issues. Diversity of opinion is a problem of understanding; it presents us with the difficulty of understanding unfamiliar values, customs and reasons. The failure of such understanding is exemplified in missionary's desire to save the savage through conversion to, and revelation of, moral truth. The problem of pluralism presents itself where we have understanding because it is the problem of differing valuations, a problem of judgment, exemplified in the situation in which I value justice while you value mercy. Even as each understands why the other values what they do, our commitments are simply different. The danger of the quest for certainty exists for both diversity and pluralism, but they are distinct. An insistence that one's understanding is certain and true, and that those who think or believe differently are dangerous or evil or irrational, threatens the humanity of those one does not understand. We see this happen when difference is rendered as threatening or wholly alien otherness, which in turn licenses many forms of exclusion and violence. The insistence that ones valuations are singular and certain, however, is a failure of judgment, which threatens to eliminate politics by either insisting that ones valuation is synonymous with the true, right and good – therefore accepting no contestation – or declaring all valuations to be irrational, which reduces politics to conflicts based on the exertion of greater force. Pluralism, understood as accepting that we can value different things without either of us being wrong or deluded or evil, is a necessary requirement for a properly political ethics, where ethical questions involve more than the coordination of self-interest or the determination and application of moral principles. Political ethics, in this pluralist mode, requires judgment, compromise and commitment.

The subject and community of human rights, conventionally rendered as universal, rational and progressive, must be acknowledged as plural, diverse and contingent if one accepts the alternative ethics developed here. This involves not just an intellectual ban on explicit progressivism that guarantees a better future state; such utopianism has been out of fashion for some time. It also involves more than the suspicion that rational consensus may only be an ideal; numerous thinkers accept that diversity, tragically, makes such a final consensus impossible. Finally, it involves more than rejecting the outdated idea of a universal individual, long seen by many to be at most a conceit providing an idealised moral perspective able to assist in the regulation of unruly human diversity. The ideals that underpin human rights were long ago placed under suspicion, and the theoretical contortions of its defenders show the suspect squirming under the pressure of ongoing interrogation. As Connolly reminds us, the distinctive feature of late-modern thought is our inability to tolerate either the problem or solution at hand.[12] The desire for certainty is not easily overcome, but if the work presented here amounts to anything, I most hope it goes some way to showing what it means to work towards a more ethical world politics without recourse to final principles to guide us.

Embracing an alternative political ethics as part of a reconstructed account of human rights requires rethinking the political spaces in which we know human rights. It leads us to express harsh critiques of seemingly unobjectionable political projects. One would be forgiven for asking, "what value are these ideas if they undermine the universal protections offered by human rights against torture and imprisonment, to political participation and welfare provision, and which limit the actions of states in the conduct of their wars?" But this is simply the wrong question, not least because no intellectual argument has the power to completely undo these developments, to disabuse us completely of these ideals or fatally compromise these institutions. Undermining the certainty of human rights and insisting that we acknowledge the political element of our commitments does not eliminate our capacity for empathy or pull down the edifices of the human rights regime, and certainly not in a single go – taking a critical orientation towards human rights requires respecting the depth of our habitual and customary attachment to those ideas and institutions. More importantly,

---

[12] Connolly, *Political Theory and Modernity*, 1-4.

it is also the wrong question because it presumes that achieved ends, such as the tragically partial ban on torture or the still contested right to clean water, are achieved within a universal ethics progressively realising the end of greater freedom. The reasons we may have for supporting these ends are neither singular nor fully compatible, and their achievement is anything but certain and inevitable, despite the stories we may tell ourselves after the fact. This is important because it reveals the struggles and contestations that have gone into creating human rights, and it also highlights the central importance of creativity, as well as constraint, in the function of political ethics, as a worthy ethics should lead us to create values and institutions, not simply act as linesmen in already ongoing game. This is why the task of the rest of this chapter is to illustrate how the wider political world of human rights appears differently from the perspective I defend, and to argue for what I think should be maintained and what opposed in the use of human rights as a political ethic for world politics in our contemporary times.

II. The Practices of Human Rights and the Democratising Ideal

In the previous chapters I have been building up an important claim: that we cannot fully understand human rights as a social phenomenon if we assume that the effect they have in world politics is either positive or negative. The tendency to see human rights in this way is deeply intertwined with dominant approaches to moral theory that inform the study of human rights. For proponents, moral principles reflect necessary commitments to the right way of ordering human life. While for critics, the way in which the moral principles that justify human rights are articulated is necessarily compromised, rendered partial, political and oppressive to otherness. At the heart of my claim that we must attend to the consequences and practices of human rights is an insistence that framing political ethics in this way is a hopeless pursuit. Ethical choices, guided by principles and leading to action in pursuit of the good, are never certain; they can never be drained of all their particular content or of their political implications. There is no point in trying to determine a final moral principle, and a critique of all ethical action as particular and political renders itself critically moribund. Instead of this tired to-and-fro, I have been arguing for a political ethics that attends to the particular situations that ethical thought is intended to address, to the concrete goods pursued in action and the importance of moral intelligence.

Thinking of human rights in this way forces us to consider how human rights are put to work in the lives of people across the globe. Only by attending to actual consequences and practices could we possibly know if human rights represent a global consensus or no more than a neo-liberal project of domination, neither of which turns out to be a very convincing diagnosis.

I have raised an essentially empirical question, and one I can only respond to in broad strokes, but this is a necessity for addressing the further question of whether human rights should be defended. Yet, an unavoidable circularity will quickly appear to the attentive reader. A critic could rightly claim that my empirical account of the consequences and practices of human rights is framed by the commitment to a radical and agonistic understanding of democracy that I have defended, thus making my appeal to empirical consequences suspect and any argument in favour of human rights unsatisfactorily circular. This is an important criticism and a fair one, up to a point. I certainly do take the virtues of agonistic respect and critical responsiveness, which I see as central to the radically democratic ethos I have been arguing for, as background to my investigation of human rights. I am, in a direct sense, looking for evidence that human rights have and can continue to support such a political ethics. But human rights are not a piece of objective reality that one examines dispassionately. They are a set of values, practices and institutions that can be taken together as a social phenomenon, but one that is altered by our reflections and evaluations. Further, our own character as members of various political communities and participants in world politics is implicated in such evaluations.[13] To say, "human rights do X", is necessarily a massive simplification. A more accurate account would be, "X is the result of some combination of social forces, identified as human rights, at work in particular circumstance." All of that is fine for the social analyst interested in isolating such phenomena. For the project at hand, however, I am engaged in an evaluation of human rights in its fuller sense, and my critique of the underlying political ethics that justify human rights for most contemporary thinkers leads to the question, "can human rights be justified by and also support a different political ethics?" This is the

---

[13] For a longer account of this position in relation to conventional approaches to social science as a value free pursuit see, Joe Hoover, "Freeing the Pluralist Imagination, or on the wisdom of escaping Weber's 'Iron Cage,'" *The Disorder of Things*, 24 January 2011, http://thedisorderofthings.wordpress.com/2011/01/24/freeing-the-pluralist-imagination-or-on-the-wisdom-of-escaping-webers-iron-cage/ (accessed 30 January 2011).

question I consider in this section, which in turn leads to an evaluation of human rights' potential contribution to such an ethics – those that remain unconvinced by my critique of the morality of certainty or the democratising I endorse must revisit those chapters or simply humour me though the final stage of analysis.

The above, however, should not be taken as a contradiction of the commitments to pluralism and corrigibility made in previous chapters. My argument for a radical democratic ethos is not intended to be final or absolute, I not only acknowledge that other political ethos can and do command the allegiance of others, but also insist that my own ethos is susceptible to revision, and possibly rejection, in light of the consequences and experiences it enables. There are at least three levels at which the reader might evaluate the work at hand: first, as a pragmatist-pluralist approach to political theory; second, as a radical democratic political ethos; and third, as a critical reconstruction and qualified defence of human rights – while these tasks are connected, rejecting or accepting any one argument does not necessarily entail the same for the others. Which is to say, one could accept my approach but reject my political ethos or evaluation of human rights, or one could accept either of those commitments but reject my theoretical starting point.

When we look to the scholarly literature on human rights, particularly in the fields of political theory and international relations, to find out something about their effects a familiar and comforting picture appears. Numerous theorists tell us that human rights offer vital protections, ensuring the well being or protecting the dignity of the abused and oppressed in the world. Yet, in most human rights studies these people do not appear. Instead, we learn how well states comply with the various human rights treaties they have signed,[14] or about the progress of international institutions and courts in ensuring rights protection by forming committees, writing reports or, less often, rendering judicial decisions.[15] And all of this is useful, so far as it goes, but the problem is that it does not go very far. Even when scholarly work focuses on the struggle for rights in particular contexts, an account of the battles whereby dictators are deposed or regimes of impunity are ended, little attention is paid to what those

---

[14] Eric Neumayer, "Do International Human Rights Treaties Improve Respect for Human Rights?" 925-953.

[15] Emilie M. Hafner-Burton and Kiyoteru Tsutsui, "Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most," 407-425.

involved thought about their own struggle for human rights.[16] What one does not hear is how people struggling for rights understand their own rights claims, do they use the language of rights for principled or strategic reasons, whether their struggles are actually easily rendered compatible with the institutionalised international norms of human rights law, or whether they present more challenging claims.[17]

While there are undoubtedly practical reasons why such detailed social analysis is absent, the difficulties of translation and prolonged observations are inadequate explanations. More fundamentally, there is a hierarchy of analysis that coalesces with conventional moral justifications of human rights – powerful and privileged actors impose universal standards upon weaker and marginalised ones. This hierarchy is built into international human rights law. Privileged international institutions and powerful states declare and enumerate human rights, which are expected to bind those states that sign up to them. States that are parties to human rights treaties are empowered as legitimate authorities by securing the human rights of their subjects. The individual as rights-holder may be at the centre of the idea of rights but she is hardly at the centre of international human rights politics. Individuals may be victims or perpetrators of abuse, they may be agents of law or disorder, but there is little space for them as political actors engaged in the work of forming human rights ideals and using those rights to alter their social conditions.

This is a familiar image of human rights politics because it conforms to the image of human rights seen from both critical and supportive perspectives. Even where Benhabib, for example, gives space for democratic iterations through which human rights standards are contextualised to the local situation, this contextualisation is

---

[16] Even important and innovate studies have failed to pay attention to how human rights alter political struggles for change, or are in turn altered by their use in such struggles, for example, see, Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, *The Power of Human Rights* (Cambridge: Cambridge University Press, 1999).

[17] This concern for how the actual people using human rights understand their claims is inherent to the situationist ethic developed here, and, further, the pluralist orientation I adopt suggests that a common rhetoric of rights does not provide evidence that all rights claims are the same or that the development of rights can be seen as singular historical development. This concern also connects my position to the concerns of postcolonial and feminist theories that emphasise the importance of acknowledging diverse subject positions and plural political temporalities. See Hutchings, *Time and World Politics*, 160-166; Meera Sabaratnam, "IR in Dialogue... but can we change the subjects? A typology of decolonising strategies for the study of world politics," *Millennium: Journal of International Studies,* Volume 39, Number 3 (2011), 8-13, page numbers refer to the online first version – link not yet available; and William E. Connolly, *Neuropolitics: Thinking, Culture, Speed* (Minneapolis, MN and London: Minnesota University Press, 2002), 140-173.

limited and guided by a more binding universal standard, to which democratic iterations may add their particular accents – but the language or grammar of rights is set before democratic politics begins.[18] Similarly, work on transnational activists networks suggest a feedback-loop of support between global and local actors that motivates human rights reforms, but the interactions between levels are limited and partial. Local groups carry grievances to the international level and bring back human rights standards from the international to be imposed upon state authorities.[19] Yet, this image of human rights is not the complete picture and there is an increasing amount of work that reveals the degree to which human rights are taken up and reconstructed by people facing specific political threats and problems. This work upsets the hierarchy of human rights politics and questions the idea that moral principles and law are transferred from the international to the local level.

A number of critical historians, anthropologists and sociologists have contributed to developing a wider account of human rights politics, with much of that work based in feminist and post-colonial perspectives. These scholars share a focus on analysing the use of human rights in particular social struggles and on attending to the way those involved in those struggles use rights. While this work has been ongoing in various disciplines, surprisingly little of it has influenced normative theorising on human rights. This is true, at least in part, because both supporters and critics of human rights actually lack the conceptual space to full acknowledge the value of such work. Brooke Ackerly, one of the few scholars to engage with both normative political theory and detailed analysis of the practices of human rights, presciently notes that attending to the details of how human rights are used and what those involved in social struggles mean when they deploy the idea of human rights requires rethinking one's approach to normative theory.[20] While I share sympathy with Ackerly's project in trying to rethink ethical theory so that space is made for the experience of the people engaged in human rights politics, the terms in which I do so are different.[21] Similarly, but coming from the field of anthropology, Mark Goodale

---

[18] Seyla Benhabib, "Claiming Rights across Border: International Human Rights and Democratic Sovereignty," 691-704.

[19] Thomas Risse and Kathryn Sikkink, "The socialization of international human rights norms into domestic practices: introduction," *The Power of Human Rights*, 1-38.

[20] Brooke Ackerly, *Universal Human Rights in a World of Difference*.

[21] Difference in approach can be seen in contributions to a special issue on human rights as political practices. See: Brooke Ackerly, "Human Rights Enjoyment in Theory and Activism," *Human Rights*

notes the split that persists between anthropology's detailed study of the social world and a version of political theory beginning with abstract first principles.

> This dichotomy is of course a false one. There is no reason why anthropologists or others interested in making sense of contemporary social practice in a way that resonates beyond the mere case study, the mere collection of disconnected human exotica, should be forced to *either* observe and faithfully record *or* drown in a sea of theoretical foundationalism.[22]

Unintentionally echoing Dewey in noting the falseness and limitation of such a dichotomy, Goodale develops an anthropological approach to human rights based on insights generated by the ethnographical study of human rights practice, which in turn seemed to require its own political theory. My own argument can be seen as coming from the other direction, developing an account of normative theory of rights that requires specific and sustained empirical analyses of rights practice.

Without suggesting that political theorists need to change disciplines, or that we need historians, sociologists and anthropologists to do political philosophy on the side, I do want to argue that these interdisciplinary connections can be developed by attending to human rights as a political practice and that doing so opens up promising new modes of ethical inquiry. Human rights politics take place in a wider variety of social spaces than is conventionally acknowledged. The use of human rights by activists and participants in social movements are as important as the pronouncement of national leaders and international lawyers, and the informal political discussions that lead to popular protests are as significant as a political act as a new indictment at the ICC. Along with diversifying the spaces and multiplying the practices that constitute human rights, engaging in an analysis of how human rights are used also allows us to see beyond the hierarchical transmission of human rights from privileged actors to the oppressed, from "philosophers" to the "masses," and renders the transmission of human rights ideas far more ambiguous than conventional feedback loop from "global" to "local" would suggest, as "local" human rights movements

Review, Volume 12, Number 2 (March 2011) forthcoming, available through online first at http://www.springerlink.com/content/9546765610883863, last accessed 28 March 2011; and Joe Hoover and Marta Iñiguez de Heredia, "Philosophers, Activists, and Radicals: A Story of Human Rights and Other Scandals."

[22] Mark Goodale, *Surrendering to Utopia: An Anthropology of Human Rights* (Stanford, CA: Stanford University Press, 2009), 7.

influence diverse and dislocated "locals", and human rights ideas developed in the "South" or among the "oppressed" influence international norms. Not only have international and local political spaces been pluralised, but also the inherent hierarchy of the global-local account is upset and challenged by remapping the political spaces of human rights.

By now it is a common place among critics of human rights that the spread of human rights norms and institutions imposes a particular political subjectivity (sold as a universal account of the individual rights holder) and presumes that a liberal organisation of the social world is unambiguously beneficial.[23] This makes two presumptions that are contestable. First, it assumes that this imposition is actually happening and is successful. Second, it assumes that this liberal ideology, imposed as a cohesive whole, is not valuable to those upon whom it is imposed. This uncritical critique finds as little need to engage with the practices of human rights as the uncritical defence does.

Attending to the details undermines both presumptions. First, it is not clear that the imposition of human rights is intentional and fully successful in the manner that the critique suggests. Human rights language and appeals to international standards do not only originate from international sources, as those suffering social oppression and exclusion often make human rights for themselves. This does not imply that there is no connection between international standards and particular political struggles or that the power imbalances in world politics do not colour human rights practices. The Brazilian Landless Peasants Movement (MST), for example, uses human in both a principled and a strategic way: first, it monitors and reports on human rights abuses committed by corporations that oppose their direct actions and makes appeal to national and international human rights bodies; and second, the group articulates its own conception of a human right to land in terms of the socially beneficial use to which peasants put the land, rather than based on a right to private property. Not only do human rights serve as a way to seek protection and redress, but they are also deployed in innovative ways that challenge conventional accounts of rights.[24]

---

[23] Douzinas, *Human Rights and Empire*, 177-197.
[24] Hoover and Iñiguez de Heredia, 21-23.

The idea of imposition, however, suggests an evangelical zeal that is certainly present in international human rights politics, but is hardly definitive. For example, Lauren Leve traces the complex interaction between human rights norms and Buddhist spiritual beliefs, noting that Buddhists in Nepal take up the language of rights and advocate for secular institutions in order to protect their religious belief within society. This occurs despite the ontological conflict between these very different notions of the self, where the liberal rights-holders contrasts with the selfless centre of perception in Buddhism.[25] Yet where Leve seems to suggest that the secular liberalism of human rights places a burden upon Buddhists, forced to exist with a sort of dualist sense of self, this presumes that the ideology of human rights is a coherent whole and that Buddhists deployments of human rights are not also critical reconstructions of the liberal model of rights. Leve is certainly right to point to a tension in Buddhist deployment of human rights in Nepal, but exposing a tension is not the same as identifying an always-present imposition. This points to the distinctive value of a pluralist and pragmatic line of critical engagement, as seeing human rights as a contested ideal and plural practice both complicates our analysis and requires our judgments on the value of human rights to take account of the consequences of human rights in practice.

It is hardly clear that human rights, even if limited to "liberal" notions of rights, present as a comprehensive ideology that is resistant to change and lacking in internal ambiguity. Neil Stammers, for example, in his historical and sociological study of human rights highlights the internal ambiguities of the western rights tradition, noting the conflict between accounts of rights that begin with the idea of the possessive-self and those that begin from the social dependent-self – a contrast he traces back as far as the English revolution.[26] Similarly, Lynn Hunt's history of rights emphasises the importance of literature in developing sensitivity to the pain and suffering of others, suggesting that the human rights self is a sympathetic-self, not merely a possessive-self.[27] In both cases, the authors are careful to note that human rights ideas are not static, and that such contrasting ways of thinking about rights are prone to being

---

[25] Lauren Leve, '"Secularism is a human right": double-binds of Buddhism, democracy, and identity in Nepal', *The Practice of Human Rights: Tracking Law between the Global and the Local*, eds., Mark Goodale and Sally Engle Merry (Cambridge: Cambridge University Press, 2007), 78-114.
[26] Neil Stammers, *Human Rights and Social Movements*, 40-69.
[27] Lynn Hunt, *Inventing Human Rights*, 35-69.

overwhelmed by powerful ideologies as well as the cynical manipulation of powerful political actors. What it preserves, however, is the politics of human rights, which is often denied by supporters and critics alike, who tend to turn human rights into an all or nothing proposition.

The work of Sally Engle Merry, who looks at the use of human rights to combat violence against women, looks at the various spaces in which human rights politics take place.[28] Moving from the conference rooms where human rights treaties are drafted and violations reported, she traces the points of transmission between agents of international institutions and global civil society, who then transmit human rights ideas and practices to individuals and groups engaged in social struggles. Unlike constructivist work on human rights, however, Merry's focus is on the way human rights norms are transmitted between these social spaces. She describes this process as 'vernacularization' and in this process people make the ideas and practices of human rights work for themselves, and, perhaps more importantly, reconstruct the meaning of human rights.[29] This not only mars the clean lines of the human rights feedback-loop, it also raises the question of what happens if human rights norms and institutions are being formulated by the receivers of human rights norms, but it also reveals further lines of diffusion. Global civil society activists do not dutifully carry norms from the international to the local, they transmit human rights practice horizontally and the ideas they transmit are often innovated by individuals and groups normally perceived as receivers of human rights. Merry acknowledges the power of dominant global actors, able to dominate the international political space, but maintains some hope that international human rights can provide important space for a critical and ethical form of politics, functioning in a in a 'genuinely emancipatory way'[30] – but this is a rather fragile hope. This results partly from her focus on the legal aspects of international human rights, which she notes are often distant from the experience of women who lack understanding of international human rights norms and make their claims for social change in multiple vernaculars.[31] While I do not want to suggest that all social movements make human rights claims, expanding our

---

[28] Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago, IL: University of Chicago Press, 2006).
[29] Merry, *Human Rights and Gender Violence,* 179-217.
[30] Ibid., 231.
[31] Ibid., 6.

understanding of human rights beyond claims that appeal to international legal norms allows us to appreciate the way human rights, as ethical claims that reconstruct political identities and orders, have a wider significance in social movements.

Goodale focuses on oppositional social movements in Bolivia, which oppose the transmission of neo-liberal human rights through various instruments of international law in addition to more direct political opposition.[32] Recognising that the inability of marginalised people to reconstruct established institutions and official discourses on their own, he analyses the way social movements deploy their own understanding of human rights outside of established international practice. He characterises these forms of human rights politics as indigenous cosmopolitanism,[33] which itself challenges the notion that the international realm is exclusively dominated by liberal cosmopolitanism and international human rights standards articulated by powerful actors.

> Rather, what indigenous cosmopolitanism in Bolivia demonstrates is that a cosmos, projected as a new and more expansive framework of essential inclusion, can be both translocal *and* transnational and nonglobal and nonuniversal at the same time. So, even though indigenous Bolivians project a new cosmos as a way of breaking free from, or resisting, all of the expected historical and cultural categories within Bolivia, they do not, in the process, envision a world in which they are essentially the same in rights and obligations as everyone else indigenous or not.[34]

The analysis and revelation of plural human rights politics at the global level is another important opening provided by attending to the details of rights practice. A further example comes from Stephen Hopgood's analysis of human rights as a spiritual belief supporting a secularised universal morality, which he contrasts with re-emerging religious universalisms. This account of human rights as a secular religious faith destabilises the idea that there is a singular rationalist account of liberal human

---

[32] Mark Goodale, "The power of right(s): tracking empires of law and new modes of social resistance in Bolivia (and elsewhere)," *The Practice of Human Rights*, 130-162.
[33] Mark Goodale, "Reclaiming modernity: Indigenous cosmopolitanism and the coming of the second revolution in Bolivia," *American Ethnologist*, Volume 33, Number 4 (2006), 634-649; also Mark Goodale, *Surrendering to Utopia: An Anthropology of Human Rights.*
[34] Mack Goodale, "Reclaiming modernity," 640-641.

rights.[35] Finally, Rahul Rao traces out a cosmopolitan perspective based on anti-colonial resistance and protest, which is not an account of human rights, but provides yet another global political context in which human rights emerge as a plural and contested project.[36] By complicating the picture we have of human rights practice we end up with a more ambiguous field, but we also establish a much better starting point for evaluating the consequences and prospects of human rights.

While there is clearly much greater potential for reconstructing human rights than some critics admit, it is worth making clear that there are limits imposed by approaching a global political ethic through human rights. These limits are both historical and structural. First, human rights discourse is deeply embedded in a western tradition of thinking that has served as a justification for an oppressive international politics. The moral superiority inherent in universal discourses of Christian conversion and progressive emancipation served as an apologia for a violent and exclusionary politics that dehumanised and degraded an uncounted number of human beings.[37] While human rights have an ambiguous relationship with past colonial and imperial policies, we must acknowledge their historic complicity in such politics and their potential to underwrite neo-imperialist politics – especially for conceptions of human rights based in absolutist universal values. Second, the institutionalisation of human rights presents an always present danger that the rights relationship will become one in which rights are granted by the powerful to the weak, that the contestation of rights claims disappears as rights are incorporated into the structures of established political power.

These two weaknesses encompass the most serious objections to rights and the limits they place upon our political imagination. While I have defended a notion of rights as basic claims made upon the organisation of social life, this is not the only way such claims can be articulated. Historically, rights have tended to assign

---

[35] Stephen Hopgood, *Keepers of the Flame: Understanding Amnesty International* (Ithaca, NY: Cornell University Press, 2006). For a more general account of the role of human rights as form of secularised but sacred authority, see Stephen Hopgood, "Moral Authority, Modernity and the Politics of the Sacred," *European Journal of International Relations*, Volume 15, Number 2 (2009), 229-255.
[36] Rahul Rao, *Third World Protest: Between Home and the World* (Oxford: OUP, 2010).
[37] Makau Matua, "Savages, Victims, and Saviors: The Metaphor of Human Rights," examines the tension between the violent and exclusionary elements of human rights and its enduring promise of liberation. For a more wide-ranging collection on these themes see, Gurminder K. Bhambra and Robbie Shilliam, eds., *Silencing Human Rights*.

individual civil and political protection to liberal legal subjects, who make claims upon constitutional government, a social relationship modelled on capitalist forms of economic contract. While it is certainly possible for rights to be established for different political subjects and to be held within a political community not reducible to a corporate charter, there are limits. Subjects, whether individual or collective, make rights claims upon an identifiable political community, claims that must be generalised. This does not suggest there cannot be special rights, but that rights must be generalisations and not an infinite list of exceptions. This structure entails that any rights based political order and ethics will give special significance to separation and abstraction – rights holders are made into individuals, whether as single human beings or groups, who can object to and contest social norms and institutions. Further, the rights-holder's status within the political order is abstract, meaning that it will always fit imperfectly with the actual experience of political subjects. There are legitimate reasons to object to this way of organising political life, but before we reject a rights framework we would do well to acknowledge the positive consequences of such an arrangement.

First, the generation of social space between political subjects preserves the independence and liberty necessary for dissent, opposition and contestation. Recognising this does not require an exclusive commitment to formal legal freedom and is compatible with insisting that political subjects isolated and disempowered have little reason to value the freedom granted to rights-holders. Second, the abstract relations created by a rights framework provide protections as well as limitations; an appeal to abstract and formalised laws can do much to preserve individuals and groups persecuted within society. This does, however, illustrate the importance of a contingent order of rights that is open to change, as the conditions of rights holders may change in a way that demands new recognitions, in which case an order of absolute rights becomes a cage. Further, it highlights the importance of an underlying ethos to rights claims, always contestable and perhaps partial, but offering a clear account of the ideal good that our rightful relationships should support.

Beyond the limits of thinking in terms of rights, it is necessary to consider the limitations of humanity as a political category. Whether assigning rights and duties to the individual human being, or speaking of the responsibilities and powers of a human

community, there is an ambiguous and at times threatening notion at work. Historically, powerful social actors have used the idea of humanity to generalise and impose their experience on others, in turn justifying exclusion and violence. Yet, it has also been used as a demand for recognition, for a status within the social world that cannot be denied. What we need to be conscious of is that appeals to humanity are neither natural nor uncontroversial. Realising the potential of humanity as a political category requires that we pay attention to the role it plays in enabling recognition for those lacking other status or encumbered with a degraded and marginalised social identity, but also understanding humanity as plural and diverse. To return to the distinction between plurality and diversity, this way of thinking about humanity implies that we need to understand diversity, to behave as if we can understand each other through our differences; the pluralism of humanity, alternatively, requires that we acknowledge and respect that people will hold different values, which are not irrational or evil, and that our political relations reflect an agonistic respect.

The lingering worries that we may have about embracing human rights as a political ethics – and I would not want to downplay the serious reasons we have for such hesitance – can be allayed to some degree by attending to the way human rights, and other forms of universal right, have been established. There have been a number of recent studies that connect human rights to political movements contesting the basic terms of the social order; recovering this radical history of rights is vital to properly evaluating their further potential. The key distinction that emerges from these studies is what Stammers terms 'power to' versus 'power over'[38] – Upendra Baxi makes a similar distinction between a 'politics *of* human rights' and a 'politics *for* human rights'[39] – which points to the importance of the moment of transition when a right changes from a new and disruptive political demand to an accepted part of the social order. Sociological work on rights vitally highlights the danger of success for any rights claim. Both Stammers[40] and Siba Grovogui[41] note that the Haitian revolution did not lead to a wider recognition of the humanity or rights of the

---

[38] Stammers, *Human Rights and Social Movements*, 102-130.
[39] Baxi, *The Future of Human Rights,* xv-xvii.
[40] Stammers, 63-66.
[41] Siba N. Grovogui, 'No More no Less: What Slaves thought about their Humanity', *Silencing Human Rights*, 56-60.

enslaved, despite their political victory, which reminds us that there is always the potential for rights to become regressive and for appeals to humanity to go unacknowledged,[42] in this case the Haitian slave's rights were not embraced as legitimate rights of man till decades later. Similarly, Lynn Hunt notes the way rights claims were made by women, former slaves, religious minorities and other marginalised groups in the lead up and aftermath of major rights revolutions – but these claims for inclusion were unsuccessful in most cases.[43] Rather than providing an unshakeable confidence in the progressive realisation of a comprehensive human rights ideal, attention to the historical and sociological detail of how rights have emerged reveals the contingency of rights movements. More promising, however, is that this analysis of how rights were established suggests that the human rights tradition is wider and more diverse than the neo-liberal re-articulation of liberal rights witnessed since the end of the Cold War.

In response to the concern for the limits of humanity as a political category, we also find evidence of an ongoing politics of humanity. This can be seen in historical examples where recognition of shared humanity provoked recognition of the oppressed – women, slaves, workers, religious minorities and other oppressed human beings have always had allies among the socially privileged that responded to a sense that the existing social order was inhumane and intolerable. More importantly the abstract category of humanity has provided a way of making claims to recognition. Sojourner Truth, an early feminist and anti-slavery activist used the language of inclusive rights to great effect: 'I am above eighty years old; it is about time for me to be going. I have been forty years a slave and forty years free, and would be here forty years more to have equal rights for all.'[44] Keenly aware that she had been denied human status as a slave and as an African American and as women, she recognised that speaking in terms of a shared humanity was vital to making the political claim for

---

[42] The audibility of an appeal to humanity, both aurally and conceptually, is vital. Drawing on arguments made in Chapter 5, the impetus to hear these appeals falls to each, but especially to the powerful – Connolly's virtue of critical responsiveness – which calls us to recognise appeals that do not fit hegemonic modern categories. Shilliam offers this challenge in Robbie Shilliam, "Decolonizing the grounds of ethical inquiry: a dialogue between Kant, Foucault and Glissant," concluding: 'Set all the captives free from the bind of the European-modern. Then perhaps, meditates the African-Maroon, the learned will wake from their intellectual dreamland to experience the thrill and awe of dialogue,' 17.

[43] Hunt, *Inventing Human Rights*, 146-175.

[44] Sojourner Truth, quoted in Howard Zinn, *A People's History of the United States* (New York, NY: Harper Collins, 2003), 202.

recognition and consideration. Therefore, despite the limitation of a discourse of humanity, it is important to acknowledge the gap left by abandoning such a discourse, rather than critical reconstructing it.

My aim in this section has been to argue for another tradition of human rights, one that reflects a democratic and pluralist politics, in which the marginalised, excluded and disempowered are able to lay claim to social power and reconstruct the political orders that have oppressed them. I do not want to claim that this is the authentic human rights tradition, not only is the case for a far more conservative and exploitative human rights tradition far too easy to make, to make a claim to some final authentic account would undermine my entire argument. What I have tried to make clear is that human rights are a diverse political practice, defined by the pursuit of a variety of ethical values and embodied in contesting political movements. Even opposing sides of a political conflict, for example between the neo-liberal state and a worker's movement, can be engaged in a human rights politics. The final defence of the potential of rights to contribute to a democratising ethic is taken up now.

III. A Question of Valuation, or, What Human Rights are Good For

There is an obvious objection that could be raised to my argument thus far. By suggesting that human rights are an ambiguous moral project that reflects the diverse ways that human rights are used politically, it could be suggested that I am pulling the rug from underneath the idea of legitimate authority, or undermining the power of morality to act as the law that constrain politics. If we accept that there is no ultimately authoritative or final set of human rights, and instead suggest what human rights are, is in fact, a mode of contestation, this not only undermines the plausibility of consensus on objective universal principles, but it subverts the desirability of such principles. My response to this is, on one hand, simply to accept the charge and much of the previous argument has been about developing a political ethics that does not depend upon universal principles in that way. Yet, on the other hand, a further response requires that we reconsider the force of such an objection.

There is an important difference between a theory actually undermining the supposed force of existing moral principles and offering a theory that acknowledges

the lack of universally binding principles as a condition of ethical and political experience. Normative theories often fail to address this difference, instead appealing to a general sense of moral confusion brought on by a lack of authoritative principles and offering a return to certainty by articulating (or more accurately, re-articulating) new authoritative principles.[45] This is to be expected; if one of the presumptions of ethical theory is that is has the ability to provide certainty, failing to do so would then be a symptom of the supposedly anomalous and threatening modern condition of moral confusion (of diversity and doubt) that undermines the power of morality or the authority of the law. The theory of human rights I defend begins from the reality of contestation, disagreement and plural sources of moral authority, and there is no reason to think that this or any other political ethics could transcend those conditions. Rather, the purpose of such a theory is to enable us to respond to the world of our experiences, to critically evaluate it and to act more purposefully, more intelligently and more ethically. Whether one recognises the condition of uncertainty and plurality as positive or negative, whether it is seen as deep ontological reality or a more transient consequence of modernity will affect the ethics that emerges as a response.

The agonistic and democratic ethic I have argued for views the plurality we encounter in the world in a positive way and it suggests that the contingency of ethical life is a basic feature of our experience. Therefore, an agonistic and democratic ethos respects deep pluralism by seeking modes of contestation that enable coexistence and encourage inclusion in setting the terms of social order, rather than allowing contestation to degenerate into violence and exclusion. Evaluating this perspective requires that we consider how it enables our response to pressing problematic experiences in world politics, as opposed to its ability to justify authoritative principles. My own argument may not meet that criteria, and in fact the most damaging critique would be that it *does not enable better and fuller ethical thinking* in world politics, but I must insist on being held to the proper standard, not to one necessitated by particular presumptions about the reality and efficacy of objective and transcendent moral principles.

---

[45] MacIntyre's *After Virtue* is undoubtedly the most thorough critique of the dysfunction of contemporary moral thinking and theory, and while I do not support MacIntyre's efforts to reclaim tradition, his diagnosis of the problem is, I think, accurate and marks the necessary starting point for work in political ethics.

Human rights are not the cornerstone for some grander political and moral project, though they may be co-opted to serve in such endeavours. Abandoning this notion allows us to recognise human rights as a particular practice that provides a way of organising political life, potentially at all social levels – from locals to globals, as it were. I have identified the key element of human rights practice as a responding to the need to justify coercive authority, to establish political legitimacy. Along with responding to the question of political legitimacy, human rights also enable any "human" to contest that legitimacy. Those, I think, are the basics, but obviously the way in which that schematic account is filled in is open-ended. I have tried to give good reasons why the historical tradition of moral and political universalism that lays claim to the mantle of human rights should be greeted with scepticism, but the line of thinking that extends from natural rights to liberal cosmopolitan remains influential. In particular, what ties this tradition together, allowing it to bear a substantial intellectual load, is the way it fills in fundamental elements of human rights practice. First, legitimacy is determined by justified moral principles with sufficient certainty to draw relatively final and determinate limits around political practice. Second, the universalism entailed by the idea of humanity is singular, and while equal capacity is assumed, equal possession of full humanity is not. Challenging this tradition is difficult not only because it enjoys a cultural prestige in dominant societies, but also because it appeals to deep-seated understanding of how ethics and politics fit together in social life. For this reason, the position defended here has had to work in several registers, linking alternative traditions of ethical theory to alternative strains of democratic politics and human rights practices.

The reconstruction offered here has a tradition of its own, and throughout I have linked my defence of human rights to a radical democratic orientation and counter-hegemonic practices in world politics. Not only do I think this reconstruction is more convincing as an approach to ethics, but also defending a radical democratic rights tradition makes an important contribution both to how we conceptualise human rights in world politics, as well as how we judge and act as participants in world politics. While the full exploration of these ideas can only be taken up in future work, I want to mention three advantages of thinking of human rights in these terms. First, reconstructing human rights as a democratising political ethos reconfigures how we understand sovereignty. Rather than human rights defining the responsibilities for

legitimate sovereignty (taming the beast) or human rights providing so much ideological but insubstantial cover for the exercise of political power unconstrained by the demands of legal and moral legitimacy (disguising the beast),[46] a democratising human rights ethos looks to the contingency of sovereignty as the capacity to remake the social world or to hold it in place. Connolly explicitly develops a democratising sovereignty, though the idea is implicit in many of the other thinkers I draw on, in his analysis of sovereignty as defined by positional and expressive elements.[47] He suggests that whatever the concentrated power of the positional sovereign, enabled by structures of authority, ranging from holding the means for physical violence to the authority of the law, expressive sovereignty ultimately rests with the political community, in either their acquiescence or their willingness to demand (and in some cases carry out) political actions, including changes in the institutions of institutional sovereignty.[48] This account of sovereignty counters both cosmopolitan and statist accounts and opens up the meaning of human rights in important ways.

John Dewey rejects the mythology of sovereignty in a manner similar to Connolly, and suggests that the democratic nation-state is a contingent arrangement that is ill suited to the problems of contemporary politics, which for him include the difficulty of creating democratic community under contemporary conditions[49] and the increasing power of social forces that escape democratic control.[50] In Connolly's terms, the expressive sovereignty of the democratic public has been subverted and blocked, while positional sovereignty serves the interests of an elite few at great cost to the majority. While a full examination of these issues is impossible here, what it highlights is that the effect of human rights claims on state sovereignty is more radical than supporters or critics of traditional human rights would allow. Human rights have the potential to do more than restrain sovereignty and despite the best efforts of those

---

[46] Louiza Odysseos, "Human Rights, Liberal Ontogensis and Freedom: Producing a Subject for Neoliberalism?" *Millennium: Journal of International Studies*, Volume 38, Number 3 (2010), 747-772.

[47] William E. Connolly, *Pluralism*, 130-160.

[48] Ibid., 146.

[49] It is noteworthy that so many of the conditions that Dewey identified are still important, and in fact shared by Connolly as well. In particular, he was concerned about the increasing complexity of society, the isolation of individuals in bureaucratic systems, new modes of communication and travel that enabled expanded commerce, consumerism and distraction (rather than community), increasing diversity and the loss of tradition, but without the intellectual tools to respond to ethical questions.

[50] John Dewey, *The Public and Its Problems*.

with positional authority they are not so easily turned into merely ideological cover for sovereign power.[51] As was highlighted in Chapter 5, a democratising human rights ethics enables new claims to be made upon institutions of sovereignty and to reconfigure the democratic community beyond institutionalised boundaries – as the human rights claims of undocumented migrants, for example, challenges not only the rules for who is included and excluded from political community but also seeks to reconstruct the rights and duties owed to those without citizenship-status. Rather than seeing such movements as part of a global transformation, however, this democratising perspective frames such movements in terms of specific human rights publics, contesting particular political arrangements, which are linked together in what could be thought of as a human rights assemblage, in which resonances and diverse linkages create a recognisable but plural and changing human rights sensibility.[52]

Second, a democratising account of human rights also helps us to understand and justify the extension of political community beyond conventional accounts of national community without appealing to the abstract notion of a universal human community. A democratising human rights ethic frames the struggle for inclusion by excluded groups as the quintessential political contest enabled by appeals to human rights. This runs counter to Hannah Arendt's influential argument that the key failing of human rights was that they failed to identify the political community necessary for meaningful rights.[53] The powerful claim is that human rights failed to matter in the moment they were most needed, as victims of the Second World War were rendered stateless and subject to brutality and murder, with no responsible party able to protect their rights. Where Arendt saw the idea of belonging to a "human" political community as essentially meaningless (a critique largely endorsed above in regard to cosmopolitan accounts of human rights), a democratising rights tradition sees the

---

[51] Andrew Schaap, "Political Abandonment and the Abandonment of Politics in Agamben's Critique of Human Rights," Unpublished Paper (Exeter: The Exeter Research and Institutional Content archive, 2008), available online at http://hdl.handle.net/10036/42438, last accessed 29 March 2011. Agamben's arguments against human rights have been particularly influential among critics of liberal human rights. Connolly in fact responds directly to his analysis of sovereignty as the final authority to decide the exception to the law. Schaap suggests, largely in agreement with Connolly, that Agamben's position makes it impossible for him to appreciate the potential subversive power of rights – which I have suggested is actually supported by a close engagement with human rights practices.
[52] William E. Connolly, "The Complexity of Sovereignty," *Sovereign Lives: Power in Global Politics*, eds., Jenny Edkins, Veronique Pin-Fat and Michael J. Shapiro (Abingdon: Routledge, 2004), 35.
[53] Arendt, "The Decline of the Nation-State and the End of the Rights of Man."

assertion of humanity as part of the fight for status. As Andrew Schaap suggests, the 'subject that claims its human rights emerges in the interval between the identities of citizen and human, which are afforded by a socio-legal order.'[54] This political account of the claim to humanity is possible because the identities of citizenship and humanity are not taken to be certain or singular, but instead open to renegotiation. A further implication of the view defended here (particularly in Chapters 4 and 5) is that actively seeking to democratise political community, through human rights, is a vital task for coping with our contemporary condition and expanding democratic control of the social forces and practices that impact our lives.

Finally, thinking of human rights as a democratising ethos has the potential to improve on a key area where human rights as a political practice has been less successful, in struggles to overcome economic marginalisation and severe inequality. Returning to Dewey's account of rights as defining the privileges and obligation of communal relationships, it becomes possible to get around the liberal tendency to think of rights as individual claims to some protection or good. Dewey's democratic ethic suggests that the key issue of marginalisation is not met by defending a right to have our basic needs met or to be free from intentional economic harms inflicted by others – as important as both of those are – but enabling individuals and communities to participate in the control and determination of their economic fortunes.[55] Rather than engaging in seemingly ill-defined debates about whether an individual can claim a human right to work, education or health, the question becomes what sort of economic relationships and material provisions should obtain between individuals and within the community. While this reorientation does not make the struggle to redefine economic relationships simple or easy it does clarify the task – no longer is the question of economic justice about fairness in the application of the rules, but about the whether the relationships that result from economic structures are acceptably democratic. A key political question this opens up is the issue of private property; normally assumed to be a fundamental right (if not the defining liberal human right) as the rights bearer is essentially a property holder, but this is a particular way of organising economic relationships that can be reconstructed – for example, in the way

---

[54] Andrew Schaap, "Enacting the Right to Have Rights: Jacques Rancière's critique of Hannah Arendt," *European Journal of Political Theory*, Volume 10, Number 1 (2011), 34.
[55] Owen, "Pluralism and the Pathos of Distance," 223.

MST have claimed that a right to land is based in the productive use that is made of it on behalf of the community.

These brief comments serve to indicate how a pluralist and pragmatist account improves our thinking about human rights in world politics, even as the analysis is limited in depth. These limitations are in part the practical limitations of space, but they also reflect the situated approach necessitated by the position defended here, as human rights function in relation to specific problems as opposed to as abstract generalities. To consider the effect of human rights on any of these areas of concern – sovereign authority, political community or economic provision – would require its own study engaged with the particular struggles and contexts in which human rights claims were being made in regard to these areas of concern.

Along with providing a better understanding of how human rights do and can function in world politics, this reconstruction of human rights suggests that there is value in embracing a democratising ethos that extends agonistic respect in approaching political contests and advises that we bring a critical responsiveness to our politics, which helps us to interrogate our own privileges and the impositions we place upon others. At the heart of this ethos is an orientation that cannot be finally justified but which can be stated to make clear its appeal. A democratising human rights ethos actively seeks to enable people to make claims on the social conditions that affect them. What it does not do, however, is to articulate those claims as universals spoken on the behalf of others, rather it seeks to follow Baxi's advice to speak with others in the struggle for political change. Finally, the value of being able to make claims outside of privileged status, whether it's nationalist, religious or some other form of privilege, is that it enable an equal democratic politics, which ennobles individuals, by working to ensure everyone shares in the vital democratic activity of exerting one's power to remake the world.

Conclusion

The Measure of Reconstruction

'As far as philosophy is concerned, the first direct and immediate effect of this shift from knowing which makes a difference to the knower but none in the world, to knowing which is a directed change within the world, is the complete abandonment of what we may term the intellectualist fallacy. By this is meant something which may also be termed the ubiquity of knowledge as a measure of reality.'

<div align="right">-John Dewey, The Quest for Certainty</div>

I. A Measure of the Distance Traveled

A conclusion is not a summary, but a marker, of the completion of a task, of what has been accomplished. I will not mark this ending by recounting results and findings, or by listing consequences and final evaluations; so far as this is necessary, it is done in the previous chapter. What I offer here is a marker by which the measure of this work can be taken, measuring it as both a response to the initial question of what human can become, and as a point from which to move forward. Taking the measure of this work means considering how far the end of preserving the transformative power of human rights while undermining their totalising tendency has been advanced.

At a basic level this has been a work that considers how we think – about human rights, about world politics, about ethics – rather than one that tries to determine what should be thought about such matters. In this sense, it is a theoretical rather than practical work; therefore it may frustrate those readers who desire prescriptions, who expect theoretical reflection to produce imperatives. This lack marks a difference in approach, distinguishing the kind of reconstructive work undertaken here from more clearly normative political theory. There are prescriptive elements in my call to see human rights as an agonistic politics concerned with the privileges attached to humanity as a political identity and the ongoing contestation over the best form of political community. More prescriptive still, I have affirmed a democratising human rights politics that enables agonistic respect for those we disagree with but whom we can still support and find common cause with, while also calling on us to be sensitive to the claims of those who are excluded, marginalised and abused. Further, this democratising account of human rights, if one is convinced by it, pushes us to attend

to and support the use of human rights to make world politics more inclusive and fully democratic – this is importantly a call for direct and participatory forms of democracy, which exceed the limitations of the nation state but do not aspire to a global expansion of systems of representative governance.

While the principled reason for avoiding authoritative prescriptions helps to distinguish the approach I have taken throughout this work, the lack of clear evaluations and firmer judgments requires a further response. Even within the terms of the approach to ethics I have defended, this work lacks judgments, specific evaluations of what human rights do and do not mean, and clear visions of what world politics should and should not be – tasks which I have suggested should be possible, and in fact enabled by the perspective offered here, so the absence of more concrete judgments needs to be acknowledged and explained. The simple explanation is that the work carried out here is prior to these more concrete tasks; it is a difference in the end of inquiry. Here I have set out to reconstruct human rights as an ethical ideal and while this has important applications for the institutions and practices that instantiate those ideals, the primary work here is conceptual – it is the work necessary for applying a reconstructed account of human rights in more specific critical inquiries. One could object that this approach is overtly (and overly) idealist, which would be true if this work were thought to be complete unto itself – it is not. And this is for me the most important marker to acknowledge when taking the measure of my work: will it enable further insight into world politics, and will it support the work of identifying, analysing and responding ethically to problematic situations. These are speculative questions and therefore the full measure of the work done here can only be made when there are further consequences to look to, no matter how comprehensive or convincing the theoretical account may (or may not) be. To clarify the contribution made in this work, I want to turn to three ways in which my position alters how we think about human rights, which in turn suggests further lines of inquiry that can more fully measure the value of the account of human rights presented here.

First, the ethical position I have defended alters the location of our judgments from the abstract to the specific. This means that when we consider more immediate and concrete questions, we will be able to offer more specific and surer judgments. For example, if we are asking should we support the Egyptian protestors in Tahir square

attempting to unseat their president,[1] or whether intervening to stop the violence in the Ivory Coast is wise,[2] then clearer judgments and more detailed prescriptions of what should be done will be possible. Conventional moral theory suggests that working out abstract principles and imperatives will tell us how to think in specific moments when judgment is required, while the ethics I defend suggests that our generalisations and abstractions come from our past experience of particular moments and the received insights of tradition and therefore the abstract is not absolute but contingent, at best a shorthand but in any case located far from the moment in which judgment is actually required and made.

Second, along with transposing the location of our most authoritative judgments, the political ethics that comes out of this reconstruction undermines and changes the status of those judgments. What would it mean to say democratic protests should unseat Mubarak, or that an intervention in the Ivory Coast is necessary? Such judgments are affirmations of particular ends in view, which must be tested against experience; therefore, ethical judgment is always uncertain, it contains an element of risk, as there is a danger that our judgments are wrong, either because the end pursued proves wanting or we failed to understand the situation adequately. Acknowledging the partiality and uncertainty of our ends requires that we constantly attend to the fallibility and corrigibility of our judgments.

Finally, the ethical position defended here opens up the meaning and practice of human rights to further critique. While it remains possible endorse elements of existing human rights practices and the conventional ideals those rights support, my reconstruction raises questions about the political relationships that define contemporary human rights practice, which are as often as not unequal and

---

[1] The protests and revolution that took place in Egypt in the early months of 2011 were the at the centre of international news as I was completing this thesis, the choice to speak about these events (only briefly) reflects my concern that these theoretical reflections should inform understanding of world politics, rather than a deeply considered engagement with these issues – this case and other used in the conclusion are used suggestively (opportunistically?) rather than systematically. For a brief summary of events see "Egypt protests: Key moments in unrest," *BBC News*, 11 February 2011, http://www.bbc.co.uk/news/world-middle-east-12425375.

[2] For more on the recent events in Ivory Coast, where a disputed election in 2010 lead to violence and disorder in the country, see John James, "Can Ivory Coast avoid return to war?" *BBC News*, 17 March 2011, http://www.bbc.co.uk/news/world-africa-12763786; and Mark Doyle, "No rush to military intervention in Ivory Coast," *BBC News*, 31 December 2010, http://www.bbc.co.uk/news/world-africa-12096437.

hierarchical, and the sorts of exclusions that define the meaning of rights, for example raising doubts about the focus on individual violations and individual rights violators, portrayed as evil and exceptional. These points can be clarified by thinking about the current situation in Libya.[3] The recent resolutions by the UN Security Council, which authorised an ICC investigation and an intervention to stop government violence, reveal positive aspects of contemporary human rights practice, as there has been an effort to halt the violence against rebels and civilians, and to hold the government of Libya accountable for the violence perpetrated against its own citizens.[4] Yet, even in this seemingly positive case attending to the politics of human rights raises important problems with the response to events in Libya. First, it reveals the hypocrisy and hierarchy that is inherent in the contemporary human rights regime, as the international response to rights violations is dependent upon the fickle will of powerful states and international actors in determining when and if there will be interventions to stop abuses, and whose crimes matter and whose are ignored. Second, it points to the limitation of contemporary rights thinking as the focus is exclusively on specific figures responsible for rights abuses, Colonel Gaddafi most prominently, rather than the wider social context in which violence was made possible. The corporations and states that have provided arms to the Libyan government cannot be conceived of as rights violators, and this is truer still of those who supported the Gaddafi regime despite the widely acknowledged abuses. This is of course an extremely limited consideration of a complex case, and what I want to highlight is the ways in which attending to the politics of human rights enables a more critical view.

More fundamentally, the reconstruction of human rights as a democratising ethos addressing the ethico-political significance of our shared humanity and the terms of legitimate social order opens up bigger questions. For example, the extended economic crisis, which has been ongoing since 2008, and its negative consequences have not been addressed as a human rights concern. Within the contemporary terms of human rights this is not surprising, the suffering that has been caused is not widely acknowledged as a human rights abuse given the ambiguity of the right to be

---

[3] For a brief summary of the political fortunes of Muammar Gaddafi see Martin Asser, "The Muammar Gaddafi story," *BBC News*, 26 March 2011, http://www.bbc.co.uk/news/world-africa-12688033.

[4] For details on the UN Security Council resolutions see "Libya: UN Security Council votes sanctions on Gaddafi," *BBC News*, 27 February 2011, http://www.bbc.co.uk/news/world-africa-12589434; and "Libya UN Resolution 1973: Text analysed," *BBC News*, 18 March 2011, http://www.bbc.co.uk/news/world-africa-12782972.

defended and the rights violator it must be defended against. Further, there seems to be little that can be done to alleviate the widely-acknowledged suffering – especially within the orthodox neo-liberal frame of contemporary economic thinking – as the negative consequences (both from the crisis and the response to it) are taken to be the result of economic forces rather than the activity of culpable moral agents.

Without engaging in the details of the causes and consequences of the crisis, I do want to suggest that it is possible to frame the issue in human rights terms. If the economic crisis, and the response to it, is about any one thing, it is the unbalanced state of the global economy, in which the interests of the economic elite have been explicitly privileged and enabled[5] – which has now had disastrous consequences, which have affected those least responsible most profoundly. This egregious injustice is largely acknowledged, but where are the calls for a more comprehensive and radical response? The inability of contemporary human rights to offer a perspective on this event is a damning indictment, as it displays an indifference to the global poor who lack secure access to food, basic services and prospects for fuller and more dignified lives as well as the dissatisfied and suffering working class. How can human rights be mobilised to address such a widespread and pressing concern? There are have been sporadic invocations of human rights in response to the ever-clearer economic injustices perpetuated by the global economy, for example demands for a right to housing,[6] and demands for economic relationships that serves the masses rather than the elite.[7] But a more comprehensive response is possible by understanding human rights claims in the way I have suggested: first, we can contest the image of humanity that constructs human rights on the model of individual property rights, and second, we can articulate new social relations as a condition of political legitimacy, such that a system that benefits the economic elite at the expense of the majority simply cannot

---

[5] Supporters of a neo-liberal global economy acknowledge this feature of the economy, the institutions of the international economy are intended to enable powerful actors to conduct their business freely – the moral case for this position, and its almost always made in moral terms, is that everyone benefits from such an arragement, or benefits more than they would from any other.

[6] US based NGO Take Back the Land has responded to the housing crisis in the US by advocating both for a human right to housing and extending community control over land, for more see their website: http://www.takebacktheland.org.

[7] Brazil's Landless Workers Movement has one of the most developed agendas on this issue, as they connect their effort to claim land, based on the productive use that communities make of it, to wider social justice concerns and reform of the basic economic relationships that produce poverty and social exclusion, for more see their English website at http://www.mstbrazil.org/.

be legitimate. Again this is only suggestive, but what I want to emphasise is the openings made possible by the reconstruction offered in this work.

In the end, the value of the work completed is complex and remains uncertain. It provides an analysis and critique of human rights as an ideal that is at the centre of contemporary world politics, further it provides an alternative ethical and political understanding of human rights that works to highlight the transformative and inclusive aspects of human rights while exposing the assimilative elements of the human rights ideal to ongoing critique, and finally it suggests a new approach to thinking about human rights, which I hope enable more critical and creative inquiries into human rights and world politics.

Bibliography

Ackerly, Brooke A. *Universal Human Rights in a World of Difference.* Cambridge: Cambridge University Press, 2008.

Ackerly, Brooke A. "Human Rights Enjoyment in Theory and Activism." *Human Rights Review*, Volume 12, Number 2 (2011). Forthcoming. Available through online first at http://www.springerlink.com/content/9546765610883863, last accessed 28 March 2011

Afshari, Reza. "On Historiography of Human Rights: Reflections on Paul Gordon Lauren's *The Evolution of International Human Rights: Visions Seen.*" *Human Rights Quarterly*, Volume 29, Number 1 (2007). 1-67

Agi, Marc. *René Cassin 1887-1976.* Mensil-sur-l'Estrée: Perrin, 1988.

Alves, José A. Lindgren. "The Declaration of Human Rights in Postmodernity." *Human Rights Quarterly*, Volume 22, Number 2(2000). 478-500.

Anghie, Antony. *Imperialism, Sovereignty and the Making of International Law.* Cambridge: Cambridge University Press, 2004.

Appiah, Kwame Anthony. *Cosmopolitanism: Ethics in a World of Strangers.* London: Penguin Books, 2006.

Arat, Zehra F. Kabasakal. "Forging a Global Culture of Human Rights: Origins and Prospects of the International Bill of Rights." *Human Rights Quarterly*, Volume 28, Number 2 (2006). 416-437.

Archibugi, Daniele. *The Global Commonwealth of Citizens: Toward Cosmopolitan Democracy.* Princeton, NJ: Princeton University Press, 2008.

Arneson, Richard J. "Perfectionism and Politics." *Ethics*, Volume 111, Number 1 (October 2000). 48-49.

Barry, Brian. *Culture & Equality.* Cambridge, MA: Harvard University Press, 2002.

Baxi, Upendra. *The Future of Human Rights.* Oxford: Oxford University Press, 2007.

Beitz, Charles. "What Human Rights Mean." *Daedalus*, Volume 132, Number 1 (Winter, 2003). 36-46.

Beitz, Charles R. *The Idea of Human Rights.* Oxford: Oxford University Press, 2009.

Beitz, Charles R. and Robert E. Goodin. *Global Basic Rights.* Oxford: Oxford University Press, 2009.

Benhabib, Seyla. *Situating the Self.* Cambridge: Polity Press, 1992.

Benhabib, Seyla. *The Claims of Culture: Equality and Diversity in the Global Era.* Princeton, NJ: Princeton University Press, 2002.

Benhabib, Seyla. *The Rights of Others: Aliens, Residents, and Citizens.* Cambridge: Cambridge University Press, 2004.

Benhabib, Seyla. *Another Cosmopolitanism.* With replies from Jeremy Waldron, Bonnie Honig, & Will Kymlicka. Edited by Robert Post. Oxford: Oxford University Press, 2006.

Benhabib, Seyla. "The legitimacy of human rights." *Daedalus*, Volume 137, Number 3 (Summer 2008). 94-104.

Benhabib, Seyla. "Claiming Rights across Border: International Human Rights and Democratic Sovereignty." *American Political Science Review*, Volume 103, Number 4 (November 2009). 691-704.

Berlin, Isaiah. "'The Second Confucius', review of John Dewey, *Art as Experience.*" *London Mercury,* Volume 31 (1934–5). 87–88.

Berlin, Isaiah. *The Assault on the French Enlightenment*. Unpublished John Danz Lectures, University of Washington, 22, 24 and 25 February 1971, accessed 03 February 2009, http://berlin.wolf.ox.ac.uk/lists/nachlass/assault2.pdf.

Berlin, Isaiah. *The Crooked Timber of Humanity.* Edited by Henry Hardy. Princeton, NJ: Princeton University Press, 1990.

Berlin, Isaiah. *The Sense of Reality.* Edited by Henry Hardy. London: Pimlico, 1996.

Berlin, Isaiah. *Against the Current*. Edited by Henry Hardy. London: Pimlico, 1997.

Berlin, Isaiah. *Concepts and Categories*. Edited by Henry Hardy. London: Pimlico, 1999.

Berlin, Isaiah. *The Power of Ideas.* Edited by Henry Hardy. London: Chatto & Windus, 2000.

Berlin, Isaiah. *Liberty*. Edited by Henry Hardy. Oxford: Oxford University Press, 2002.

Berlin, Isaiah. *Russian Thinkers*. Edited by Henry Hardy. London: Penguin Press, 2008.

Berlin, Isaiah and Beata Polanowska-Sygulska. *Unfinished Dialogue.* Amherst, NY: Prometheus Books, 2006.

Berlin, Isaiah and Bernard Williams. "Pluralism and liberalism: A reply." *Political Studies*, Volume 42 (1994). 306-309

Besson, Samantha and John Tasioulas, editors. *The Philosophy of International Law*. Oxford: Oxford University Press, 2010.

Bhambra, Gurminder K. and Robbie Shilliam, editors. *Silencing Human Rights: Critical Engagements with a Contested Project.* Basingstoke: Palgrave Macmillan, 2009.

Booth, Ken. "Human Wrongs and International Relations." *International Affairs*, Volume 71, Number 1, (1995). 103-126.

Botwinick, Aryeh and William E. Connolly. *Democracy and Vision: Sheldon Wolin and the Vicissitudes of the Political*. Princeton, NJ: Princeton University Press, 2001.

Boucher, David. "Tocqueville, Collingwood, history and extending the moral community." *British Journal of Politics and International Relations*, Volume 2, Number 3 (October 2000). 326-351.

Bray, Daniel. "Pragmatic Cosmopolitanism: A Deweyan Approach to Democracy beyond the Nation-State." *Millennium: Journal of International Studies*, Volume 37, Number 3 (2009). 683-719.

Brown, Chris. *International Relations Theory: New Normative Approaches*. Oxford: Columbia University Press, 1992.

Brown, Chris. *Sovereignty, Rights and Justice: International Political Theory Today.* Cambridge: Polity, 2002.

Brown, Chris. "Tragedy, "Tragic Choices" and Contemporary International Political Theory." *International Relations*, Volume 21, Number 1 (2007). 5-13.

Burgers, Jan Herman. "The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century." *Human Rights Quarterly*, Volume 14 (1992). 447-477.

Burke, Roland. *Decolonization and the Evolution of International Human Rights.* Philadelphia, PA: University of Pennsylvania Press, 2010.

Campbell, David and Morton Schoolman, editors. *The New Pluralism: William Connolly and the Contemporary Global Condition*. Durham, NC: Duke University Press, 2008.

Caney, Simon and Peter Jones, editors. *Human Rights and Global Diversity.* London: Frank Cass, 2001.

Cerna, Christina M. "Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts." *Human Rights Quarterly*, Volume 16, Number 4 (1994). 740-752.

Chandler, David. "Critiquing Liberal Cosmopolitanism? The Limits of the Biopolitical Approach." *International Political Sociology*, Volume 3 Issue 1 (March 2009). 53-70.

Charles Malik Papers. Library of Congress, Manuscripts Division.

Charvet, John and Elisa Kaczynska-Nay. *The Liberal Project and Human Rights: The Theory and Practice of a New World Order.* Cambridge: Cambridge University Press, 2008.

Cheng, Ruth H.C. and Sze-Chuh Cheng, editors. *Peng Chun Chang 1892-1957: Biography and Collected Works.* Privately Published, 1995.

Chowdhury, Nayeefa. "The Quest for Universal Human Rights: A Brief Comparative Study of Universal Declarations of Human Rights by the UN and the Islamic Council of Europe." *The International Journal of Human Rights*, Volume 12, Number 3 (2008). 347-352.

Cmiel, Kenneth. "The Recent History of Human Rights." *The American Historical Review*, Volume 109, Issue 1 (February, 2004). Online at http://www.historycooperative.org/journals/ahr/109.1/cmiel.html. Last accessed 25 January 2011.

Cochran, Molly. *Normative Theory in International Relations: A Pragmatic Approach.* Cambridge: Cambridge University Press, 1999.

Cochran, Molly, editor. *The Cambridge Companion to Dewey*. Cambridge: Cambridge University Press, 2010.

Cohen, Joshua. "Minimalism About Human Rights: The Most We Can Hope For?" *The Journal of Political Philosophy*, Volume 12, Number 2 (2004). 190-213.

Compa, Lance A. and Stephen F. Diamond, editors. *Human Rights, Labor Rights, and International Trade*. Philadelphia, PA: University of Pennsylvania Press, 1996.

Connolly, William E. "Appearance and Reality in Politics." *Political Theory*, Volume 7, Number 4 (November 1979). 445-468

Connolly, William E. *The Terms of Political Discourse.* Oxford: Martin Robertson, 1983.

Connolly, William E. *Political Theory and Modernity*. Oxford: Basil Blackwell, 1988.

Connolly, William E. *Identity\Difference: Democratic Negotiations of Political Paradox.* Ithaca, NY: Cornell University Press, 1991.

Connolly, William E. "Tocqueville, Territory and Violence." *Theory, Culture & Society*, Volume 11, Number 1 (1994). 19-41.

Connolly, William E. *The Ethos of Pluralization.* Minneapolis, MN: University of Minnesota Press, 1995.

Connolly, William E. "A critique of pure politics." *Philosophy and Social Criticism*, Volume 23, Number 5 (1997). 1-26.

Connolly, William E. "Speed, Concentric Cultures, and Cosmopolitanism." *Political Theory*, Volume 28, Number 5 (October 2000). 596-618.

Connolly, William E. "Cross-State Citizen Networks: A Response to Dallmayr." *Millennium: Journal of International Studies*, Volume 30, Number 2 (2001). 349-355.

Connolly, William E. *Neuropolitics: Thinking, Culture, Speed.* Minneapolis, MN and London: Minnesota University Press, 2002.

Connolly, William E. *Pluralism.* Durham, NC: Duke University Press, 2005.

Connolly, William E. "The Evangelical-Capitalist Resonance Machine." *Political Theory*, Volume 33, Number 6 (December 2005). 869-886.

Connolly, William E. *Capitalism and Christianity, American Style*. London: Duke University Press, 2008.

Connolly, William E. "Capital Flows, Sovereign Practices and Global Resonance Machines." *Innovating Global Security Lecture Series*, Watson Institute, Brown University (19 February 2009). http://www.watsoninstitute.org/events_detail.cfm?id=1287 (accessed 1 December 2010).

Connolly. William E. *A World of Becoming.* Durham, NC: Duke University Press, 2010.

Contemporary Condition, The. http://contemporarycondition.blogspot.com/

Cracraft, James. "A Berlin for Historians." *History and Theory*, Volume 41, Number 3 (October 2002). 277-300.

Crisp, Roger and Michael Slote, editors. *Virtue Ethics.* Oxford: Oxford University Press, 1997.

Crowder, George. *Liberalism and Value Pluralism.* London: Continuum, 2002.

Crowder, George. *Isaiah Berlin: Liberty and Pluralism.* Cambridge: Polity Press, 2004.

Czobor-Lupp, Mihaela. "Communicative Reason and Intercultural Understanding." *European Journal of Political Theory*, Issue 7, Number 4 (2008). 430-448.

Derrida, Jacques. *Specters of Marx: The State of the Debt, the Work of Mourning and the New International*. Translated by Peggy Kamuf. Abingdon: Routledge, 1994.

Dewey, John. *Experience and Nature.* Chicago and London: Open Court Publishing Company, 1925.

Dewey, John. *The Public and its Problems.* London: Allen & Unwin, 1927.

Dewey, John. *Democracy and Education.* New York, NY: Macmillan, 1930.

Dewey, John. *The Quest for Certainty.* London: George Allen & Unwin, 1930.

Dewey, John. *Problems of Men.* New York, NY: Philosophical Library, 1946.

Dewey, John. *Outlines of a Critical Theory of Ethics.* New York, NY: Hillary House, 1957.

Dewey, John. *Freedom and Culture.* Amherst, NY: Prometheus Books, 1989.

Dewey, John. *Lectures on Ethics: 1900-1901*. Edited and with an Introduction by Donald F. Koch. Carbondale, IL: Southern Illinois University Press, 1991.

Dewey, John. *The Political Writings*. Edited by Debra Morris and Ian Shapiro. Cambridge: Hackett Publishing Company, 1993.

Dewey, John. *Principles of Instrumental Logic: John Dewey's Lectures in Ethics and Political Ethics, 1895-1896*. Edited by Donald F. Koch. Carbondale, IL: Southern Illinois University Press, 1998.

Dewey, John. *Human Nature and Conduct: An Introduction to Social Psychology.* Amherst, NY: Prometheus Books, 2002.

Dewey, John. *Reconstruction in Philosophy.* Mineola, NY: Dover Publications, 2004.

Donnelly, Jack. "Human Rights: A New Standard of Civilization?" *International Affairs*, Volume 71, Number 1 (2002). 1-23.

Donnelly, Jack. *Universal Human Rights in Theory and Practice.* Ithaca, NY: Cornell University Press, 2003.

Donnelly, Jack. "The Relative Universality of Human Rights." *Human Rights Quarterly* 29 (2007). 281-306.

Douzinas, Costas. *Human Rights and Empire: The Political Philosophy of Cosmopolitanism.* Abingdon: Routledge, 2007.

Dunne, Tim and Nicholas J. Wheeler, editors. *Human Rights in Global Politics*. Cambridge: Cambridge University Press, 1999.

Edkins, Jenny, Veronique Pin-Fat and Michael J. Shapiro, editors. *Sovereign Lives: Power in Global Politics*. Abingdon: Routledge, 2004.

Elshtain, Jean Bethke. "Really existing communities." *Review of International Studies*, Volume 25, Number 1 (1999). 141-146.

Enloe, Cynthia H. *Bananas, Beaches and Bases: Making Feminist Sense of International Politics*. London: University of California Press, 2000.

Evans, Tony. "International Human Rights Law as Power/Knowledge." *Human Rights Quarterly*, Volume 27, Number 3 (2005). 1046-1068

Erskine, Toni. *Embedded Cosmopolitanism: Duties to Strangers and Enemies in a World of 'Dislocated Communities'*. Oxford: Oxford University Press, 2008.

Ferrell, James. "The alleged relativism of Isaiah Berlin." *Critical Review of International Social and Political Philosophy*, Volume 11, Number 1 (March 2008). 41-56.

Ferrell, James. "Isaiah Berlin: Liberalism and pluralism in theory and practice." *Contemporary Political Theory*, Volume 8, Number 3 (2009). 295-316.

Fesmire, Steven. *John Dewey and Moral Imagination: Pragmatism in Ethics.* Bloomington and Indianapolis, IN: Indiana University Press, 2003.

Festenstein, Matthew. *Pragmatism and Political Theory.* Cambridge: Polity, 1997.

Fischer, Louis. *Gandhi: His Life and Message for the World.* New York: Mentor, 1982.

Foucault, Michel. *Madness and Civilization.* London: Routledge, 2001.

Foucault, Michel. *The Order of Things: Archaeology of the Human Sciences.* London: Routledge, 2002.

Fraser, Arvonne S. "Becoming Human: The Origins and Development of Women's Human Rights." *Human Rights Quarterly*, Volume 21, Number 4 (November, 1999). 853-906.

Frost, Mervyn. *Ethics in International Relations: A Constitutive Theory of Individuality*. Cambridge: Cambridge University Press, 1996.

Gadamer, Hans-Georg. *Truth and Method.* London: Continuum, 2004.

Galston, William. *Liberal Pluralism: the implications of value pluralism for political theory and practice.* Cambridge: Cambridge University Press, 2002.

Geras, Norman. *Solidarity in the Conversation of Humankind: Ungroundable Liberalism of Richard Rorty.* London: Verso, 1995.

Gettleman, Jeffrey. "Africa's Forever Wars: Why the continent's conflicts never end." *Foreign Policy*, March/April 2010.

Glendon, Mary Ann. "Knowing the Universal Declaration of Human Rights." *Notre Dame Law Review*, Volume 73, Number 3 (1998), 1153-1190.

Glendon, Mary Ann. *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights.* New York, NY: Random House, 2001.

Goodale, Mark. "Reclaiming modernity: Indigenous cosmopolitanism and the coming of the second revolution in Bolivia." *American Ethnologist*, Volume 33, Number 4 (2006). 634-649.

Goodale, Mark. *Human Rights: An Anthropological Reader.* Oxford: Blackwell Publishing, 2009.

Goodale, Mark. *Surrendering to Utopia: An Anthropology of Human Rights.* Stanford, CA: Stanford University Press, 2009.

Goodale, Mark and Sally Engle Merry, editors. *The Practice of Human Rights: Tracking Law between the Global and the Local.* Cambridge: Cambridge University Press, 2007.

Goodman, Ryan and Derek Jinks. "Measuring the Effects of Human Rights Treaties." *European Journal of International Law*, Volume 14, Number 1 (2003). 171-183.

Gouinlock, James. *John Dewey's Philosophy of Value.* New York: Humanities Press, 1972.

Gray, John. *Isaiah Berlin.* London: Harper Collins Publisher, 1995.

Gray, John. *Two Faces of Liberalism.* New York, NY: The New Press, 2000.

Gregory, James. "The political philosophy of Walzer's social criticism." *Philosophy and Social Criticism*, Volume 36, Number 9 (2010). 1093-1111.

Griffin, James. "Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights." *Proceedings of the Aristotelian Society*, Volume 101 (2000). 1-28.

Griffin, James. *On Human Rights.* Oxford: Oxford University Press, 2008.

Habermas, Jürgen. *The Theory of Communicative Action, Volume 1: Reason and the Rationalization of Society.* Boston, MA: Beacon Press, 1984.

Habermas, Jürgen. *The Theory of Communicative Action, Volume 2: Lifeworld and System: A Critique of Functionalist Reason.* Boston, MA: Beacon Press, 1987.

Habermas, Jürgen. *Moral Consciousness and Communicative Action*. Cambridge: Polity, 1992.

Habermas, Jürgen. "Human Rights and Popular Sovereignty: The Liberal and Republican Versions." *Ratio Juris*, Volume 7, Number 1 (March 1994). 1-13.

Habermas, Jürgen. *Between Facts and Norms*. Cambridge: Polity Press, 1997.

Habermas, Jürgen. "Remarks on Legitimation through Human Rights." *Philosophy and Social Criticism*, Volume 24, Number 2-3, (1998). 157-171.

Habermas, Jürgen and Cronin, Ciaran. "On the Cognitive Content of Morality." *Proceedings of the Aristotelian Society*, Volume 96 (1996). 335-358.

Hafner-Burton, Emilie M. and Kiyoteru Tsutsui. "Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most." *Journal of Peace Research*, Volume 44, Number 4 (2007). 407-425.

Hafner-Burton, Emilie M. and James Ron. "Seeing Double: Human Rights Impact through Qualitative and Quantitative Eyes." *World Politics*, Volume 61, Number 2 (April 2009). 360-401.

Hardy, Henry and Crowder, George, editors. *The One and the Many: Reading Isaiah Berlin*. Amherst, NY: Prometheus Books, 2007.

Hathaway, Oona. "Do Human Rights Treaties Make a Difference?" *Yale Law Journal*, Volume 111, Number 6 (April 2002). 1935-2042.

Held, David. "Restructuring Global Governance: Cosmopolitanism, Democracy and the Global Order." *Millennium: Journal of International Studies*, Volume 38, Number 3 (2009). 535-547.

Held, David. *Cosmopolitanism: Ideals, Realities and Deficits.* Cambridge: Polity, 2010.

Heller, Agnes. "The Discourse Ethics of Habermas: Critique and Appraisal." *Thesis Eleven*, Volume 10-11, Number 5 (1985). 5-17.

Herman, Barbara. "On the Value of Acting from the Motive of Duty." *The Philosophical Review,* Volume 90, Number 3 (July 1981). 359-382.

Herman, Barbara. *The Practice of Moral Judgment*. Cambridge, MA: Harvard University Press, 1996.

Hickman, Larry A., editor. *Reading Dewey: Interpretations for a Postmodern Generation.* Indianapolis, IN: Indiana University Press, 1998.

Hildreth, R.W. "Reconstructing Dewey on Power." *Political Theory*. Volume 36, Number 6 (2009). 780-807.

Honig, Bonnie. *Political Theory and the Displacement of Politics.* London: Cornell University Press, 1993.

Honig, Bonnie. *Democracy and the Foreigner*. Princeton, NJ: Princeton University Press, 2003.

Honig, Bonnie. *Emergency Politics: Paradox, Law, Democracy.* Princeton, NJ: Princeton University Press, 2009.

Hoover, Joe and Marta Iñiguez de Heredia. "Philosophers, Activists, and Radicals: A Story of Human Rights and Other Scandals." *Human Rights Review*, Volume 12, Number 1 (2011), forthcoming. Available through online first at http://www.springerlink.com/content/p8166q6x9g27m121/ last accessed 28 March 2011.

Hopgood, Stephen. *Keepers of the Flame: Understanding Amnesty International*. Ithaca, NY: Cornell University Press, 2006.

Hopgood, Stephen. "Moral Authority, Modernity and the Politics of the Sacred." *European Journal of International Relations*, Volume 15, Number 2 (2009). 229-255.

Hume, David. *A Treatise of Human Nature.* Harmondsworth: Penguin Books, 1969.

Hunt, Lynn. *Inventing Human Rights: A History.* New York, NY: W. W. Norton, 2007.

Hutchings, Kimberly. *Kant, Critique and Politics.* London: Routledge, 1996.

Hutchings, Kimberly. "Towards a feminists international ethics." *Review of International Studies*, Volume 26 (2000). 111-30.

Hutchings, Kimberly. "Speaking and hearing: Habermasian discourse ethics, feminism and IR." *Review of International Studies*, Volume 31, Number 1 (2005). 155-165.

Hutchings, Kimberly. *Time and World Politics.* Manchester: Manchester University Press, 2008.

Hutchings, Kimberly. *Global Ethics: An Introduction.* Cambridge: Polity, 2010.

Ignatieff, Michael. *Human Rights as Politics and Idolatry*. Edited Amy Gutman. Princeton, NJ: Princeton University Press, 2001.

Ivison, Duncan, Duncan Patton, and Will Sanders. *Political Theory and the Rights of Indigenous Peoples.* Cambridge: Cambridge University Press, 2000.

Ishay, Micheline. *The History of Human Rights: From Ancient Times to the Globalization Era.* Berkley and Los Angeles, CA: University of California Press, 2004.

Jackson, Robert. *The Global Covenant: Human Conduct in a World of States.* Oxford: Oxford University Press, 2003.

Jahanbegloo, Ramin. *Conversations with Isaiah Berlin*. London: Phoenix Paperbacks, 1991.

Kant, Immanuel. *Political Writings.* Edited by H. S. Reiss. Cambridge: Cambridge University Press, 1991.

Kant, Immanuel. *Ethical Philosophy*. Translated by James W. Ellington. Indianapolis, IN: Hackett, 1994.

Kant, Immanuel. *Prolegomena to Any Future Metaphysics: with Selections from the Critique of Pure Reason.* Edited by Gary Hatfield. Cambridge: Cambridge University Press, 1997.

Kant, Immanuel. *Critique of Pure Reason.* Mineola, NY: Dover, 2003.

Kant, Immanuel. *Critique of Practical Reason.* Mineola, NY: Dover, 2004.

Kekes, John. *The Morality of Pluralism.* Princeton, NJ: Princeton University Press, 1993.

Kenny, Michael. "Isaiah Berlin's Contribution to Modern Political Theory." *Political Studies*, Volume 48 (2000). 1026-1039.

Kirkup, Alex and Tony Evan. "The Myth of Western Opposition to Economic, Social, and Cultural Rights? A Reply to Whelan and Donnelly." *Human Rights Quarterly*. Volume 31, Number 1 (2009). 221-237.

Korey, William. *NGOs and the Universal Declaration of Human Rights: A Curious Grapevine.* New York, NY: St. Martin's Press, 1998.

Korsgaard, Christine. *Creating the Kingdom of Ends.* Cambridge: Cambridge University Press, 1996.

Kurasawa, Fuyuki. *The Work of Global Justice: Human Rights as Practices.* Cambridge: Cambridge University Press, 2007.

Lauren, Paul Gordon. *The Evolution of International Human Rights: Visions Seen.* Philadelphia, PA: University of Pennsylvania Press, 2003.

Lewis, William Draper and John R. Ellingston, editors. "Essential Human Rights." *The Annals of The American Academy of Political and Social Science*, Volume 243, January 1946.

Lilla, Mark, Dworkin, Ronald and Silvers, Robert B., editors. *The Legacy of Isaiah Berlin.* New York, NY: New York Review of Books, 2001.

Linklater, Andrew. *Men and Citizens in the Theory of International Relations.* London: Macmillan, 1990.

Linklater, Andrew. *The Transformation of Political Community: Ethical Foundations of the Post-Westphalian Era.* Cambridge: Polity Press, 1998.

Linklater, Andrew. "Transforming political community: a response to the critics." *Review of International Studies*, Volume 25, Number 1 (1999). 165-175.

Linklater, Andrew. *Critical Theory and World Politics: Citizenship, sovereignty and humanity.* London: Routledge, 2007.

Luban, David. "The Romance of the Nation state." *Philosophy and Public Affairs*, Volume 9, Number 4 (1980). 392-397

MacIntyre, Alasdair. *A Short History of Ethics.* London: Routledge, 2002.

MacIntyre, Alasdair. *After Virtue: A Study in Moral Theory.* Notre Dame, IN: University of Notre Dame Press, 2007.

Mackinnon, Catharine A. *Are Women Human? And Other International Dialogues.* Cambridge, MA: Harvard University Press, 2006.

Malik, Charles. *The Challenge of Human Rights: Charles Malik and the Universal Declaration.* Habib C. Malik, editor. Oxford: Charles Malik Foundation, 2000.

McCarthy, Thomas. "Kantian Constructivism and Reconstructivism: Rawls and Habermas in Dialogue." *Ethics*, Volume 105, Number 1 (October 1994). 44-63.

Merry, Sally Engle. *Human Rights and Gender Violence: Translating International Law into Local Justice.* Chicago, IL: University of Chicago Press, 2006.

Moore, G. E. *Principia Ethica.* Edited by Thomas Baldwin. Cambridge: Cambridge University Press, 1993.

Morsink, Johannes. "The Philosophy of the Universal Declaration." *Human Rights Quarterly*, Volume 6, Number 3 (August, 1984). 309-334.

Morsink, Johannes. *The Universal Declaration of Human Rights: Origins, Drafting and Intent.* Philadelphia, PA: University of Pennsylvania Press, 1999.

Morsink, Johannes. *Inherent Human Rights: Philosophical Roots of the Universal Declaration.* Philadelphia, PA: University of Pennsylvania Press, 2009.

Moyn, Samuel. *The Last Utopia: Human Rights in History.* Cambridge, MA and London: The Belknap Press of Harvard University Press, 2010.

Mutua, Makau. "Savages, Victims, and Saviors: The Metaphor of Human Rights." *Harvard International Law Journal*, Volume 42, Number 1 (Winter 2001). 201-245.

Mutua, Makau. *Human Rights: A Political and Cultural Critique.* Philadelphia, PA: University of Pennsylvania Press, 2002.

Mutua, Makau, "Standard Setting in Human Rights: Critique and Prognosis." *Human Rights Quarterly*, Volume 29, Number 3 (2007). 547-630.

Mutua, Makau. "Human Rights and Powerlessness: Pathologies of Choice and Substance." *Buffalo Law Review*. Volume 56, Number 4 (2008). 1027-1034.

Neumayer, Eric. "Do International Human Rights Treaties Improve Respect for Human Rights?" *Journal of Conflict Resolution*, Volume 49, Number 6 (December 2005). 925-953.

Niebuhr, Reinhold. *Moral Man and Immoral Society: A Study in Ethics and Politics.* New York, NY: Scribner, 1934.

Nietzsche, Friedrich. *On the Genealogy of Morality.* Cambridge: Cambridge University Press, 1994.

Noble, Cheryl. "A Common Misunderstanding of Dewey on the Nature of Value Judgments." *The Journal of Value Inquiry*, Volume 12, Number 1 (1978). 53-63.

Nussbaum, Martha. "Human Functioning and Social Justice: In Defense of Aristotelian Essentialism." *Political Theory*, Volume 20, Number 2 (1992). 202-246.

Nussbaum, Martha. *Sex and Social Justice.* Oxford: Oxford University Press, 1999.

Nussbaum, Martha. *Women and Human Development: The Capabilities Approach.* Cambridge: Cambridge University Press, 2000.

Nussbaum, Martha. "Beyond the Social Contract: Capabilities and Global Justice." *Oxford Development Studies*, Volume 32, Number 1 (March 2004). 3-18.

Nussbaum, Martha and Amartya Sen, editors. *The Quality of Life.* Oxford: University of Oxford Press, 1993.

Odysseos, Louiza. "Human Rights, Liberal Ontogensis and Freedom: Producing a Subject for Neoliberalism?" *Millennium: Journal of International Studies*, Volume 38, Number 3 (2010). 747-772.

O'Neill, Onora. *Constructions of Reason: Explorations of Kant's Practical Philosophy.* Cambridge: Cambridge University Press, 1990.

Pagden, Anthony. "Human Rights, Natural Rights, and Europe's Imperial Legacy." *Political Theory*, Volume, 31, Number 2 (April 2003). 171-199.

Parekh, Serena. "Resisting "Dull and Torpid" Assent: Returning to the Debate Over the Foundations of Human Rights." *Human Rights Quarterly*, Volume 29, Number 3 (2007). 754-778.

Phillips, Anne. "Feminism and Liberalism Revisited: Has Martha Nussbaum Got It Right?" *Constellations*, Volume 8, Number 2 (2001). 249-266.

Pogge, Thomas. *World Poverty and Human Rights.* Cambridge: Polity, 2002.

Prichard, Alex. "David Held is an Anarchist. Discuss." *Millennium: Journal of International Studies*. Volume 39, Number 2 (2010). 439-459.

Rana, Rajat. "Symphony of Decolonisation: Third World and Human Rights Discourse." *The International Journal of Human Rights*, Volume 11, Number 4 (2007). 367-379.

Rao, Rahul. *Third World Protest: Between Home and the World.* Oxford: OUP, 2010.

Rawls, John. *Political Liberalism.* New York, NY: Columbia University Press, 1993.

Rawls, John. *A Theory of Justice.* Cambridge, MA: Harvard University Press, 1999.

Rawls, John. *The Law of Peoples*. London and Cambridge, MA: Harvard University Press, 1999.

Rawls, John. *Justice as Fairness*. Edited by Erin Kelly. Cambridge, MA: Harvard University Press, 2001.

Raz, Joseph. *The Practice of Value.* Oxford: Oxford University Press, 2003.

Reed, Jamie "From Logical Positivism to "Metaphysical Rationalism": Isaiah Berlin on the "Fallacy of Reduction."" *History of Political Thought*, Volume 29, Number 1 (Spring 2008). 109-131.

Reinbold, Jenna. "Political Myth and the Sacred Center of Human Rights: The Universal Declaration and the Narrative of "Inherent Human Dignity."" *Human Rights Review*, Volume 12, Number 2 (2011), Forthcoming. Available through online first at http://www.springlink.com/content/y13672p6w3w15653/, last accessed 28 March 2011.

Reus-Smit, Christian. "Human rights and the social construction of sovereignty." *Review of International Studies*, Volume 27 (2001), 519-38.

Risse, Thomas, Stephen C. Ropp and Kathryn Sikkink. *The Power of Human Rights*. Cambridge: Cambridge University Press, 1999.

Robinson, Fiona. "Human rights and the global politics of resistance: feminist perspectives." *Review of International Studies*, Volume 29 (2003). 161-180.

Rorty, Richard. *Consequences of Pragmatism: Essays, 1972-1980.* Minneapolis, MN: University of Minnesota Press, 1982.

Rorty, Richard. *Contingency, Irony, and Solidarity.* Cambridge: Cambridge University Press, 1989.

Rorty, Richard. *Truth and Progress: Philosophical Papers, Volume 3.* Cambridge: Cambridge University Press, 1998.

Rorty, Richard. *Philosophy as Cultural Politics: Philosophical Papers, Volume 4.* Cambridge: Cambridge University Press, 2007.

Sabaratnam, Meera. "IR in Dialogue... but can we change the subjects? A typology of decolonising strategies for the study of world politics." *Millennium: Journal of International Studies.* Volume 39, Number 3 (2011). Forthcoming.

Sartre, Jean Paul. *Existentialism is a Humanism*. Edited by John Kulka. Translated by Carol Macomber. New Haven, CT: Yale University Press, 2007.

Schaap, Andrew. "Political Abandonment and the Abandonment of Politics in Agamben's Critique of Human Rights." Unpublished Paper. The Exeter Research and Institutional Content archive (2008). Available online at http://hdl.handle.net/10036/42438, accessed 29 March 2011.

Schaap, Andrew. "Enacting the Right to Have Rights: Jacques Rancière's critique of Hannah Arendt." *European Journal of Political Theory*, Volume 10, Number 1 (2011). 22-45.

Schick, Kate. "Beyond Rules: A Critique of the Liberal Human Rights Regime." *International Relations*, Volume 30, Number 3 (2006). 321-327.

Seckinelgin, Hakan and Hideaki Shinoda, editors. *Ethics and International Relations*. Basingstoke: Palgrave, 2001.

Sen, Amartya. "Elements of a Theory of Human Rights." *Philosophy & Public Affairs*, Volume 32, Number 4 (2004). 315-356.

Shapcott, Richard. *Justice, Community, and Dialogue in International Relations.* Cambridge: Cambridge University Press, 2001.

Shapcott, Richard. "Cosmopolitan Conversation: Justice, Dialogue and the Cosmopolitan Project." *Global Society*, Volume 16, Number 3 (2002). 221-243.

Shilliam, Robbie. "Decolonizing the grounds of ethical inquiry: a dialogue between Kant, Foucault and Glissant." *Millennium: Journal of International Studies*, Volume 39, Number 3 (2011). Forthcoming. Available through online first at

http://mil.sagepub.com/content/early/2011/03/09/0305829811399144, last accessed 28 March 2011.

Shue, Henry. *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy.* Princeton, NJ: Princeton University Press, 1996.

Shute, Stephen and Susan Hurley, editors. *On Human Rights: The Oxford Amnesty Lectures 1993*. New York, NY: Basic Books, 1994.

Singer, Peter. *How Are We To Live?* Amherst, NY: Prometheus Books, 1995.

Skagestad, Peter. "Collingwood and Berlin: A Comparison." *Journal of the History of Ideas* (2005). 99-112.

Skrupskelis, Ignas K. "Some Oversights in Dewey's Cosmopolitanism." *Transactions of the Charles Peirce Society*. Volume 45, Number 3 (2009). 308-347.

Stammers, Neil. *Human Rights and Social Movements.* London: Pluto, 2009.

Stevenson, C.L. *Ethics and Language.* New Haven: Yale University Press, 1954.

Stuhr, John J. "Old Ideals Crumble: War, Pragmatist Intellectuals, and the Limits of Philosophy." *Metaphilosophy*, Volume 35, Numbers 1 & 2 (January 2004). 82-98.

Sullivan, William M. and Will Kymlicka, editors. *The Globalization of Ethics*. Cambridge: Cambridge University Press, 2007.

Sutch, Peter. "International justice and the reform of global governance: a reconsideration of Michael Walzer's international political theory." *Review of International Studies*, Volume 35, Number 3 (2009). 513-530.

Tamir, Yael. "A Strange Alliance: Isaiah Berlin and the Liberalism of the Fringes." *Ethical Theory and Moral Practice*, Volume 1 (1998). 279-289.

Tascón, Sonia and Jim Ife. "Human Rights and Critical Whiteness: Whose Humanity?" *The International Journal of Human Rights*, Volume 12, Number 3 (2008). 307-327

Tasioulas, John. "Human Rights, Universality and the Values of Personhood: Retracing Griffin's Steps." *European Journal of Philosophy*, Volume 10, Number 1 (2002). 79-100.

Tasioulas, John. "Taking Rights out of Human Rights." *Ethics*, Volume 120, Number 4 (July 2010). 647-678.

Todorov, Tzvetan. *The Conquest of America.* New York: Harper Collins, 1982.

United Nations Commission on Human Rights. *Report of The Drafting Committee to the Commission on Human Rights* (Geneva: ECOSOC, 1947). E/C.4/21.

United Nations Commission on Human Rights. *Summary Record of the Twenty-Sixth Meeting* (Geneva: ECOSOC, 1947), E/CN.4/SR/26.

United Nations Educational, Scientific and Cultural Organization. *Human Rights: Comments and interpretations* (UNESCO/PHS/3 (rev.)), Paris, 25 July 1948.

Walker, R.B.J. *Inside/Outside: International Relations as Political Theory.* Cambridge: Cambridge University Press, 1993.

Walker, R.B.J. "The hierarchicalization of political community." *Review of International Studies*, Volume 25, Number 1 (1999). 151-156.

Waltz, Susan. "Universalizing Human Rights: The Role of Small States in the Construction of the Universal Declaration of Human Rights." *Human Rights Quarterly,* Volume 23, Number 1 (2001). 44-72.

Waltz, Susan. "Reclaiming and Rebuilding the History of the Universal Declaration of Human Rights." *Third World Quarterly*, Volume 23, Number 3 (June, 2002). 437-448.

Walzer, Michael. *Just and Unjust Wars: A Moral Argument with Historical Illustrations.* New York, NY: Basic Books, 1977.

Walzer, Michael. *Spheres of Justice: A Defense of Pluralism and Equality.* New York, NY: Basic Books, 1983.

Walzer, Michael. *Thick and Thin: Moral Argument at Home and Abroad.* Notre Dame, IN: Notre Dame University Press, 1994.

Walzer, Walzer. *On Toleration.* London: Yale University Press, 1997.

Walzer, Michael. *Arguing About War.* New Haven, CT: Yale University Press, 2004.

Walzer, Michael. *Thinking Politically: Essays in Political Theory*. Edited by David Miller. London: Yale University Press, 2007.

Wasserstrom, Jeffrey N., Greg Grandin, Lynn Hunt, and Marilyn B. Young, editors. *Human Rights and Revolutions.* Plymouth: Rowman & Littlefield, 2007.

West, Cornel. *The American Evasion of Philosophy: A Genealogy of Pragmatism.* Madison, WI: University of Wisconsin Press, 1989.

Westbrook, Robert B. *John Dewey and American Democracy.* Ithaca, NY: Cornell University Press, 1991.

Whelan, Daniel J. and Jack Donnelly. "The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight." *Human Rights Quarterly*. Volume 29, Number 4 (2007). 908-949.

White, Morton. *Social Thought in America: The Revolt Against Formalism.* New York: Viking Press, 1949.

Williams, Bernard. *Problems of the Self.* Cambridge: Cambridge University Press, 1973.

Williams, Bernard. *Moral Luck: Philosophical papers, 1973-1980.* Cambridge: Cambridge University Press, 1981.

Williams, Bernard. *Ethics and the Limits of Philosophy.* Cambridge, MA: Harvard University Press, 1985.

Williams, Bernard. *In the Beginning was the Deed.* Edited by Geoffrey Hawthorn. Princeton, NJ: Princeton University Press, 2005.

World Conference on Human Rights: Vienna Declaration and Programme of Action. United Nations document A/CONF.157/23

Zakaras, Alex. "Isaiah Berlin's Cosmopolitan Ethics." *Political Theory*. Volume 32, Volume 4 (August 2003). 495-518.

Zalewski, Marysia, Ann Tickner, Christine Sylvester, Margot Light, Vivienne Jabri, Kimberly Hutchings, and Fred Halliday. "Roundtable Discussion: Reflections on the Past, Prospects for the Future in Gender and International Relations." *Millennium Journal of International Studies*, Volume 37, Number 1 (2008). 153-179.

Zinn, Howard. *A People's History of the United States.* New York, NY: Harper Collins, 2003.

Žižek, Slavoj. "Against Human Rights." *New Left Review,* Volume 34 (July – August 2005), accessed 03 February 2009, http://www.newleftreview.org/?view=2573.

Zoelle, Diana Grace. *Globalizing Concern for Women's Human Rights: the failure of the American Model.* New York, NY: St. Martin's Press, 2000.