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Lockean Theories of Property: Justifications for Unilateral Appropriation

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Abstract. Although John Locke's theory of appropriation is undoubtedly influential, no one seems to agree about exactly what he was trying to say. It is unlikely that someone will write *the* interpretation that effectively ends the controversy. Instead of trying to find the one definitive interpretation of Locke's property theory, this article attempts to identify the range of reasonable interpretations and extensions of Lockean property theory that exist in the contemporary literature with an emphasis on his argument for unilateral appropriation. It goes through Locke's argument point-by-point discussing the controversy over what he said and over what he perhaps should have said to make the most valuable and coherent argument. The result is an outline of Lockean theories of property: a menu of options by which one might use appropriation to justify property rights. Supporters only need to pick the version they find most plausible, but opponents should be aware of the entire menu. Anyone claiming to refute appropriation-based property rights must address not only one but all potentially valid versions of it.

Key words: property, Locke, appropriation, libertarianism, Lockean proviso.

Although John Locke's property theory (1960, especially *Second Treatise*, ch. 5) is undoubtedly influential, no one seems to agree on exactly what he was trying to say. Many have complained about his ambiguity. Those who do not see ambiguity have interpreted him in strikingly different ways.[1] There is unlikely to be an "a-ha" moment, when someone writes *the* interpretation, effectively ending the controversy. But the ambiguity in Locke's property theory does not imply that it lacks important insights. The most important and influential of these insights is unilateral appropriation: the idea that there is something individuals can do on their own to establish rights over natural resources that others have a moral duty to respect.

Given the influence of and the controversy over Locke's theory of unilateral appropriation, it is worthwhile to take stock of the range of theories that have been developed out of it. In an effort to do so, this article makes a critical point-by-point examination of Locke and his interpreters, not to identify the one correct interpretation of Locke's theory but to identify the menu of options: the range of potentially valid ways in which unilateral appropriation might be used to justify private property rights. Supporters only need to pick the version they find most plausible, but opponents should be aware of the entire menu. Anyone claiming to refute the appropriation-based justification of property rights must address not only one but all potentially valid versions of it.

Locke, of course, is not the first writer to discuss the appropriation of property. Grotius (2005 [1625]) had a version of appropriation theory, and in the form of first possession, it has been recognized in the common law tradition stemming as far back as an-

1] See below.

cient Rome.[2] But Locke employs unilateral appropriation to argue that property rights entail morally binding restrictions on others in advance of – and perhaps with greater authority than – any social agreement. His argument has had enormous influence ever since, and therefore, it has become the starting point for almost any discussion of the appropriation-based justification of property rights. The extent to which Locke actually relies on unilateral appropriation is also a matter of controversy (discussed below), but the focus of the discussion always returns to this crucial issue.

My attention in this article is not limited to sources proposed strictly as interpretations of *Locke's* theory; it includes *Lockean* extensions and modifications as well. Following Gopal Sreenivasan (1995, 106), I use the term "Locke's theory" to refer to Locke's own words or intentions and the term "Lockean theory" to refer to any theory somehow based on Locke. I am interested in Locke's property theory because it bears on the on-going philosophical debate over equality, property rights, freedom, and the legitimacy of government powers of taxation, regulation, and redistribution.[3] The central goal of this article is to identify the range of plausible appropriation-based justifications of private property.

Issues of why Locke said what he said, what his real intentions were, or how one comes up with a particular interpretation of Locke are of only secondary importance to this effort.

Although Locke clearly wrote in Christian terms, this article searches for a secular version of Lockean theory. Discussion of the theological aspects of Locke's theory has become popular recently,[4] but those aspects of his theory can be seen at least somewhat metaphorically,[5] and many Lockean property theorists leave them aside.[6] A secularized version must be found if Lockean property theory is going to be relevant to modern pluralistic societies.

This article is organized as follows. Section I discusses the controversy over Locke's property theory, indicating that it is unlikely to be resolved. Section II begins the discussion of Lockean property theory by examining the conditions for appropriation in the state of nature. Section III discusses the controversy over whether and how many provisos apply to appropriation. It argues that although there are up to three Lockean provisos, with reasonable simplification they can be considered jointly as one proviso. Section IV discusses now the proviso can be fulfilled in a world of scarce resources. Section V examines how, whether, and what strength of property rights (appropriated in the state of nature) can be brought into civil society. Section VI concludes by putting together an out-

2] Epstein 1995.

3] Williams 1992; Nozick 1974; Cohen 1995; Arneson 1991.

4] Dunn 1990; Dunn 1969; Harris 1994; Waldron 2002; Myers 1995.

5] Brown 1999.

6] For discussion of the religious aspects of Locke's theory see Oakley 1997; Schochet 2000, 367-72; Terchek and Brubaker 1989; Ward 1995.

line of Lockean theories of property. It shows how various interpretations and reformulations of Lockean theory can be understood as specifications of that outline.

An attack on appropriation theory cannot be successful if it defeats only one specification of that outline. The opponent must defeat the entire outline or any reasonable specification of it. The existence of this diverse menu of options by which a supporter might use appropriation theory to justify private property rights does not make any one argument for property logically stronger, but it does make the task of the opponent of private property much more demanding.

I. LOCKE AS RORSCHACH

Lockean appropriation theory has been applied not only to individual property rights but to intellectual property, territorial rights, international law, bioengineering, and many other areas.[7] Nevertheless, "How to make full sense of Locke's theory of property remains one of the big challenges in the history of political thought." (Nicholson 1998, 153).

Some scholars believe that Locke's property theory is unclear or inconsistent.[8] Those who have tried to clarify Locke's property theory have produced inconsistent interpretations. Richard Ashcraft (1986) sees revolutionary theory. C. B. Macpherson (1962) and others see a basis for class-based capitalism.[9] Barbara Arneil (1996; 1996b) sees a justification for British imperialism in America. Many right-libertarians see liberal individualism with strong natural property rights.[10] John Dunn (1991 [1968]; 1969) sees property rights tempered by a strong duty of charity. Several scholars see limited, regulated property rights.[11] Gopal Sreenivasan (1995) sees greatly limited, egalitarian property rights. Leo Strauss (1991 [1952]) sees no appeal to natural law at all. Matthew Kramer (2004) sees a thoroughgoing communitarianism. James Tully (1980, 167-70) sees contingent property rights as strong as society chooses to grant.

Given all of this disagreement, "One cannot but be wary before trespassing on the bitter and protracted debate on Locke's theory of property." (Clark 1998, 256). But it has something that accounts for its enduring popularity. According to Alan Simmons:

> [T]hose who innocently work to discover, make, or usefully employ some unowned good ought to be allowed to keep it (if in so doing they harm no others)... It is the strength of this intuition that keeps alive the interest in Locke's labor theory of property acquisition… However badly he defends his views, we might say, surely Locke is on to something. (1992, 223)

7] Child 1997; Dienstag 1996; Hughes 1997; Meyer 2000; Story 1998; Nine 2008; Steiner 2008; Levin 2001; McDaniel 2001; Lindsay 2005.

8] Monson (1971).

9] Poole (1980) and Wootton (1992).

10] Nozick (1974, 167-82); Rothbard (1982, 21-24).

11] Gough (1950); Ryan (1984); Waldron (1988, 137-252); Freeman (2001).

Or is he? Before we can evaluate it, we need to determine what justifications of property rights have been developed from this basic insight.

II. APPROPRIATION IN THE STATE OF NATURE

Locke devised a theory of unilateral appropriation in an attempt to show how individuals can come to have unequal private property even if the Earth and all its natural resources in the initial state of nature "belong to Mankind in common" (§25-§27)[12]. Whatever he intended by this statement, it was something less than full ownership, or unilateral appropriation would have been prohibited outright.

Locke begins in a state of nature with abundant natural resources but no government, money, or trade. The first person to mix his or her labor with land needs no one else's consent to appropriate it (§26-31).[13] A farmer (who alters the land through labor) appropriates it; a hunter-gatherer (who labors on land without significantly altering it) does not.

Locke discusses labor-based appropriation at length. It is not always clear which of his statements are meant as justifications for appropriation and which are merely descriptive. But his property chapter contains at least five possible justifications for it. First, self-ownership implies a person owns his or her labor and any unowned thing s/he mixes it with (§27-28). Second, labor improves resources and accounts for most of the value of property (§28). This reason can be read as meaning that natural resources have little or no value until mixed with labor and/or consumed.[14] Third, Locke's calling attention to the improvement of resource value through the pains of the laborer (§34) can be read as some kind of desert claim.[15] Fourth, improving resources effectively makes more resources available for others (§37).[16] Fifth, appropriators are entitled to something like an unconditional right to produce their own subsistence (§28-29). This reason is illustrated by what Sreenivasan calls the "paradox of plenty" (1995, 28-29). Locke argues, "If [unanimous consent] was necessary, Man had starved, notwithstanding the Plenty God had given him" (§28). This outcome is paradoxical in the sense that God gave land to mankind in common so that it would sustain them, but strict common ownership could preclude individuals' access to sustenance.

12] Unless otherwise specified, section numbers (denoted §) refer to Locke 1960, *Second Treatise*.

13] Locke actually discusses only the first *man* (§26-27) and his family (§36, 48). Waldron 1988, 161-62, argues that Locke's family-based ownership is important. However, most contemporary Lockeans apply appropriation theory on an individual, non-gender-specific basis. For discussion of the family in Locke's theory see Pfeffer 2001.

14] Arneil (1994, 602), Olivecrona (1991 [1974], 341) and Cohen (1995) read it this way. Williams (1992, 56) reads Locke not as seeing resources as small in relative value to labor but as seeing resources as opportunities for labor.

15] Becker 1977, 35-36; Buckle 1991, 149-61.

16] This argument is elaborated and more fully connected with a need for private ownership by Schmidtz (1990; 1991, 17-24).

All of Locke's justifications for labor-based appropriation have been challenged by scholars. For example, Waldron (1988, 168-74) argues that the paradox of plenty cannot justify appropriation because a right to subsistence can be fulfilled without conferring exclusive ownership rights to appropriators. Sreenivasan (1995, 28-29) replies that the paradox is not meant as the justification of unilateral appropriation but as a demonstration of its feasibility, by reducing the need for unanimous consent to an absurdity – starvation amid plenty.

Many authors have remarked that this argument justifies ownership of only the value added by the appropriator, not the full resource value of an asset.[17] Locke may have believed that the tax system could not separate value added, and he seems to have believed that resource value was insignificant. If these beliefs are incorrect, the conclusion that the laborer should own the entire resource is weakened.

Not all appropriation theorists accept first labor as the method by which property claims can be established. Some replace first labor with first claim, first use, first possession, or discovery.[18] Some have proposed additional justifications for appropriation, including that property takes a pivotal role in a person's life,[19] that a stable property rights system produces efficiency gains that benefit everyone,[20] and that appropriation is necessary to pursue projects, with which others should not interfere.[21]

III. THREE PROVISOS IN ONE

Scholars have identified as many as three limits on Lockean appropriation: (A) the no-waste proviso or spoliation limitation, (B) the charity or subsistence proviso, and (C) the enough-and-as-good proviso or the sufficiency limitation. There is little agreement about which provisos are necessary, whether they were intended, or what their implications are, but with reasonable simplification, it is possible at least to consider them jointly. The following four subsections discuss three provisos and the possibility of combining them.

A. The no-waste proviso

Locke argues with great emphasis, that an appropriator must not waste his or her property or take more than s/he can use (§31, 38, 46). In the state of nature, this proviso ensures substantial equality by limiting the size of holdings to the amount a person can work directly.

17] Epstein (1995, 60).

18] Otsuka (2003, 21 n. 29); Narveson (1988, chapter 7); Epstein (1995); Kirzner (1989, 18-19, 98-100).

19] Waldron (1992).

20] Epstein (1995).

21] Sanders (1987, 392-99); Sanders (2002, 40-45); Lomasky (1987, 130-31).

It is hard to understand why Locke stresses this proviso so much. The most obvious motivation is that, if people waste what they take, there might not be enough to go around, but that argument would make the no-waste proviso an instrument to maintain the enough-and-as-good proviso (discussed below). Instead, Locke seems to ascribe independent value and primary importance to the no-waste proviso. One explanation for this proviso is simply that God commanded people to use the bounty of nature (§31). If so, it might not have a secular equivalent.

Rather than protection for the propertyless from a wasteful upper class, several authors read this proviso as support for the expansion of upper class property rights through the enclosure movement in Britain and colonization abroad.[22] Locke's apparent argument is that peasants and technologically primitive people violate the no-waste proviso by failing to use land to its fullest. Industrious British proprietors are, therefore, justified in seizing it.[23] If this interpretation is correct, this aspect of Locke's theory is rather unappealing.

B. The charity proviso

Locke (1960, *First Treatise* §42; 1993, 452; Dunn 1991 [1968]) believed in a strong duty of charity by which everyone is entitled to maintain subsistence, but scholars do not agree whether he includes charity as a proviso in his property theory. Most scholars have not addressed the possibility of a distinct charity proviso. John Sanders (1987, 371-73) recognizes a duty to charity in the *First Treatise*, under the name "Right to Surplusage", but argues that it manifests itself as the enough-and-as-good proviso in the *Second Treatise*. A few scholars, such as Waldron (1979, 327-28), see it as something rather different from the enough-and-as-good proviso. He claims (2002, 177-85)) that the *Second Treatise* relies heavily on the charity proviso although Locke does not specifically restate it there. Other scholars do see references to this proviso in the *Second Treatise* (§25).[24] Robert Lamb and Benjamin Thompson (2009) argue that concept of charity was not entirely consistent and that it implies only minimally enforceable duties. Although charity might give those in need a title to the plenty of others, it appears to be a paternal responsibility for the property-owning class rather than a challenge to the concentration of ownership. It could be used to justify taxation and redistribution, but Locke may have believed, as many right-libertarians do, that such taxation is unnecessary in a healthy economy because the market provides enough jobs for the able-bodied and voluntary charity provides enough support for the infirm.[25]

22] Arneil (1994); Arneil (1996); Glausser (1990); Olivecrona (1974, 592); Lebovics (1991 [1986]).

23] Glausser 1990.

24] Ashcraft (1994, 243).

25] Waldron 1988, 161; Winfrew 1991 [1981], 398.

C. The enough-and-as-good proviso

Locke states that appropriation is valid, "at least where there is enough, and as good left in common for others" (§27), and he elaborates this idea significantly in the following paragraphs (§27-36). Waldron (1988, 210) and Macpherson (1962, 211) call this idea the "sufficiency limitation." Nozick calls it "*the* Lockean proviso" (1974, 178-182).

It has inspired diverse interpretation, beginning with Locke's placement of the words "at least." Seemingly, either the words "at least" mean nothing, or the entire proviso means nothing. Had Locke written, *appropriation is valid where there is* at least *enough and as good left in common for others*, he would have made it clear that he intended it was a proviso. But instead he wrote, "*at least* where there is enough and as good left in common for others" (§27, emphasis added), implying that there are other unspecified cases in which a person can appropriate without leaving enough and as good for others. Why would Locke include this phrase "at least" if it did not mean that appropriation was also valid without it? Why would Locke mention this enough-and-as-good clause at all (and mention it several times) if he did not intend it as a proviso?

Some scholars argue that this sufficiency limitation is not a proviso at all. It could be a sufficient (but not necessary) condition for appropriation or merely a description of the effect of the no-waste proviso in the state of nature.[26] This position has two difficulties. First, Kramer (2004, 106) demonstrates that the enough-and-as-good proviso cannot be successfully employed as a sufficient condition. Suppose I shoot a rhinoceros, and I leave enough rhinos so that everyone who wants can shoot one too. But you, like most people, don't want to shoot a rhino; you believe they are sacred creatures that must all be left in the wild. The fact that there is enough-and-as-good left for you to appropriate, does not mean that you should feel uninjured by my appropriation or even that I should be permitted to appropriate. For the enough-and-as-good proviso to become a sufficient condition, it would have to be combined with the assumption that there is no value in leaving the entire stock of the resource in question in common. This assumption will not hold for all resources.

Second, Locke does not state the proviso merely as a matter of fact but as a justification for appropriation. He repeatedly uses words like "injury," "complaint," "prejudice," and "intrench" (§27-36) seemingly to demonstrate that the enough-and-as-good proviso justifies property *because* it ensures the appropriator "does as good as take nothing at all" (§33).

Some more extreme property rights advocates argue that appropriation theory is logically stronger without any provisos. In various versions the essential argument is that people have no positive right to resources. Therefore, they are no worse off in terms of their rights, even if others appropriate everything.[27] Opponents of this extreme view argue

26] Thomson (1976); Waldron (1979, 322; 1988, 210-11; 2002, 172).

27] Kirzner 1989, 98-100; Narveson 1988, 100-101; Rothbard 1982, 244-45.

that without a proviso, appropriation interferes with, and therefore harms, anyone who is capable of using unappropriated resources.[28] If Locke did not intend the sufficiency limitation as a proviso, perhaps he should have. Any justification of property is weak and unpersuasive without it.

Most authors agree with Sreenivasan (1995, 40) and Nozick (1974) that the enough-and-as-good proviso is the most important limitation on property rights. Even Waldron (1979; 2002) admits that there is a problem when the sufficiency limitation is not met. If the phrase "at least" is carefully placed, it means that when goods are not scarce the appropriator is required either to compensate the non-appropriators or to obtain consent.[29]

D. Three provisos in one

Realizing that all three provisos stem from the belief that people should be free to use resources to meet their needs, it is possible with minor simplification to combine them into one. To do so, the no-waste proviso has to be read as an instrument to help fulfill the others, even though this is a more secularized reading than Locke probably intended. The charity and sufficiency provisos protect the propertyless better when both are in effect. The charity proviso implies greater support for those unable to appropriate resources on their own. The enough-and-as-good proviso implies greater support to those who are capable of appropriating more than just enough resources to meet their basic needs. The simplifying assumption that everyone is capable of providing for themselves given enough resources (perhaps by reselling them) allows the following section to focus on fulfilling "the" proviso without too much loss of generality. This proviso is somewhat broader than Nozick's characterization of sufficiency as "the" proviso.

IV. FULFILLING THE LOCKEAN PROVISO

Each of the following three subsections discusses one of three questions about how the proviso should be fulfilled. (A) Must it be fulfilled in kind or is compensation acceptable? (B) Should it be fulfilled in terms of standard-of-living or independent functioning? (C) How strong should it be? Locke did not elaborate extensively on these issues. Therefore, this discussion mostly involves Lockean adaptations.

A. Must the proviso be fulfilled in resources or is compensation acceptable?

It is unclear whether "enough and as good" should be left in the same kind of resources taken by the appropriator or whether the appropriator can replace natural resources with something else. Depending on the strength of the proviso, in-kind fulfillment might be difficult or impossible in a world with a population in the billions, but as long as production creates value, the possibility exists to fulfill the proviso by replacement or compensa-

28] Wenar (1998).

29] Sreenivasan 1995, 40; Tully 1980.

tion. Locke seems to have something like this in mind when he asserts that inhabitants are beholden to the farmer who increases the stock of corn (§36) and that laborers in England are better off than kings in America.[30] Whether or not this is his actual intent, it seems like the logical extension of the proviso, and it has been suggested by many Lockean authors.[31] Three candidates for replacement – market opportunities, government services, and cash – play a part in the discussion below.

B. Should the proviso be fulfilled in terms of standard-of-living or independent functioning?

Some authors are concerned only with a living standard conception of the proviso, and claim that it can be shown to be fulfilled by comparing the consumption levels of modern workers with those of people who lived before the establishment of agriculture.[32] The focus on living standards ignores the important issue that appropriation reduces the freedom from interference of the propertyless and treats forced participation in the market economy as the moral equivalent of working as one's own boss in pre-agricultural society.[33]

Simmons (1992) argues that a reasonable proviso should ensure that non-appropriators are left in a condition of nondependence: the ability to make a living with direct access to resources. He considers nondependence to be a moderate level of the proviso – as opposed to the strong and weak versions discussed below, but the question of how the proviso is to be fulfilled is entirely separate from its level. His argument for nondependence is actually a call to fulfill the proviso in terms of independent functioning rather than standard of living. Workers who have high standards of living but are dependent on their employers could meet a generous interpretation of the proviso in terms of living standards without satisfying it at all in terms of independent functioning.

Tully (1980) and Sreenivasan (1995) argue that Locke saw the proviso as ensuring that the able-bodied have direct access to the means of production so that they do not become dependent proletarians. If so, market opportunities cannot fulfill the proviso. It would require cash compensation or government-provided goods and services.

Waldron (1984; 1988; 1982, 225) argues this interpretation is an implausible account of Locke's intent; it was clear and well documented that Locke took the existence and legitimacy of dependent wage-labor for granted and believed that subsistence could be fulfilled through wage labor.[34] One might reply that in *the First Treatise* Locke argues against one person being in a position of dependence on another for his survival, but that passage is written in the context of *one* employer not a group of competing employers (§

30] Snyder 1991 [1986], 374.

31] Otsuka (2003); Paine (1797); Sreenivasan (1995).

32] Mack (1995); Nozick (1974, 182).

33] Carter 1989, 46; Bogart 1985, 833-34.

34] Macpherson 1962, 216-17.

41-42). Although he didn't argue it explicitly, Locke probably believed competition among employers gave workers sufficient freedom that they did not require independence from property owners as a group. Eric Mack (1995; 2002) explicitly defends that position as the most logically plausible version of the proviso.

C. How strong should the proviso be?

The two most commonly discussed levels for the proviso are what Nozick calls the "weak" and "strong" versions (1974, 174-82). But as I will show, neither of these versions is strong enough to meet the conditions Locke established for appropriation in the state of nature.

Nozick's weak version hinges on the words "in common" in the phrase, "enough, and as good left in common for others." One can appropriate resources as long as everyone else is as well off as they would be if *no one* had appropriated any property and society remained in a state of nature (Nozick 1974, 178-79).

Waldron (1988, 214-15), Sreenivasan (1995, 40), and Tully (1980, 137-38) agree that the proviso is best interpreted as Nozick's strong version: resources can be appropriated as long as an equal share of the value of unimproved natural resources is available to everyone. This version allows for inequality only in the improvements that have been made to resources, but the value of improvements could be by far the greater portion of total property. Some authors erroneously claim that the strong version is unfulfillable. Actually, it can be fulfilled at any level of scarcity by using the policy endorsed by some left-libertarians of taxing raw resource value at the highest sustainable rate and distributing the revenue equally to everyone.[35]

Locke seems to imply the equal shares version at one point writing, "He that had as good left for his improvement, *as was already taken up*, needed not complain" (§34, emphasis added). But he more often implies something much stronger: "he that leaves as much as another can make use of, does as good as take nothing at all" (§33). Locke writes that after appropriation, non-appropriators, "would still have room, for as good, and as large a Possession … as before it was appropriated (§36).

In these passages "enough and as good" clearly does not refer to the size of the *appropriator's* share but to the amount other people can use (§33). Appropriation necessarily means that fewer unclaimed goods exist, but it does not necessarily mean that there are now fewer unclaimed goods than other people can use. A proviso allowing everyone access to as much as they could use would allow appropriation only of goods that are economically abundant. Goods, such as air, dirt, and salt water are abundant in the sense that they have a market value of zero and there is more available than anyone is able to appropriate. Locke clearly had abundance in mind when he wrote, "No body could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst" (§33).

35] Steiner (2009, especially 5-6; 1992).

This abundance condition could be called the "maximum strength" version of the proviso. It is much stronger than the "strong" proviso, because under scarcity, each person can make use of more than a per capita share, and in a monetary economy there is no limit to how much a person can use (§45-50).

One might be tempted to think that there is no need for property when goods are abundant, but in Locke's state of nature only raw resources are abundant, not finished products (§28). If so, property has value for the reasons Locke stated, and people do continue to appropriate abundant goods. A sculptor can pick up a worthless rock by the side of a road and carve it into something valuable, even though unimproved rocks remain economically valueless. It doesn't matter whether she now possesses more rocks than other people; it matters only that there are more unaltered rocks available than anyone wants. Someone who demands that particular rock clearly desires "the benefit of another's pains" (§34). Assuming abundant resources that have no value left unappropriated, property seems to have no other effect than protecting people from intrusive interference. The sculptor interferes with others when she claims a particular rock but not with any project they might conceivably want to do on their own; only with their ability to thwart her efforts.

Locke clearly relies on the maximum strength proviso to justify property *when resources are abundant*; only this version fully supports his claims of no injury, entrenchment, prejudice, or cause for complaint (§27-36). Even the "strong" version protects people from some forms interference by imposing other forms of interference with things people are capable of doing without aid from others.

The maximum strength proviso and the belief that people should be free from interference with their projects are sufficient to justify property. The rest of the theory is superfluous when natural resources are abundant. If I appropriate air, it does not matter whether I work with it (using it inflate a tire), play with it (using it to inflate a balloon), or waste it (blowing it into space). "Waste" – as Locke used the term – simply means disuse (e.g. §36, 37, 38), and he knew that some abundant resources necessarily go unused (§42). The only reasonable justification for the no-waste proviso under conditions of abundance is to prevent the possibility that waste will create scarcity, again implying only instrumental value to the no-waste proviso.

Although the maximum strength proviso has plausibility, it lacks applicability, because it justifies property only in abundant resources. Most authors who reject "the proviso" on the grounds that it is unfulfillable seem to have the maximum strength version in mind.[36] Although several scholars have interpreted the proviso as an abundance condition,[37] I know of no explicit discussion of the difference between it and the equal-shares version, and no discussion that both recognizes Locke's reliance on it in the state of

36] Kirzner (1989, 156); Sartorius (1984, especially 210); for a list of several others making this claim see Schmidtz 1990, 504.

37] Carter (1989, 19).

nature and explains the move to a weaker proviso under scarcity.[38] However, some arguments in Lockean literature might be put to this purpose. The function of the rest of the theory must be to extend property beyond abundance.

One option is to argue that the propertyless are not entitled to all they can appropriate now given current technology but only to all they would have been able to appropriate in the state of nature. Eric Mack argues, "if the whole process of privatization leaves Sally with 'enough and as good' to use as she would have enjoyed (at a comparable cost) had all extra-personal resources remained in common, Sally will have no complaint." (2002, 248).[39] Alan Ryan writes, "since all men have profited by entering a market society, there is no cause for complaint if some men have done better than others." (1991 [1965], 433).

This argument is coherent and it seems to be what Locke was getting at (§37-41), but it has three difficulties. First, it relies on the implausible empirical assumption that everyone is better off now than every single person was before the invention of agriculture. It might be plausible that the average person is better off, but the very idea of a proviso is that it protects everyone. Second, it seems to give current property owners credit for all that civilization has accomplished. Third, as Michael Otsuka argues (2003, 24-26), the spirit of Locke's proviso is that one person's appropriation must not put another person at any disadvantage. The proviso must take into account everything non-appropriators might have done with resources, including taking the advantages current property holders have taken or creating a system that shares access to advantage more equally.

There are several other possible ways to justify moving to a weaker proviso under scarcity. Right-libertarians could appeal to a finders-keepers ethic[40] or any of Locke's labor-mixing arguments. Left-libertarians could argue that equal shares version best expresses the value of equal freedom from interference.[41] Liberal-egalitarians could argue that the proviso implies entitlement to a decent share of society's productive capacity .[42] Another option is to rely on a social agreement. Locke employs this strategy when he discusses the transition to civil society.

V. PROPERTY IN CIVIL SOCIETY

Most of Locke's chapter on property involves appropriation in the state of nature; only the last few paragraphs (§45-51) focus on property in civil society.[43] The transition to civil society is the most controversial part of his theory. Scholars have given very different accounts of the property system Locke's theory implies for modern states.

38] Waldron (2002, 172-73) comes closest but denies the function of the maximum strength proviso.

39] Sanders (1987, 385) also makes a version of this argument.

40] Kirzner (1989, 16-18); a similar argument under a different name is given by Schmidtz (1990, 511).

41] Steiner (1981b).

42] Lemos (1991 [1975]).

43] Olivecrona 1991 [1974].

For Locke, three changes mark the transition from the state of nature to civil society: resource abundance ends, a monetary economy appears, and a government is established (§45-51). Richard Ashcraft (1994) sees discrete stages in Locke's state of nature, but Locke is unclear whether these changes are supposed to be simultaneous or sequential. Archeologists and anthropologists have found evidence of these changes need not occur together or in any specific order. Strong governments have existed without monetary economies; stateless societies have existed with substantial land scarcity; and so on.[44] Nevertheless, as we will see, the supposed connection between these three changes is extremely important for Lockean theory.

One might expect the end of resource abundance to reduce the size of property holdings in accordance with the enough-and-as-good proviso, but Locke instead focuses on how civil society frees owners from the no-waste proviso (§46-50). According to Locke, money requires general agreement to be valuable (§46) and provides a costless way to store wealth (§47). Locke seems to connect these two reasons (§50), but whether or not money implies consent is irrelevant to whether or not it provides a waste-free store of wealth.

There can only be slight inequality in Locke's state of nature because a subsistence farmer can only take so many resources without wasting them. However, in a monetary economy a proprietor can pay servants to keep an unlimited amount of resources from being wasted. This incentive does not ensure a waste-free economy, but Locke seemed to think it would be enough. Once again, the stress Locke places on the no-waste proviso is a mystery: it is irrelevant in the age of abundance and overcome in the age of scarcity. Perhaps it is merely a justification for colonialism.

Consent would be important if inequality of ownership in civil society required a social agreement, but Locke seems to believe that ownership is not the sort of thing that requires consent.[45] It is difficult to make any consistent interpretation of the role of consent in Locke's property theory without amending or absurdly interpreting at least one of Locke's statements; consider these four:

> "I shall endeavor to shew, how Men might come to have a property … without any expressed Compact of all the Commoners" (§25).

> "[W]ill any one say he had not right to those Acorns or Apples he thus appropriated, because he had not the consent of all Mankind to make them his? … If such a consent as that was necessary, Man had starved, notwithstanding the Plenty God had given him" (§28).

> "The Turfs my Servant has cut … become my *Property* without the assignment or consent of any body" (§28).

> "Men have agreed to disproportionate and unequal Possession … by tacit and voluntary consent" (§50).

44] Johnson and Earle 2000.

45] Rapaczynski 1981, 306.

One might argue that Locke believed people generally consent to a system of appropriation in which individuals may appropriate any unowned property without specific consent. This interpretation is consistent with statement A, which denies only the need for *expressed* consent, and with statement D, which asserts that consent has been given. But it conflicts with statements B and C, which deny the need for *any* consent. One might argue that consent is not necessary in the state of nature but is necessary for *unequal* property ownership in a monetary economy. This interpretation runs into difficulty with statement C, which is a case of appropriation by labor in civil society without consent. Waldron observes, "Locke appears to connect the age of plenty with the lack of any need for consent to appropriate and the age of money and scarcity with a suggestion that now, after all, property is based on consent." (1988, 210). Even that interpretation, which does not ascribe much consistency to Locke, involves amending C.

The timing of the appearance of government is also important. If an irrevocable agreement to use money and to accept inequality comes first, social agreement validates property outside of – and possibly with greater authority than – government, and therefore, property implies moral limits on government. If money arises only with government and an explicit agreement, the theory can more easily support the idea that property is whatever society chooses to grant.

Some theorists have attempted to make sense out of Locke's consent theory. Others argue that it cannot justify property because any tacit consent does not need to be irrevocable.[46] Some scholars attempt to resolve Locke's apparent contradictions by almost completely separating his property theory in the state of nature from his property theory in civil society. According to S. B. Drury (1991 [1982]), property rights in Locke's civil society are based on utility. According to Tully (1980, 164-70), they become contingent on whatever the polity decides. Most scholars find Tully's view to be an implausible interpretation of Locke's intent.[47] This view of Locke seems difficult, because Locke was trying to establish limits on government, and because he believed the protection of property is one of the central functions of government.[48]

Tully's interpretation implies that Locke showed nearly the opposite of what he said he would "endeavor to shew" (§25). It would mean that he intended only the last few paragraphs of his chapter on property to be relevant to the society in which he lived.

Perhaps Locke believed the propertyless had to validate property rights from the state of nature in order to move into civil society. They had the choice of being propertyless *and* remaining in the state of nature or entering civil society as a propertyless citizen. If so, Locke's theory, reduces "voluntary" consent to purely formal agreement. Locke's

46] Weale (1978); Zvesper (1984); Brough (2003).

47] For example, Cohen (1986); den Hartogh (1990); Sreenivasan (1995); Waldron (1984); 1988.

48] Baldwin 1982; Frye 2004; Kleinerman 2007.

consent theory suffers from the problem common to consent theories of government that truly voluntary consent is absent from virtually any known polity.[49]

Perhaps Ellen Frankel Paul (1981) is right to conclude that Locke's attempt to conflate natural rights with consent theory is self-contradictory. However, although Locke might have applied consent inconsistently,[50] its inclusion could make the theory more persuasive,[51] if it could be made plausible. Despite what Locke's other statements might imply, contingent (or partially contingent) property rights seem to be the logical implication of a property theory that relies to any extent on voluntary consent.

Whatever the role of consent and money are in civil society, the question of whether the provisos remain in effect and consequently the strength of property rights in civil society is unclear. Locke mentions the possibility that owners can avoid violation of the no-waste proviso, but he does not mention how, why, or whether consent frees owners from the other provisos. This omission gives credence both to those who believe he intended the enough-and-as-good proviso to remain in effect and to those who believe he did not intend it as a proviso at all. Nozick (1974), Tully (1980), Simmons (1992), and Sreenivasan (1995) argue that the proviso remains in effect with the propertyless agreeing to inequality but not to less than sufficiency.

This discussion implies that there are at least three different versions of what happens to property rights in Lockean civil society:

> Property owners lose their natural property rights and receive whatever rights civil society agrees on.[52]
>
> Money (somehow) allows unequal property rights to exist, but the propertyless maintain their rights under the proviso(s) .[53]
>
> The propertyless give up all or most of their rights under the proviso(s).[54]

Another important issue for property in civil society often overlooked by Lockean theorists is whether original appropriation has any relevance in modern times. Thomas Mautner points out that the theory applies only to property that can be traced by a series of just steps to original appropriation, but "Force and fraud have reigned supreme in the history of mankind." (1982, 267). He concludes "both sides assume, mistakenly, that the theory can be applied." (286). Lockean theory as stated above can at best show how property *could have* arisen justly.

49] Simmons 1998.

50] Franklin 1996; Russell 1986.

51] Simmons 1989.

52] Tully 1980; 1982.

53] Simmons 1992, 303-4; Sreenivasan 1995, 103-4, 112-17.

54] Macpherson 1962, 211-13; Waldron 1988, ch. 6.

One possible response would be to argue that showing property could have arisen justly is all that is necessary. As long as current property holders are not criminals and any relevant provisos are fulfilled, it is up to anyone who would dispossess a current property owner not only to show that theft or fraud exist in the history of property, but also to show he or she is the heir of a victim of a specific instance of unjust transfer of property. In some versions of this argument the satisfaction of the proviso becomes central to the justification of property.[55] Such "statute-of-limitations arguments" have a significant weakness; they can be used to justify governments' ownership of the powers it holds with as much or more plausibility as they can be used to defend individual ownership of property.[56]

Another possible response to the claim of irrelevance would be to rely on a metaphorical appropriation argument. People who find profitable market niches have in a sense appropriated their gains through labor-mixing or other criteria. Versions of this argument have been put forward by many property rights advocates[57], but they beg the question of why the *system* of property rights in which these actions are taken is justified.

David Schmidtz (1990) argues for the relevance of appropriation theory on the basis that private property is necessary to overcome the tragedy of the commons. Yet government management can also be used to overcome the tragedy of the commons. Other options include relying more heavily on agreement and therefore less on unilateral appropriation.

The defense of the overall theory against the charge of irrelevance is still underexplored. It seems that whatever theory one uses to justify the gap between the original appropriator and the current property holder becomes the entire theory of modern property rights.

I have argued elsewhere (2009) that by ignoring this problem, many property rights advocates have tacitly relied on special pleading. They claim that government ownership of territory is unjust because past governments established their powers without a just connection to original appropriation, but they also claim that private ownership of land is just even though past private owners established their powers without a just connection to original appropriation.

VI. A MENU OF LOCKEAN PROPERTY THEORIES

The following outline summarizes the above discussion of the range of Lockean unilateral appropriation theories. Each point leaves the choice of interpretation open to reflect the conflicting conclusions Lockean authors have drawn from Locke's insights.

55] Schmidtz 1990, 513-14.

56] Widerquist 2009.

57] Kirzner (1989, 98-100); Lomasky (1987, 130); Nozick (1974, 158-61).

Outline 1: A broad outline of Lockean theories of property

1) In a state of nature, individuals have equal claim, or equal lack of claim, to unused natural resources (particularly land), meaning that resources are [one of the following]

A) unowned, or
B) owned in common, for the use of everyone but the property of no one, or
C) collectively owned as if by a corporation in which everyone owns a share.

2) In the state of nature, a natural resource may be unilaterally appropriated, [all three of the following]

A) by the first person(s) [one or more of the following]
i) to alter it significantly through work,
ii) to use, claim, possess, or discover it,

B) because [any combination of the following]
i) the first appropriator has an unconditional right to take what s/he needs or wants to purse her projects without interference;
ii) the first laborer deserves the benefit of his or her efforts;
iii) the modified asset embodies the appropriator's labor;
iv) labor improves and accounts for most of a good's value;
v) improving land effectively makes more resources available for others;
vi) property can help overcome the tragedy of the commons;
vii) a stable property rights system creates benefits for everyone; and/or
viii) property takes a pivotal role in a person's life;

C) providing [any combination of the following]
i) none of the resource is wasted (*the no-waste proviso*),
ii) everyone has access to subsistence (*the charity proviso*) , and/or
iii) a sufficient amount is left for others to use (*the enough-and-as-good proviso*).

3) The (combined) proviso(s) can be fulfilled [all of the following]

A) either [one of the following]
i) in kind: in the same resources taken by the appropriator, or
ii) by replacement, through
(a) market opportunities,
(b) government services, or
(c) cash;

B) in terms of [either]
(i) standard of living or
(ii) independent functioning, and

C) at the following level [one of the following]
(i) weak,
(ii) strong, or
(iii) maximum strength.

4) Civil society is established, at which time [both of the following]
   A) property rights [one of the following]
      i) become partially or entirely subject to (and contingent upon) social agreement, or
      ii) are carried over into civil society, because [all of the following]
         a) the propertyless tacitly agree to unequal property,
         b) the protection of property is the reason civil society exists, and
         c) a statute of limitations protects current property holders from the responsibility for past injustices;
   B) the proviso(s) [one of the following]
      i) are partially or entirely obviated by agreement,
      ii) remain in effect but are fulfilled by an unregulated market, or
      iii) remain in effect and justify government regulation of property.
5) In civil society, government may not arbitrarily seize property. It may tax and regulate property, [one of the following]
   A) only with the consent of the majority of the governed [any combination of the following]
      i) to protect self-ownership and property rights,
      ii) to maintain necessary government expenditure (such as public roads and services), and/or
      iii) to enforce whatever provisos remain in effect (if necessary); or
   B) only with the individual consent of each specific owner.

Locke's own theory clearly excludes some items in this outline, such as the prohibition of taxation and regulation (point 5:B). Although Locke might have believed that taxation required a stronger notion of consent than other legislation,[58] he clearly believed either that consent of the majority of property owners was enough[59] or that inheritors consent to taxation when they claim their heritage.[60] I include it because some scholars argue it follows from appropriation theory (in points 1-3).[61] Locke asserts that it is first labor and not first use or anything else that confers ownership (2:A), but some Lockeans argue that other justifications make a more coherent appropriation theory.[62]

Someone could pick and choose almost anything on this outline to create a theory with some textual claim to be Lockean. Perhaps the malleability of Lockean property theory is one reason for its enduring popularity. The question of which specification of the outline best reflects Locke's intent should be left to the reader's judgment. Locke's

58] Tassi 1972.

59] den Hartogh 1990; Stevens 1996; Gough 1950, 84.

60] Ludwig 2000.

61] Rothbard 1982, 162, 172.

62] Otsuka (2003, 21 n., 29); Narveson (1988, ch. 7); Kirzner (1989, 18-19, 98-100).

intended theory is not necessarily the most valuable or the logically strongest theory of appropriation that can be extracted from Lockean property theory.

A focus either on unilateral appropriation with no need for validation through agreement or on a general agreement to create property without unilateral appropriation might be stronger than Locke's hybrid. A streamlined argument for unilateral appropriation would focus on the method and justification of appropriation (point 2), and justify property in civil society with some statute of limitations (4:A:ii:c) without relying on tacit agreement. The main areas of controversy are the justifications for appropriation (2:B), the provisos (2:C and 3:C), whether the provisos require government enforcement (4:B:ii-iii), and the corresponding strength of property rights (5).

The interpretations and reformulations of Lockean theory mentioned above can be characterized largely as specifications of this outline. For example, Nozick (1974) greatly streamlines Lockean theory to justify strong property rights. His most important premises are his unspecified theory of acquisition (2) and the weak proviso (2:C:iii and 3:C:i):

Outline 2: Nozick's property theory in terms of the Lockean outline

1) In a state of nature, individuals have an equal lack of claim to unused resources. Meaning that natural resources are
   A) unowned.
2) In the state of nature, some unspecified theory justifies appropriation,
   C) providing
      iii) a sufficient amount is left for others (*the enough-and-as-good proviso*).
3) This proviso can be fulfilled
   A) in the following form:
      ii) by replacement, through
         (a) market opportunities
   B) in terms of
      (i) standard of living,
   C) at the following level:
      (i) weak.
4) Civil society is established, at which time,
   A) property rights
      ii) are carried over into civil society, because
         c) a statute of limitations (partially) protects current property holders;
   B) the proviso
      ii) remains in effect but is fulfilled by an unregulated market.
5) In civil society, government may not arbitrarily seize property. It may tax and regulate property,
   A) only with the consent of the majority of the governed
      i) only to protect self-ownership and property rights.

There may be a tradeoff in Lockean property theory between the strength of the theory and the strength of the property rights it supports. If an appropriation supporter accepts more limits, they can make the argument for appropriation more widely acceptable, but they may make the property rights they are able to justify less valuable to holders.

Supporters of strong private property rights have two kinds of options. They can argue against the need for limits on appropriation,[63] or they can accept limits, and argue that strong private property rights do not violate those limits.[64] Supporters of weaker property rights can accept more limits on appropriation and more limited property rights.

Opponents of appropriation need to be aware of all of these strategies. Although supporters of appropriation can choose the strongest formulation of the outline, opponents need to address the entire menu of strategies available to supporters. There are at least three ways to do so. First, they could take issue with the statute of limitations (4:A:ii:c). This strategy would not refute the idea of appropriation in the abstract, but it could possibly refute its practical relevance. Second, they could argue that the provisos (3:A-C) are necessary and cannot be fulfilled within the context of conventional property rights. Third, they could argue that none of the eight reasons for appropriation (points 2:B:i-viii) justify putting non-appropriators under the duty to respect property rights.

The ambiguity that Locke allowed to creep into his property theory has developed into a diverse set of appropriation-based justifications for private property that must be fully addressed by opponents. Anything less would be incomplete.

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63] Kirzner (1989); Narveson (1988); Rothbard (1982) use this strategy.

64] Mack (1995); 2002; Nozick (1974).

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Abortion and the Limits of Political Liberalism

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Abstract. In this article, I argue that laws permitting abortion are incompatible with political liberalism since such laws necessarily are dependent on beliefs or doctrines incompatible with other reasonable comprehensive doctrines. To demonstrate this I argue against two lines of defense for the compatibility between abortion and political liberalism. These two lines of defense are: (a) the agnostic position, according to which abortion are justified by reference to the uncertainty about on the status of the fetus and (b) the irrelevance position, according to which the rights of the woman to terminate the pregnancy override the rights of the fetus no matter whether or not the moral status of the fetus is considered as strong as the status of the woman. My conclusion is that both of these two lines of argument rest on beliefs or doctrines in conflict with other reasonable comprehensive doctrines. They are therefore in conflict with political liberalism. I finally discuss the implications for political liberalism given that my argument is sound. I conclude by arguing for a transformation of the duty to avoid conflicts with reasonable comprehensive doctrines to a mere ambition to avoid disputiveness as such.

Key words: political liberalism, abortion laws, John Rawls, comprehensive doctrines.

The question of whether or not laws permitting abortion are compatible with political liberalism is contested. John Rawls, the originator of political liberalism, seems to imply that they are since he considers a prohibition of at least early abortion unreasonable (Rawls 1993, 243-44 n. 32).[1] Consequently, laws permitting *early* abortions seem – at least – to be considered compatible with political liberalism according to Rawls. Several proponents of political liberalism support Rawls´s view.[2] Many theorists, however, also reject the compatibility between abortion and political liberalism. And the most common argument for this position is that a justification of abortions laws necessarily implies a position on the moral status of the fetus, which is dependent on one or another comprehensive doctrine and in conflict with others (Quinn 1997; Galston 1991; Greenawalt 1987). I will adhere to this position. My aim is to evaluate, and, in the end, reject two argumentative strategies to avoid taking a position on the moral status of the fetus. The first one can be labeled the agnostic position, according to which position on the moral status of the fetus is avoided by reference to the uncertainty about on the status of the fetus. This argumentation is employed by Judith Jarvis Thomson (1995) and most recently by Lawrence Torcello (2009). Considering the prominence of Thomson and the fact that Rawls refers

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1] Even if this position was modified in a later article (Rawls 1999, 169 n. 80), I will argue that this modification cannot be interpreted as if Rawls abandons his former position. In the later article "The Idea of Public Reason Revisited" Rawls' position still seems to imply that denying the right to abortion is "unreasonable" and therefore not in accordance with public reason (1999, 170). For a similar interpretation of Rawls, see Dombrowski 2001, 127.

2] See for example Macado 2001; Schwartzman 2004; Thomson 1995; Torcello, 2009.

to her article, her article has received surprisingly little attention, which is illustrated by the fact that Torcello does not refer to her even though his argument builds on hers. The second one can be labeled the irrelevance position, according to which a position on the moral status of the fetus is avoided by reference to the claim that the rights of the woman to terminate the pregnancy override the rights of the fetus even if the status of the fetus is considered as strong as the status of the woman. The status of the fetus is therefore irrelevant. To my knowledge, this strategy has not been used in order to argue for the compatibility between political liberalism and abortion, only to defend abortion normatively. The reasons for this are probably that this strategy rests on an conservative assumption (that the status of the fetus is considered as strong as the status of the woman during the whole pregnancy), which makes the case for abortion much more difficult to defend normatively than if this assumption was not accepted. To not only accept a conservative assumption about the status of the fetus as the starting point of the discussion, but also accepting the constraints of public reason may be considered as too hard which possibly explains the lack of previous research. But I will mainly consider this argument as a strategy to defend abortion under very certain circumstances like pregnancies caused by rape and when the pregnancy causes a threat to the life of the mother.

My aim is to reject these arguments for the compatibility between abortion laws and political liberalism without appealing to views that explicitly deny women the right to abortion in the first trimester. For the sake of the argument I follow Rawls in this regard and consider such views unreasonable, which means that it must be demonstrated that the conflict between the constraints of public reason and abortion laws are caused by other views than simply a conservative position on abortion. By adding this premise, the rejection of the arguments for the compatibility between abortion and political liberalism will not be dependent on questions whether or not a conservative position is reasonable, which in turn makes my argument more robust.

I. PUBLIC REASON AND ABORTION

According to political liberalism, political conceptions of justice must be presented independently from comprehensive doctrines of any kind (Rawls 1999, 143). We should not, says Rawls, justify political power with regard to "constitutional essentials and questions of basic justice" just by appealing to philosophical, ethical or/and religious comprehensive doctrines (1993, 215). In order to meet the requirements of public reason, such public power needs to be justified by political values, which "free and equal citizens might also reasonably be expected to endorse" (Rawls 1999, 140). Otherwise, the autonomy of citizens rejecting the comprehensive worldviews is threatened because political power – which is coercive in character – then restricts the life plan of those citizens by reasons they cannot apprehend (Weithman 2002, 201-2). To avoid this is, to quote Rawls "the liberal principle of legitimacy" (1993, 137).

But what does Rawls mean when he says that we should avoid dependence on comprehensive doctrines? To answer that question we first need to describe and define a comprehensive doctrine and then establish what a dependency on such a doctrine means. According to Rawls comprehensiveness is a matter of scope. A doctrine is comprehensive when "it includes conceptions of what is of value in human life, ideals of personal virtue and character, and the like, that are to inform much of our nonpolitical conduct (in the limit our life as a whole)" (Rawls 1988, 252). This definition of comprehensive conceptions fits, in particular, the major religious, ethical or/and philosophical traditions such as Catholicism, Utilitarianism and Platonism. Justifications in the public sphere, which depend on such comprehensive doctrines, will be in conflict with other doctrines and should therefore be avoided. By avoiding dependence on comprehensive doctrines an overlapping consensus in constitutional essentials and questions of basic justice is reachable.

However, as Rawls also recognizes, probably very few people possess a single coherent comprehensive view of life (Rawls 1993, 160). And certainly, by introducing the concept of partially comprehensive conception, Rawls narrows the scope of its application and makes space for a more loose articulation of its content (1993, 13). Nevertheless, Rawls still seems to consider the comprehensiveness per se as the core of the problem in relation to the principle of legitimacy. But I don't see how this can be the case. The implication of that interpretation is that the criteria of public reason will not be applicable to more or less isolated beliefs. For example a belief in God does not necessary imply either a full or partial comprehensive view – even though this often may be the case.[3] Still it would be an unreasonable interpretation of the criteria of public reason to conclude that a dependence on such a belief in constitutional essentials and questions of basic justice would be permissible because of the lack of comprehensiveness.

Furthermore, consider the question of issue here, abortion. As I will argue below, proponents of political liberalism tend to place this issue within the realm of public reason, which in Rawlsian terms means that it belongs to "constitutional essentials and questions of basic justice". Abortion must therefore be justified without being dependent on comprehensive doctrines. And, certainly, some justification of positions on abortion implies a dependence on comprehensive doctrines, but this is not necessarily the case. Take for example the position of those who argue that the personhood is constituted by brain waves (see, for example, Brody 1975). This position does not imply a comprehensive doctrine since this criterion does not "include conceptions of what is of value in human life, ideals of personal virtue and character, and the like, that are to inform much of our nonpolitical conduct". Nor does it imply a partially comprehensive doctrine since such doctrines still "compromise a number of…non-political values and virtues" (Rawls 1993, 13). I cannot see that the criterion of brain waves compromises virtues of any kind and the scope of its application is restricted to the domain of issues of life and death. Regardless of its limited scope of application, this position of abortion is, as Francis Beckwith states, embedded in

3] This example is taken from Gaus 1996, 263.

metaphysics of the human being (2001). And as such, this criterion is highly controversial, not least because of its (restrictive) consequences for the possibilities of abortion. As I noted above, Rawls contends that a comprehensive doctrine that leads to the exclusion of rights to abortion in the first trimester is unreasonable, which in turn means that abortion laws are permitted to be in conflict with such a view and still compatible with public reason. But this line of reasoning would not be applicable to conclusions about the permissibility of abortion if they were drawn from isolated beliefs or from systems of beliefs narrower than comprehensive doctrines. In other words: the implication of the fact that Rawls – and others after him – define the problem in terms of comprehensiveness is that the constraints imposed by public reason are not applicable to isolated beliefs or narrower system of beliefs. My point is that this implication is unacceptable from the point of view of the liberal principle of legitimacy. It does not matter whether or not the conclusions are drawn from comprehensive doctrines, or from a narrower system of beliefs or even from isolated beliefs – if the conclusions are drawn from premises which citizens cannot reasonably be expected to endorse, the autonomy is threatened.

The central question for liberal legitimacy is consequently whether or not conclusions justifying public power in constitutional essentials and questions of basic justice are based on premises which citizens reasonably can be expected to endorse. But what are the criteria for reasonable endorsable premises in constitutional essentials and questions of basic justice? At a minimum, such premises should not be irreconcilable with reasonable beliefs and doctrines held by the citizens since it would be unreasonable to expect citizens to endorse premises in conflict with their own reasonable beliefs and doctrines. To examine the compatibility between abortion and political liberalism, which is the task of my paper, one therefore needs to answer the question whether or not abortion can be justified without being dependent on premises irreconcilable with reasonable beliefs and more or less comprehensive reasonable doctrines of the citizens. However, in this regard I will follow Rawls and focus on reasonable comprehensive doctrines rather than reasonable beliefs. This choice is certainly not unobjectionable. It can be argued, as Gerald Gaus does, that a focus on exclusively reasonable doctrines at the expense of reasonable beliefs can be considered arbitrary and discriminating (1996). However, it is sufficient for my purposes to demonstrate the incompatibility between abortion and comprehensive reasonable doctrines since it is uncontroversial from the point of view of political liberalism that justifications of public power should not be in conflict with reasonable comprehensive doctrines. According to Rawls, the political conception of justice should be like a module that fits into reasonable comprehensive doctrines (1993, 12). At best, those doctrines should support the political conception of justice, but even if this must not necessarily be the case, to uphold the liberal principle of legitimacy, the political conception of justice should at least not be in conflict with reasonable comprehensive doctrines.

To be able to examine the compatibility between reasonable comprehensive doctrines and abortion, a definition of the former is of course necessary. As Peter Jones notes, somewhat surprisingly Rawls defines the reasonableness of doctrines differently than he

defines the reasonableness of persons (1995, 526). According to Rawls, reasonable comprehensive doctrines have three general characteristics (1993, 59). James Boettcher summarizes them in the following manner:

> First, as an exercise of both theoretical and practical reason, reasonable comprehensive doctrines coherently address the major philosophical, theological and moral concerns of human beings. Second, each doctrine organizes and weighs values, including non-political values, in a particular fashion. Finally, comprehensive doctrines are usually tied to a tradition of thought so that they tend to develop slowly, remaining stable over time (2004, 607).

In contrast, reasonable people are defined in terms of virtues of persons. Reasonable people are characterized by willingness to both propose and honor fair terms of cooperation and to recognize the burden of judgment. The latter implies an acceptance of the claim that pluralism is a permanent feature of a free society. The definition of a comprehensive doctrine is quite undemanding; as Brian Barry argues it can probably be interpreted as meaning that doctrine should be considered as reasonable unless otherwise is proven (1995, 897). Considering this, it is quite uncontroversial to define those doctrines which I will refer to in this article as reasonable.

However, much more interesting is to consider the fact that a reasonable doctrine can be interpreted in an unreasonable way (Rawls 1993, 60 n. 14). This will be the case if the virtues of reasonable persons are not practiced. Applied on the abortion issue, it is sometimes argued that an interpretation of Catholicism according to which women are denied rights to abortion in the first trimester conflicts with the conditions of a reasonable interpretation of an otherwise reasonable doctrine.[4] Since it is a matter of dispute whether or not an interpretation according to which women are denied the right to abortion in the first trimester is reasonable or not, I will for the sake of the argument assume that such an interpretation is unreasonable. Consequently it will not be sufficient to demonstrate the incompatibility between abortion and interpretations of doctrines stating that abortion should be prohibited in the first trimester; rather the incompatibility between abortion and obviously not unreasonable interpretations of doctrines must be demonstrated. Of course I will not be able to test the compatibility between abortion laws and reasonable comprehensive doctrines in an exhaustive way; it is only necessary to demonstrate the incompatibility between abortion laws and at least one reasonable comprehensive doctrine.

II. THE AGNOSTIC POSITION

Rawls does not make a lot of comments on abortion specifically, but in a quite famous note in *Political Liberalism* he singles out three political values with relevance to abortion: "the due respect for human life, the ordered reproduction of political society over time, including the family in some form, and finally the equality of women as equal citizens".

4] See for example Dombroski 2000, 129-30. Rawls seems to take the same position, see 1993, 243 n.32.

These values are political and not metaphysical because they are considered independent from comprehensive doctrines. A reasonable balance of these three political values will, says Rawls, "give a woman a duly qualified right to decide whether or not to end her pregnancy under the first trimester" (1993, 243 n. 32). Since this conclusion about the abortion rights is claimed to be derived from a purely political value, the abortion rights should, according to this line of thought, be considered as exclusively political. However, he does not present any argument for why his position evades dependence on comprehensive views. Following Philip L. Quinn (1995), it must therefore be concluded that he is not able to show how this balance is justified within the scope of public reason. However, when commenting abortion in a later text, Rawls refers to Judith Jarvis Thomson's article "Abortion" in *Boston Review* (1995) for a "more detailed interpretation" of those values "when properly developed in public reason" (Rawls 1999, 169 n. 80). To make Rawls' argument complete one must thus turn to her article.

It is important to note that Thomson's article is not explicitly occupied with political liberalism. However, the way Rawls refers to her makes it reasonable to assume that he considers her argument as being at least compatible with the requirements of political liberalism.[5] Thomson defends abortion rights not primarily by arguments about the lack of moral status of the fetus. On the contrary, she finds no conclusive reasons for denying that fertilized eggs have a right to life and therefore, consequently, no conclusive reason for denying that abortion is a violence of those rights. But this position does not lead her to conclude that women should be denied abortion rights. This is because there are at the same time no conclusive reasons for giving fertilized eggs a right to life and a protection from abortion. Her conclusion is thus that neither side has proven its case.

If there is no conclusive reason either to deny or to give fertilized eggs the right to life, how could one then defend women's right to have an abortion? Thomson argues here that the lack of conclusive proof of either side leads to the conclusion that the side whose position implies an imposition of force has to lose because it constrains the liberty of women. Women should not be constrained to exercise self-determination when there are no conclusive reasons for it at hand. She argues that such constraints would impede the equality of women (Thomson 1995, 15).

My aim here is not to challenge Thomson's view normatively,[6] but rather to test whether or not her reasons for permitting abortion is compatible with the demands of public reason. According to my interpretation public reason are not allowed to be in conflict with reasonable comprehensive doctrines. For the sake of the argument I previously assumed that an interpretation of a doctrine which denies a qualified right to abortion during the first trimester is unreasonable. In order to demonstrate the incompatibility be-

5] It can be noted that even though he refers to Judith Jarvis Thomson article, he states that he "would want to add several addenda to it" (Rawls 1999, 169 n. 80). But although he seems to consider her article incomplete, I think it reasonable to expect it to be compatible with political liberalism since he refers to it.

6] For this, see Beckwith 2004.

tween Thomson's argument and political liberalism, I consequently have to show that her argument is in conflict with other doctrines than those which proscribe a conservative position. And it is obvious that this it the case. Her agnostic view on the moral status of the fertilized egg is namely not only in conflict with conservative positions but also with liberal approaches to the status of the human embryo.[7] This is the case since she – in contrast with the liberal view - rejects the conclusiveness of denying fertilized egg a right to life. That also means that her agnostic argument differs from the Rawlsian "method of avoidance". The method of avoidance calls us to refrain from engaging in metaphysical issues when justifying principles of justice (Rawls 1987, 12). It is by applying the method of avoidance that a political conception of justice can be as a module that fits into and can be supported by different doctrines (Rawls 1993, 12). For example, one could argue that certain human rights could be justified without references to specific ethical doctrines, which mean that those rights are compatible with a wide range of doctrines. Therefore, one could defend human rights and still avoid taking positions on ethical doctrines. Thomson, however, does not apply this method since she does not refrain from taking positions on doctrines when she declares that there are neither conclusive reasons to deny nor to give fertilized eggs rights. Consequently she explicates the arguments for the conservative, as well as the liberal approach to the status of human embryo, refutes them eventually, and therefore comes to an agnostic conclusion, which in turn clears the way for her pro-choice position about abortion. In contrast, the arguments for fundamental human rights do not spring from such a doctrinal divergence, but rather the reverse.

The limitation of Thomson's argument in relation to the criteria of public reason raises the question about one other possible way to argue for abortion rights. Namely, whether or not agnosticism about the moral status of the fertilized egg and the fetus could be defended without claims about the inconclusiveness of available positions. This line of defense for abortion is recently pretty much employed by Lawrance Torcello (2009). According to him, there is a precautionary argument for permitting abortion:

> In most cases, abortion is considered from the perspective of an actual woman with all of the moral status that comes with non-controversial personhood. The precautionary argument dictates that in the absence of certainty, the default position should be that of caution. When dealing with a decision between the freedoms of choice and consciousness belonging to an actual woman as opposed to the uncertain moral status of a fetus gestating in her body, the most cautious option is to honor the physical and mental integrity of the woman and her best judgments regarding her own interests. This position requires the least amount of comprehensive assumptions (2009, 26).

The similarity between Torcello's and Thomson's argument is obvious – even though she does not conceptualize her argument in terms of a precautionary principle. Still the essence of their arguments is the same: the uncertainty of the status of the embryo and the early fetus makes it unjustified to constrain the possibilities for at least early abor-

7] For an overview of these approaches, see Steinbock 2006.

tions. However, there is one important difference: while her arguments for abortion rights are based on a refutation of the conclusiveness of the liberal as well as more conservative approach, his arguments for abortion rights are based on a judgment of the comprehensiveness of the two positions. And since the liberal position "requires the least amount of comprehensive assumption" women should be given abortion rights. The question is consequently whether this line of argument is compatible with political liberalism. I would argue that it is not. First of all, it can be noted that his "comparative approach", according to which the liberal view needs lesser amount comprehensive assumption than the conservative view, cannot sufficiently justify abortion rights according to the Rawlsian version of public reason. To be justified in this way, it is not sufficient for abortion rights to be justified in a less comprehensive way than what would be the case of a more restrictive position on abortion. Abortion rights need to be justified in a way that totally avoids dependence on comprehensive doctrines. That is the goal of the Rawlsian "method of avoidance" – a goal which Torcello does not reach with his argumentation.

However, as I have argued previously in this article, the decisive point of view should be whether or not abortion laws are in conflict with reasonable comprehensive views. The question is consequently whether or not Torcello's position is in conflict with such views. I assumed for the sake of the argument that doctrines proscribing a conservative view on abortion are not reasonable. The question is consequently whether Torecello's position is in conflict with other doctrines than those proscribing conservative positions. I think it is obvious that this is the case. Arguing for agnosticism of the status of the fetus and the permissibility of abortion during the whole pregnancy his position is not only in conflict with conservative positions but also with positions sometimes called "moderate" or "gradualist" (see for example Alward 2007; Tsai 2005). According to this position, an unborn human being gradually becomes a person during the pregnancy, which also means that the protection of the fetus also is gradually prioritized. Abortion in the early stages of the pregnancy is according to this view considered morally permissible while the normative case for restriction becomes stronger as the pregnancy proceeds. This gradualist or moderate position is doctrinally integrated in for example religious traditions which take a position on abortion without adhering to either the conservative or the liberal position (Tsai 2005).[8] Since Torcello's agnostic position – according to which the uncertainty of the status of the fetus makes abortion on demand permissible until birth – is in conflict with this gradualist position, Torcello´s position is incompatible with political liberalism.

The premises of inferences for abortion rights within the limits of political liberalism so far discussed have been a stipulated agnosticism. In the case of Thomson's argument, this agnosticism was an implication of her claim about the inclusiveness of the liberal as

8] This position is in conflict not only with conservative abortion laws but with abortion laws in general since almost any abortion law in the world limits the access to abortion in the later phases of the pregnancy – only Canada, China, Vietnam and North Korea have no further time limit for abortion (Rahman et al.1998). However, it may be hard to identify a specific comprehensive doctrine behind these laws.

well as the conservative position on the moral status of a fertilised egg while Torcello's agnosticism is more taken for granted. Nevertheless, both of these two lines of argument for abortion rights are incompatible with political liberalism. More specifically, the mere claim of the inclusiveness of the liberal position by Thomson is incompatible with political liberalism. In the case of Torcello's argumentation, his liberal position – according to which abortion should be permissible during the whole pregnancy – is in conflict with not only conservative positions on abortion but also wish so called moderate or gradualist ones. Abortion laws may, however, be justified independently of the status of the fetus, which means that premises about the status of the fetus will be irrelevant. This is in fact pretty much what Judith Jarvis Thomson does in her earlier article *A Defense of Abortion,* when she argues for the permissibility of abortion even if the fetus has a right to life. I will now turn to this line of Thomson's reasoning.

III. IRRELEVANCE POSITION

To be independent of positions of the status of the fetus Judith Jarvis Thomson takes as her point of departure in *A Defense of Abortion* the premise that the fetus is a person from the moment of conception (Thomson 1971, 48). If abortion can be justified despite this premise, then abortion can be justified regardless of the status of the fetus. The dependence on beliefs about the (low) moral status of the fetus will thus be eliminated. This in turn means that one obstacle to making abortion compatible with comprehensive doctrines compromising a view on the status of the fetus will be overcome. However, obviously this move cannot justify an unqualified right to abortion according to political liberalism. That is so because this line of defense of abortion assumes that the fetus is a person with a right to life. And it would certainly be in conflict with many comprehensive doctrines to claim that an existing right to life does not entail any protection from actions analogously with an abortion. The question is rather whether there are any situations in which such protection may be removed without being in conflict with reasonable comprehensive doctrines. To be able to answer that question, we need to identify situations when the reasons for abortion are as strong as possible. If the argument does not succeed in these situations, there is no reason to believe that it will work at all. Two situations will be considered here: a pregnancy as a result of a rape and when the life of the mother is threatened by the pregnancy. But before this can be done we need to summarize Thomson's argument.

The beginning of Thomson's argument is well known (1971, 48-49). She asks you to imagine that a person, a famous violinist, is being involuntarily plugged into your body because his kidneys are not working. Thanks to this intervention, your kidneys can be used to extract poison from his blood as well as yours. The situation needs to last for nine months before you are free to unplug yourself. However, if you unplug the violinist before the nine months have passed, he dies. Thomson contends that you have the right to unplug the violinist because you did not agree to being plugged even if you know unplugging would result in his death. Analogously she also contends that a woman whose pregnancy

is the result of an involuntary intercourse has the right to abortion. She also argues that you have the right to unplug the violinist if your kidneys are being damaged because of the arrangement. Analogously, the woman should have the right to abortion if the pregnancy threatens her life (1971, 52). The question is whether or not this defense can justify abortion within the limits of political liberalism when the pregnancy is the result of a rape or is threatening the life of the mother. In other words: is it possible to justify abortions in these situations without conflicting reasonable comprehensive doctrines? I think the answer is no. And the reason why is that such justification will either be supported by or in conflict with two principles or doctrines deeply embedded in moral theories on human action. These two principles are the doctrines of doing and allowing and of double effect. My aim here is to demonstrate the following: firstly that a position on these two doctrines is unavoidable in taking a position on abortion when the life of the mother is threatened by the pregnancy or when the pregnancy is the result of rape; and secondly, that the space for abortions in these two circumstances is determined by the positions taken on these two doctrines.

The doctrines of double effect and of doing and allowing become relevant when our aim to promote good causes serious harm (Quinn 1989; McIntyre 2004). According to the principle of double effect actions with bad consequences can be permitted if these consequences are foreseen rather than intended. Granting that the abortion will result in the death of an innocent person with a right to life, this is obviously a bad consequence. For those adhering to moral theories accepting the principle of double effect the death of the person consequently must be only foreseen and not intended (McIntyre 2004). Those adhering to the doctrine of doing and allowing doctrine ascribe moral significance to the distinction between killing and allowing to die. They consider killing more objectionable than letting die. Therefore, it may be justified to let an innocent person die while it is prohibited to kill him/her (Howard-Snyder 2002). Consequently, according to this doctrine, the death of the fetus must only be allowed and not caused by an act of killing. Now I find it rather obvious that these two doctrines are relevant in relation to the situations considered here, i.e., when the pregnancy threatens the life of the mother and when the pregnancy is caused by a rape. The aim is to promote good by terminating an involuntary pregnancy and eliminate a deadly threat against the woman respectively, and, granting that the fetus is a person with a right to life, this course of action will obviously cause harm. Either the moral significance of the distinctions between doing and allowing and between intended and unintended effects are acknowledged or they are refuted. Of course it is possible to remain agnostic about them, but as soon as the space for abortion needs to be specified (which necessarily would be the case when an abortion law is to be legislated) a position for or against these doctrines would be unavoidable. In other words: a conclusion about the space for abortion in the two circumstances discussed above implies a position on these doctrines.

Consequently when an abortion law covering the abovementioned circumstances is to be legislated either these distinctions will be recognized, which implies stronger limita-

tions on how and under which circumstances an abortion is allowed than the case would be if these distinctions were not recognized. The difference is probably most obvious with regard to the doctrine of double effect. According to the most orthodox version of this principle, the following criteria must be fulfilled:

> 1. that the action in itself from its very object be good or at least indifferent;
> 2. that the good effect and not the evil effect be intended;
> 3. that the good effect be not produced by means of the evil effect;
> 4. that there is a proportionately grave reason for permitting the evil effect" (Mangan 1949, 43).

I think it is obvious that the space for an action (in this case an abortion) would be more limited if these conditions are considered than if they are not. Certainly, there are different versions of the doctrine of double effect, but no matter how "thin" they may be, all versions of the doctrine of double effect imply some constraints on the course of action, which means that it makes a difference whether or not this doctrine is applied. This would also be the case with the doctrine of doing and allowing. As Anton Tupa in a recent article claims: albeit it is "quite complicated" to determine what constitutes killing and letting die, still "…some methods of abortions clearly involve killing the fetus – this much is not controversial" (2009, 3). Recognizing the distinction between allowing and doing – or in this case – between killing and letting die – implies consequently that all methods of abortions involving killing are impermissible.

The disagreement over the status of the doctrines of double effect and of doing and allowing makes it impossible to avoid conflicts with comprehensive doctrines in justifying abortion granting that the fetus is a person with a right to life. Certainly, it is possible to find a consensus about the permissibility of abortion when the life of the mother is in danger and in case of pregnancy as a result of rape respectively, but different stances on those doctrines determine the limitations of this opportunity. The acceptance of these two doctrines limits the possibilities for abortion substantially compared to what the case would be if these were rejected. So even if it were possible to reach a consensus about the permissibility of abortion in these two cases, disagreements about the status of these doctrines will still make conflicts with comprehensive doctrines unavoidable when the specific content of the law is outlined. Consequently, even in case the pregnancy is a result of rape or when the pregnancy is threatening the life of the mother, an abortion law would be incompatible with political liberalism. Depending on what position is taken on the doctrine of double effect and of doing and allowing either the law would be considered as unjustified limited or unjustified permissible.

IV. IMPLICATIONS

If my argument about the incompatibility between political liberalism and abortion laws is sound, the implications are more problematic to political liberalism than to abor-

tion laws. This is so because the compatibility with comprehensive reasonable doctrine is more central to those defending political liberalism than to those defending abortion laws. Therefore, I will concentrate on the former. According to the interpretation made initially in this article, the essence of the criterion of political liberalism is to avoid dependence on beliefs which citizens not reasonably can be expected to endorse. That implies that abortion laws, at a minimum, must be justified without being in conflict with reasonably comprehensive doctrines. Rawls therefore stipulates that *the duty of civility* commands us to justify political power in "constitutional essentials and questions of basic justice" without dependence of comprehensive doctrines (1993, 154-55). However, given my initial interpretation of Rawls, this means that the duty of civility does not only apply to comprehensive doctrines but also to beliefs which citizens not reasonably can be expected to endorse.

But what if this scope of public reason is too limited to justify abortion laws? Considering the arguments I make here as well as arguments put forward of others regarding the incompatibility between restrictive abortion law and political liberalism, such a conclusion seems close to inevitable. At least it remains for those who disagree to prove their case. If this cannot be done, the consequences for political liberalism are quite serious. Since it is reasonable to assume that political liberalism endorses the Kantian maxim that "should" implies "can", the mere uncertainty about the possibilities to actually settle constitutional essentials and questions of basic rights within the scope of public reason, undermines the legitimacy of the duty of civility. In other words: it would be gravely unreasonable to endorse this duty when it is uncertain whether or not it can be fulfilled.

On a general level, there are two ways of handling the implication of the uncertainty regarding the possibility to fulfill the duty of civility. One way is simply to remove abortion from constitutional essentials and questions of basic justice and the other way is to modify the duty of civility.

By removing the abortion issue from constitutional essentials and questions of basic justice it would be possible to depend on reasonably disputable beliefs in justifying abortion laws since the criteria of the Rawlsian version of public reason only applies to constitutional essentials and questions of basic justice (Rawls 1993, 215). However, this move will be in conflict with Rawls's as well as many other liberals' inclination to locate the question of abortion within public reason (Rawls 1999:169; Macado 2000; Dworkin,1992; Thomson 1995, Audi 2000; Gutmann and Thompson 1990). This inclination is, I think, very reasonable from the perspective of political liberalism. Removing the abortion issue from public reasoning would, for example, open up for legislations based on comprehensive doctrines like Catholicism or Utilitarianism. The implication of this would be that legislations on abortion theoretically could vary from a total prohibition of abortion one term to an acceptance of abortion during the whole pregnancy (and of killing infants after birth) the next term. I think many proponents of political liberalism would consider such implications very problematic since the very aim of political liberalism is to secure legitimacy of political order and, in the end, the stability of a well-ordered society. And this aim

would be hard to reach, one could argue, if questions like abortion were unconstrained by the criteria of public reason.

Considering the negative consequences of removing abortion from "constitutional essentials and questions of basic justice", it seems plausible from the perspective of political liberalism to try reconciling "solutions" to the abortion issue with criteria of public reason. But such reconciliation must, if my arguments are warrant, be preceded by a modification of public reason because of the uncertainty regarding the possibility to fulfill the duty of civility. As far as I can see there are here also two ways to do this. One way is to weaken the obligation to be independent of reasonably disputed beliefs. The other way is to keep the status of the obligation unchanged, but to adopt a more inclusivistic approach to beliefs. Given the impossibility to discuss these two ways of reconciling abortion laws with political liberalism exhaustively, I will only comment on the former one since I find this way more promising than the latter one.[9]

One way to weaken the obligation to avoid conflicts with comprehensive doctrines is to transform this obligation into a mere goal or a prima facie duty. Such a transformation would make the avoidance of conflicts with comprehensive doctrines in constitutionals essentials and questions of basic justice desirable but not mandatory. By doing this, political liberalism obviously confirms to the principle that "should implies can". According to this revised criterion of political liberalism it may then be acceptable to rest on beliefs or doctrines in conflict with comprehensive doctrines in order to reach a settlement in very polarized issues, where no plain truths widely accepted are to be found.[10]

One objection to the strategy to transform the obligation to avoid conflicts with comprehensive doctrines to a mere ambition or prima facie duty is that public reason then would be too unconstrained to secure the stability and legitimacy of political order. Applied to the abortion issue, the consequences would be the same as the previously discussed consequences of the strategy to solve the problem of the uncertainty regarding the possibility to fulfill the duty of civility by removing the abortion issue from "constitutional essentials and questions of basic justice". By removing the abortion issue from this category, political solutions to the issue of abortion would be unconstrained by the criterion of public reason, which in turn, as I argued before, would open up for dependence on very controversial doctrines like Catholicism and Utilitarianism. According to this objection, the same would be the case if this weak criterion was adopted. Since no plain and widely accepted truths can be found in the abortion issue, reasoning in the political sphere is, according to this criterion, allowed to be dependent on some comprehensive doctrines (like Catholicism and Utilitarianism) and in conflict with others. And, as I argued before, from

9] The problem with the latter one is to find a criterion that in a justified way broadens the scope of public reason to embrace doctrines and beliefs at a level high enough to settle questions like abortions but still exclude not reasonably endorsable claims that threaten the legitimacy and stability of the liberal society. For example, it seems at least disputable if the exclusion of religious argument can be justified; see Eberle, 2002 and Gaus 2009.

10] For a similar conclusion, see Lott 2006.

the point of view of political liberalism, this fact should be seen as an unacceptable threat against the stability and legitimacy of political order.

According to the above mentioned objection, the consequences of making the obligation to avoid comprehensive doctrines to a mere ambition will open up for any beliefs – no matter how controversial it may be. However, this consequence is not an entailment of the strategy to weaken the constraints of public reason. As I argued previously the central question for liberal legitimacy is whether or not conclusions justifying public power in constitutional essentials and questions of basic justice are based on premises which citizens reasonably can be expected to endorse. And for moral reasons it seems reasonable to expect the possibilities for endorsements to vary with the level of disputivness of these premises. The more disputable the premises are, the stronger are the moral reasons to oppose them. Therefore, one could reformulate the goal to not only avoid disputable beliefs or doctrine in general but to avoid disputivness as such. Such reformulation would imply that some certainly reasonably disputable beliefs nevertheless are more disputable than others. A statement that the earth is flat is for example more disputable than the statement that aliens exist even though both statements are reasonably disputable. Consequently, a criterion which stipulates a duty to try to avoid disputivness as such favours less reasonably disputable beliefs compared to more disputable beliefs.[11] That means that public reason still will be constrained.

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11] The method of avoiding disputiveness as such is related to ideas of convergence like John Rawl's *overlapping consensus* (1993), Amy Gutmann's and Dennis Thompson's *economy of moral disagreement* (1995) and Cass Sunstein's *incompletely theorized agreements* (1996). However, the method of avoiding disputiveness as such is a less demanding idea since it primarily not aims to establish convergences but rather to decrease divergences.

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On the Public Reason of the Society of Peoples

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Abstract. This article examines John Rawls' account of the public reason of the Society of Peoples. I offer three main arguments by way of refinement to that account. The first is that the goal of unity supports an inclusive view of the international duty of civility such that the leaders of liberal peoples should be permitted to utilize nonpublic reasons in global politics as a way of reaching out to nonliberal peoples provided that in due course public reasons are presented. The second is that world leaders should not be the only agents subject to the international duty of civility. I consider and reject two reasons for limiting the scope of this duty and conclude that a range of non-state actors ought to employ global public reasons when justifying their actions in public political domains. The third is that, despite Rawls' hesitancy on this point, it is appropriate for public persons to appeal to a family of reasonable political conceptions of international justice. The example of climate change is used to illustrate the arguments throughout.

Key words: Rawls, public reason, the law of peoples, climate change.

In *Political Liberalism*, John Rawls argues that the exercise of political power is legitimate only when policies are justified to citizens on the basis of public reasons that the latter can accept *qua* rational and reasonable agents. Consequently, public political persons have a "duty of civility" to use "the political values of public reason" to justify their preferred policies to a population characterized by the fact of reasonable pluralism (Rawls 1996, 217). In *The Law of Peoples* we are told that this duty applies not only to public political persons in justifying domestic policies at home but also to public political persons in justifying foreign policy abroad. He writes:

> A main task in extending the Law of Peoples to nonliberal peoples is to specify how far liberal peoples are to tolerate nonliberal peoples. Here, to tolerate means not only to refrain from exercising political sanctions – military, economic, or diplomatic – to make a people change its ways. To tolerate also means to recognize these nonliberal societies as equal participating members in good standing of the Society of Peoples, with certain rights and obligations, including the duty of civility requiring that they offer other peoples public reasons appropriate to the Society of Peoples for their actions. (1999, 59)

For Rawls, the fact that liberal peoples (peoples who enjoy legitimate liberal constitutions, democratically elected governments and reasonably just basic institutions) are concerned to develop just foreign policy and to justify their actions on the basis of reasons that all liberal and (decent)[1] nonliberal peoples can accept is part of the very idea of liberal peoples (1999, 9–10). The many differences that characterize reasonable pluralism *within* a liberal society may be as nothing to the differences that exist *between* liberal and (decent) nonliberal peoples – characterized by a variety of different political institutions, laws, languages, religions, cultures, and histories. So, liberal peoples are to use public reasons

1] A "decent" society is one that does not have aggressive aims, secures human rights for all its members, and has a public system of law supported by an idea of justice (1999, 64–67).

to justify their preferred policies and negotiating positions to members of the Society of Peoples. In short,

> Developing the Law of Peoples within a liberal conception of justice, we work out the ideals and principles of the foreign policy of a reasonably just liberal people. I distinguish between the public reason of liberal peoples and the public reason of the Society of Peoples. The first is the public reason of equal citizens of domestic society debating the constitutional essentials and matters of basic justice concerning their own government; the second is the public reason of free and equal liberal peoples debating their mutual relations as peoples. The Law of Peoples with its political concepts and principles, ideals and criteria, is the content of this latter public reason. Although these two public reasons do not have the same content, the role of public reason among free and equal peoples is analogous to its role in a constitutional democratic regime among free and equal citizens. (55)

The Law of Peoples, then, is potentially an important reference point in normative international relations theory in part because it promises an account of how liberal peoples ought to justify their actions to other peoples. Rawls' aim in developing an account of the public reason of the Society of Peoples is "to specify its content – its ideals, principles, and standards – and how they apply to the political relations among peoples." (1999, 57). My own ambition is to critically asses Rawls' account. I shall concentrate on the following questions. What, more exactly, does the public reason of the Society of Peoples look like? Should we be concerned by the prospect of leaders drawing on controversial ethical, religious, philosophical or scientific doctrines when justifying their preferred policies and negotiating positions to other peoples? What kinds of agents should be subject to the international duty of civility? Should the requirements of civility apply not merely to world leaders but also to the representatives of multinational corporations, scientific institutes, and campaigning organizations who also shape world affairs and influence international decision-making and political debate? Finally, what global public reasons are acceptable given reasonable disagreement over the principles of international justice? Should the political representatives of liberal peoples be permitted to draw on other reasonable political conceptions of international justice besides the law of peoples?

In what follows I shall present three main arguments by way of an answer to these questions. The first is that it is fitting for the leaders and representatives of states to defend their preferred policies, negotiating positions, and decisions on matters relating to the creation and governance of international political institutions and to basic questions of international justice using reasonable comprehensive doctrines provided that in due course they offer global public reasons. The basic idea is that just as inclusivity regarding public and nonpublic reasons is more likely to foster stability within a liberal society, so inclusivity is more likely to foster unity, allegiance, and affinity within the Society of Peoples. The second argument has to do with the scope of the international duty of civility. I shall argue that there are grounds for applying this duty not only to states and state-like entities but also to a range of non-state actors in recognition of the impact the actions of the latter have on ordinary people's lives and the influence they can exert on international politics and policy. The third argument relates to the Law of Peoples. In the context of a liberal society

Rawls acknowledges that the duty of civility is tolerable only if public political persons are permitted to appeal to a family of reasonable political conceptions of justice. I argue that much the same can, and should, be said in relation to the public reason of the Society of Peoples, despite Rawls' hesitancy on this point. This means that it is appropriate for public political figures to appeal to a family of reasonable political conceptions of international justice.

I. ON THE ROLE OF PUBLIC AND NONPUBLIC REASONS WITHIN THE SOCIETY OF PEOPLES

For Rawls, part of the rationale for the duty of civility in domestic politics is to provide the foundations for "stability". A stable liberal democracy is one in which citizens have a strong and normally effective desire to act as the principles of justice demand. It is also a society in which there persists over time a plurality of reasonable comprehensive doctrines (Rawls 1996, 140–41). Crucial to this stability, claims Rawls, is the fact that public political persons appeal to public reason when justifying their preferred policies to the electorate; at least when it comes to constitutional essentials and questions of basic justice. Public reason is independent of comprehensive ethical, religious, and philosophical doctrines and comprises both guidelines of inquiry and political conceptions of justice that are implicit in the public political culture of a liberal society (223). Nevertheless, in the introduction to the paperback edition of *Political Liberalism* Rawls explains how his position on public reason has shifted over time from a narrow or exclusive view – according to which people in public political life are required to use *only* public reasons – to a wide or inclusive view – which allows public political persons to introduce their comprehensive doctrines into public political discourse "provided that in due course public reasons, given by a reasonable political conception, are presented sufficient to support whatever the comprehensive doctrines are introduced to support." (lii n. 25). Similarly, in "The Idea of Public Reason Revisited" Rawls states that nonpublic reasons are allowable "provided that in due course proper political reasons – and not reasons given solely by comprehensive doctrines – are presented." (1997, 784–85). According to Rawls, the wide or inclusive view of public reason has the advantage of "showing to other citizens the roots in our comprehensive doctrines of our allegiance to the political conception, which strengthens stability in the presence of a reasonable overlapping consensus." (1996, lii).

Turning to the international sphere, Rawls sets out a liberal conception of international justice, embodied in the eight principles of the Law of Peoples (1999, 37).[2] An important plank in the argument for the Law of Peoples is the idea that it will help to support the "unity" of the Society of Peoples. Rawls argues that the unity of the Society of Peoples will depend on the extent to which peoples can support their governments in

2] I call this a "liberal" conception because it is presented as an extension of a liberal conception of domestic justice.

honoring the Law of Peoples. "An allegiance to the Law of Peoples need not be equally strong in all peoples, but it must be, ideally speaking, sufficient." (18). Sufficient allegiance relies on "affinity" or "mutual caring" among peoples, "that is, a sense of social cohesion and closeness." (112). "Since the affinity among peoples is naturally weaker (as a matter of human psychology) as society-wide institutions include a larger area and cultural distances increase, the statesman must continually combat these shortsighted tendencies." (112). Nonetheless, Rawls is optimistic that the statesman's work is not fruitless. "What encourages the statesman's work is that relations of affinity are not a fixed thing, but may continually grow stronger over time as peoples come to work together in cooperative institutions they have developed." (112–13). The obvious practical problems are how to get cooperation up and running in the first place, and then how to sustain it over time. Where the Society of Peoples lacks cooperation, affinity will not flourish, but where there is no affinity, cooperation remains unlikely.

It seems to me that adopting an inclusive view of the international duty of civility might provide *part of* the solution to these problems; that it may help to overcome obstacles to unity and allegiance caused by an insufficiency of affinity and cooperation on pressing international issues. Now Rawls explains that the public reason of the Society of Peoples is "not expressed in terms of comprehensive doctrines of truth or of right, which may hold sway in this or that society, but in terms that can be shared by different peoples." (1999, 55). It comprises guidelines of inquiry and principles of international justice that can be used by liberal peoples when debating, establishing, and implementing the rules by which they are to co-exist and cooperate with other peoples in the international sphere. The function of an inclusive view of the international duty of civility is not to challenge the role played by public reason but to augment it in ways that might aid affinity and cooperation.

To offer one illustration, I take it as read that if the international duty of civility applies to anything, then it applies to the problem of climate change. I assume that the problem of climate change raises important issues about international law and state sovereignty and basic questions of international justice because multilateral treaties on climate change can establish the groundwork for the exercise of coercive power over sovereign states[3] and dealing with climate change more effectively may put pressure on the Westphalian model of international politics, and failing to deal with climate change effectively places at risk people's basic human rights – not least the right to life, or "the means of subsistence and security" (Rawls 1999, 65) – and adds to what Rawls calls the "unfavorable conditions" that

3] Articles 16 and 18 of the Kyoto Protocol 1997, for example, established the groundwork for procedures to help the parties enforce their commitments under the agreement, specifically, to hold parties accountable if they fail to make good faith efforts to observe the treaty and to settle disputes concerning the nature of individual commitments. Although parties to the Copenhagen Climate Change Conference 2009 failed to agree on a replacement set of legally binding targets on GHG emissions reductions, the US has threatened to withhold climate change adaptation funds from countries which opposed the Copenhagen Accord, another form of coercion.

impede "burdened peoples" in their striving for just or decent basic institutions (106). The stakes could not be higher in the climate change debate and for that reason international cooperation and affinity are at a premium. Even where cooperation and affinity can get started, a further danger is that they will not grow at a pace fast enough to keep up with rapidly changing circumstances and new scientific information.[4] I assume, therefore, that public political persons, including world leaders, ought to avail themselves of global public reasons when negotiating, interpreting, and implementing international agreements on climate change. Yet crucial to the success of such agreements is the ability of world leaders to justify the terms of the agreements both at home and abroad. Affinity can depend on the skill of leaders in speaking to foreign governments and peoples in ways that chime with their values and aspirations. And cooperation can succeed or fail depending on what leaders can "sell" to their own people as a good deal for them as well as a just agreement. Arguably one major benefit of adopting an inclusive view of the duty of civility in the international as well as the domestic context is that it would permit world leaders to present nonpublic reasons (reasons based on a range of different comprehensive doctrines that are held by some and not by others) as a way of reaching out to constituencies of belief that might otherwise remain alienated or disconnected if nonpublic reasons are excluded.

Putting the same point another way, the inclusive view of the international duty of civility allows the leaders of liberal peoples to demonstrate how a policy can be supported by both public and nonpublic reasons and in so doing gives them the opportunity to engage with other liberal, and more importantly, nonliberal peoples using a discourse with which the latter can identify.[5] So, for example, if a politician is able to argue during the course of a term of office or an election campaign that his country ought to do more to tackle the problem of climate change not only because his people are joined together with other peoples around the world in accepting the Law of Peoples but also because his people are joined together with other peoples around the world in believing that they have a duty to God to protect the planet for future generations, far from undermining unity within the Society of Peoples and allegiance to the political principles of international justice, perhaps this would go some way to supporting and enhancing that unity and allegiance. It might be a way of breaking down the lack of trust and cynicism that some nonliberal peoples might initially feel towards the leaders of liberal societies. Thus in the race for the White House Barack Obama used both theological and secular reasons in his

4] In the time it takes for an international agreement on climate change to be reached and its protocols ratified, interpreted, and implemented by the majority of countries and the largest emitters of greenhouse gases (GHGs), than climate science shows that the measures are insufficient and out of date, thus creating tensions between countries that wish to adopt more radical, future-proofing measures and those who do not. Nicholas Stern predicted that the carbon reduction targets established by the Kyoto treaty were more likely to instigate political instability around the globe than to mitigate climate change (Stern 2007). Aubrey Meyer also warned that these targets could be "worse than useless" if they lulled people into a false sense of security (2000).

5] In some instances this may involve arguing in the alternative.

speeches on climate change when addressing both domestic and international audiences (Obama 2007; 2008).

At this stage, however, I might face the objection that the values of public reason and the goals of unity and cooperation within the Society of Peoples could be undermined if public reasons are conjoined with, or presented alongside, nonpublic reasons. Suppose the leader of a developed country supports proposals which allow developing countries to go on emitting GHGs at current levels. Might not some nonpublic reasons make the presentation of proper public reasons untenable as justifications for this policy when uttered by the same agent? Suppose the leader appeals to the public reason embodied in the eighth principle of the Law of Peoples, "Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime." (Rawls 1999, 37).[6] The leader argues that the exemptions are justified because a failure to exempt developing countries from legal obligations on emissions reductions would threaten economic growth in those countries and with it the transition toward just or decent basic institutions. But suppose he also attempts to justify the exemption using the nonpublic reason that the probability of severe climate change impacts in the next 50 to 100 years is almost nil, which is a nonpublic reason because it is contrary to the probabilities accepted by the international scientific community. Or suppose that a nonpublic reason were disingenuously offered in the hopes of masking other reasons. We might imagine the leader of a large industrialized country attempting to convince the rest of the world that its neighbour, China, should be exempt from legal obligations on GHG emissions reductions because Confucianism requires the Chinese people to engage in economic growth without being fettered by such obligations. The rest of the world sees through this nonpublic reason believing that the real reason for the proposed policy is that due to its own situation the country in question should have no problem meeting its emissions reduction obligations and it wishes to strengthen its economic relations with China. Surely in these cases making the duty of civility more inclusive could actually undermine the values of global public reason and with it the international unity and cooperation it is supposed to foster.

I concede the danger but hope to make two constructive remarks about it. First, it is unlikely that the elected leader of a well-ordered liberal society would offer nonpublic reasons that have a good chance of backfiring or, to be more accurate, that he or she would continue to do so in the face of obvious diplomatic failure over a prolonged period of time. More likely is that either he or she would start to articulate nonpublic reasons that are helpful to the cause or would be replaced by someone who did. In assessing the appropriateness of the inclusion of nonpublic reasons it is fitting to consider not merely worse case scenarios but likely scenarios in which liberal peoples and their leaders learn from previous mistakes. Second, it should be seen as a key feature of the international duty of

6] Rawls clarifies that burdened societies might lack, amongst other things, "the human capital and know-how, and, often, the material and technological resources needed to be well-ordered." (1999, 106).

civility that public political persons show due concern for the primacy of public reasons. In practice this means that if it can be understood or reasonably foreseen that the set of public reasons proffered is somehow diminished, rather than enhanced, by the presentation of nonpublic reasons, it is incumbent upon that public person to present only the public reason *at that time*.

Even if permitting public political persons to make their case on matters relating to the creation and governance of international political institutions and to basic questions of international justice through iterations of public and nonpublic reasons goes some way to addressing problems of mistrust between liberal and nonliberal peoples, I do not claim that this will be sufficient by itself to achieve the unity that Rawls seeks within the Society of Peoples. It is likely that other techniques will also be required, most notably, I think, increasing the scope of the international duty of civility to include some non-state actors[7] and expanding the constituents of global public reason to capture other reasonable political conceptions of international justice besides the law of peoples. In the next section I look at the issue of non-state actors, and in the final section I turn to consider other reasonable conceptions.

II. ON THE SCOPE OF THE INTERNATIONAL DUTY OF CIVILITY

Rawls explains that the ideal of public reason is realized domestically "whenever judges, legislators, chief executives, and other government officials, as well as candidates for public office, act from and follow the idea of public reason and explain to other citizens their reasons for supporting fundamental political positions in terms of the political conception of justice they regard as the most reasonable." (1997, 768–69). Public reason is intended for public political forums, meaning the parliaments where statements are made on legislative questions, the platforms on which political speeches are delivered to the public, and the supreme court of a constitutional democracy (767). Hence, any minimally adequate account of the public reason of the Society of Peoples – that is, any minimally adequate account of Rawls' proposed analogy between the role of public reason in a constitutional democracy and its role among free and equal peoples – must supply a comparable list of public political persons and forums at the international level.

As a first approximation, let us say that the international duty of civility applies not only to the statesmen involved in drawing up and executing foreign policy and negotiating international treaties but also to the secretaries, special representatives, and high ranking officials of international political institutions such as the UN, as well as to judges sitting in international law courts. It also applies to citizens of liberal societies who must think for themselves whether or not foreign policies are supportable by public reasons (see Rawls

7] When I talk of the "scope" of the international duty of civility I have in mind the agents to whom it applies. For an interesting discussion of scope in the domestic case as it relates to the range of political issues covered, see Quong 2004.

1999, 56–57). In his book, *Social Theory of International Politics*, Alexander Wendt speaks of "the 'public sphere' of international society, an emerging space where states appeal to public reason to hold each other accountable and manage their joint affairs" (Wendt 1999, 375–76). To add specificity, we might say that this "space" includes the departments, chambers, and committee rooms of both domestic and international political institutions, the various types of meetings, conferences, and summits where statesmen come together to discuss foreign affairs and where international treaties, agreements, and conventions are negotiated and signed, the international courts including courts of arbitration, and other international public political platforms, not least the websites, texts, and documents of states and international political institutions.

To focus on statesmen for a moment, according to Rawls' definition, "Statesmen are presidents or prime ministers or other high officials who, through their exemplary performance and leadership in their office, manifest strength, wisdom, and courage." (1999, 97). Indeed, he suggests that the ideal of a statesman is captured in the saying "the politician looks to the next election, the statesman to the next generation" (97). If there has ever been a problem that calls for statesmen rather than mere politicians, surely it is climate change. But what is strangely missing from Rawls' definition is the mention of concern for other peoples. In order to reflect the international as well as intergenerational aspect of climate change perhaps we should reformulate the saying as follows: the politician looks to the next election, the statesman to the next generation and to the rest of world. We need an alternative to the term "statesman" to mark this difference. Hence we might define an *international statesman* – or *world leader* which is non gender specific – as someone who not merely works for the interests of his or her own people but also takes into consideration, and has some genuine concern for, the interests of other peoples.

So far we have seen that Rawls intends the international duty of civility to apply to states and state-like entities but *not* to non-state actors, who need not give public reasons. The desirability of this narrow scope is far from obvious, however. Sticking with the example of climate change, some non-state actors play a major role in determining total amounts of GHG emissions, whilst others serve an important function in monitoring emissions, naming and shaming countries and corporations with high emissions, and pushing for new agreements and greater reductions in emissions. I have in mind not only multinational corporations but also non-governmental organizations (NGOs) of various kinds, including global environmental organizations (such as the Climate Action Network, Friends of the Earth, and Greenpeace) and scientific organizations (such as the Union of Concerned Scientists and the Worldwatch Institute), as well as publicly recognized environmental activists, climate change scientists, and individual research institutions and centers.

Consider two possible justifications for excusing non-state actors from the international duty of civility. The first is that calling on non-state actors to live up to the ideal of civility would be like calling on the many diverse bodies and associations which make up the "background culture" of a domestic society to live up to the ideal civility. One reason

why we do not do this in the latter case is that these bodies and associations are guided, and not inappropriately so, by a range of comprehensive religious, philosophical, and ethical doctrines, and to impose on them the demands of public reason would hinder full and open discussion (see Rawls 1996, 220–21; 1997, 768). It seems to me, however, that this appeal to the possible chilling effect of the international duty of civility *vis-à-vis* non-state actors exaggerates the burden of this duty. The suggestion is not that non-state actors should somehow dispense with their nonpublic reasons – which, after all, may explain their original motivation for acting – only that when they partake of relevant public political forums they undertake to present in due course, perhaps alongside reasons based on their comprehensive doctrines, public reasons that can be accepted by all constituencies of belief.

A second possible justification for confining the international duty of civility to states and state-like entities is that this duty is grounded in the existence of institutions that have a duty to exercise legitimate political power and only states and state-like entities have such as duty (see Rawls 1996, 222). The implicit assumption is that states and state-like entities wield a power over the lives of ordinary people different in nature to that which is wielded by multinational corporations and NGOs. However, this response takes too lightly the power wielded by the latter. Even if this power is different in nature, it can still amount to the capacity to take major strategic decisions and to introduce projects on the ground without the consent of ordinary people. The response also underestimates the extent to which non-state actors can influence public political decision-making, whether directly by putting pressure on states and state-like entities or indirectly through shaping the latent beliefs, desires, and principles of the international public political culture.

To expand on these last points, when states and state-like entities take decisions over energy policy that impact the lives of ordinary people across the world it is morally fitting that they try to justify these decisions using global public reasons, but this is no less true of multinational corporations. For, they also take decisions over the production and usage of energy that have serious repercussions for the lives of ordinary people. The minimum requirement of the duty of civility is to "go public" with relevant information and changes to policy – a duty that has too often been ignored. In 2004, for example, BP attracted criticism for changing the method by which it estimates the amount of CO_2 it produces, effectively halving its reported CO_2 emissions, without notifying the public about the change.[8] I would likewise extend the international duty of civility to organizations that fall between the categories of state and non-state actors, including power companies whose majority shareholders are state-owned corporations. Consider the Chinese-based company Huaneng Power International, which emits 285 million tons of CO_2 per year, more than the total emissions of power plants in the US and UK combined (Center for Global Development 2008). I believe that a similar case can be made for applying this duty to the

8] It did so by excluding CO_2 emissions associated with oil and gas bought and sold by some of its operations.

high ranking officials and representatives of major international economic institutions, organizations, and agencies, including the World Bank, the World Trade Organization (WTO), the Organization of the Petroleum Exporting Countries (OPEC), and Export Credit Agencies (ECAs).

On the assumption that the public reason of the Society of Peoples incorporates values of openness and transparency, the duty of civility implies that leaders and delegates whose countries have vested interests in energy or environmental technology companies, should declare these interests when debating proposed international agreements in the relevant areas. It also implies that if a world leader is advocating techno-optimism as the correct overall position on the climate change problem to other heads of state and this depends on scientific evidence and conclusions that are of uncertain status by comparison with the international scientific consensus, then this should also be declared. This being the case, arguably the same standard should apply to the representatives of multinational companies and international scientific institutes in the event that they are invited to support particular proposals during international political conferences. When they step from the domain of civil society into the domain of public political debate and decision-making then they ought to declare whether or not some of their reasons reflect a concern for maintaining profits or attracting scientific funding.

I believe that comparable requirements should also apply to international NGOs. Given the public political spaces to which these organizations can have access both internationally and within their host countries (everything from the local meetings of tribal elders to the offices of politicians, the various platforms of state-governed media services, and onto the committee rooms and chambers of national governments and international political institutions) and the consequences that their activities can have for the lives of ordinary people, there are grounds to extend the international duty of civility to them. Consider the case of *A Rocha*, an international Christian organization with operations in nearly 20 countries around the world.[9] Its climate change program, "Climate Stewards", ostensibly helps poorer countries make economically sustainable reductions in GHG emissions as well as preparations for climate change impacts. "Climate Stewards" claims the endorsement of Professor John Houghton of the Intergovernmental Panel on Climate Change (IPCC). However, it also presents the following nonpublic reason as part of the justification for its activities: "God has given us a beautiful world. Now the climate is changing fast."[10] Its website, literature, and representatives urge governments and individuals alike to engage with and partake of its strategic vision partly because of its religious vision. My suggestion is not that an avowedly Christian organization working towards the goal of international sustainable development should not be able to give full and frank

9] The *A Rocha* website can be found at http://www.arocha.org/int-en/index.html, (accessed June 4, 2010).

10] This reason can be found on the *Climate Stewards* website at http://www.climatestewards.net/cs-int-en/home.html, (accessed June 4, 2010).

reasons for why it acts as it does based on its own comprehensive doctrine. Rather, my suggestion is that when a Christian organization is working in potentially non-Christian localities, it should in due course make use of the public political forums and platforms to which it has access, including at the local, national, and international levels, to present public reasons that its host peoples can accept, especially when the effective power of host peoples to scrutinize, reform or even reject the actions of well-resourced international NGOs can be vanishingly small (see Wenar 2006, 13–14).

Thus far I have defended an inclusive view of the international duty of civility as well as an expansive interpretation of the scope of that duty. In the final section, I shall argue that global public reason should comprise a family of reasonable conceptions of international justice.

III. TOWARDS A FAMILY OF REASONABLE POLITICAL CONCEPTIONS OF INTERNATIONAL JUSTICE

In the domestic case Rawls argues that the "exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational." This, he calls, "the liberal principle of legitimacy" (1996, 217). This principle imposes a moral duty on public political persons to justify their actions using public reason. It needs to be underlined, however, that for Rawls the public reason of a liberal society "is not specified by any one conception of justice, certainly not by justice as fairness alone". Rather, it is specified by "a family of reasonable political conceptions of justice" (1996, lii–liii; see also 1997, 767; 2001, 91). Hence, in the domestic case the parties in the original position not only select among variations of the two liberal principles of justice but also choose between liberal principles and alternative reasonable conceptions of justice such as utilitarianism and perfectionism. A political conception of justice is reasonable only if it can (1) be the subject of agreement in the original position among free and equal parties who are rational and mutually disinterested (1971, 292–93; 1996, 246; 1999, 107; 2001, 91), (2) provide a basis for public justification and overlapping consensus among citizens who subscribe to different comprehensive ethical, religious, and philosophical doctrines (2001, 89), and (3) be suitable for a well-ordered society viewed as a fair system of social cooperation over time; that is to say, can satisfy the criterion of reciprocity (1997, 767).

In contrast to the domestic case, however, Rawls does not offer, nor have in mind, a family of reasonable political conceptions of international justice. "The parties in the second original position select among different formulations or interpretations of the eight principles of the Law of Peoples." (1999, 40). In other words, "the parties are not given a menu of alternative principles and ideals from which to select, as they were in *Political Liberalism*, and in *A Theory of Justice*." (57). This means that the public reason of the Society of Peoples is based on one main political conception of justice, namely, the Law of Peoples

and its eight principles. Now Rawls acknowledges that "the principles listed require much more explanation and interpretation." (37). Since the principles are abstract they are likely to support more than one interpretation in any given situation, so the public officials and representatives of liberal peoples will need to reflect more closely on the meaning of the Law of Peoples as part of living up to the duty of civility. He also states that other principles may need to be added to the original list of eight principles. He offers the example of "principles for forming and regulating federations (associations) of peoples, and standards of fairness for trade and other cooperative institutions" (38). Yet even if the original list of eight principles is open to interpretation and addition, it remains the case that for Rawls there is but one reasonable political conception of international justice in play.

This raises the question of how and why Rawls ends up with the particular list of eight principles rather than an alternative list or even a set of lists. In the domestic case he specifies that the family of reasonable political conceptions of justice are based on ideas seen as implicit in the public political culture of a liberal society, where this comprises "the political institutions of a constitutional regime and the public traditions of their interpretation (including those of the judiciary), as well as historical texts and documents that are common knowledge." (1996, 13–14). In the international case, he confidently asserts that the contents of the Law of Peoples are "familiar and largely traditional principles" taken from "the history and usages of international law and practice" (57).[11] It is not hard to see the connections between the proposed background public political culture of the Society of Peoples (the history and usages of international law and practice) and the eight principles of the Law of Peoples. This background might include the International Bill of Human Rights, which is reflected in the sixth principle of the Law of Peoples, and the Vienna Convention on the Law of Treaties, which is apparent in the second principle of the Law of Peoples (37). However, it remains unclear why the history and usages of international law and practice should evince only one list. There exists a significant literature on the history and usage of international law, and this literature offers a number of different lists of the principles of international law that together could be used to construct a family of reasonable political conceptions of international justice (see, for example, Kelsen 1952; Franck 1995; and Lowe 2007). Furthermore, in seeking to justify the identification of public reason with a family of reasonable political conceptions of justice in the domestic case Rawls points out that the public political culture of a liberal people "may be

11] Rawls does not offer a justification for why he mentions in this passage only the history and usages of international law and practice and not the web of regional and international political institutions that cover the modern world, including the political institutions of regional associations like the EU and the political institutions of international organizations most notably of the UN. But perhaps the assumption is that, in contrast to domestic political institutions, regional and international political institutions exist only by virtue of prior components of international law, namely, treaties, and so political institutions are automatically included under the more general heading of the history and usages of international law and practice.

of two minds at a very deep level." (Rawls 1996, 9). Surely the public political culture of the Society of Peoples may be similarly deeply divided (see, for example, Habermas 2006).

For these reasons it seems appropriate to recognize the existence of a family of reasonable political conceptions of international justice *ex ante*. In other words, global public reason should be seen as being comprised of a number of separate reasonable political conceptions of international justice as opposed to a single conception which is subject to interpretation only within its own terms. Now it might be argued that over time the process of interpreting the eight principles of the Law of Peoples will result in a great deal of variation, so that the net result would be the same whether we start with a single conception or a family of conceptions. Even if the eight principles admit of different interpretations, however, it is not clear that this process could match the inherent diversity of a family of reasonable conceptions. As Rawls acknowledges in the domestic case, a single conception of justice "greatly limits its possible interpretations; otherwise discussion and argument could not proceed." (1999, 145 n. 35). The likely consequence of employing a single list of principles from the start is to restrict the range and variety of principles in play at later stages.

Building on the idea of global public reason and a family of reasonable political conceptions of international justice I therefore wish to propose what I shall call *the global principle of legitimacy*: the exercise of coercive power within the international sphere is proper and hence justifiable only when it is exercised in accordance with constitutions, treaties, conventions, policies, strategies, and mission statements the elements of which all decent peoples may be reasonably expected to endorse in the light of ideals, standards, and principles acceptable to them as free and equal members of the Society of Peoples. This principle implies that any high ranking officials, leaders, delegates, representatives, chairmen, heads, and judges who debate, negotiate, and take decisions on behalf of liberal states, international political institutions, and relevant non-state actors on matters relating to the creation and governance of international political institutions and to basic questions of international justice within the various public political domains of the Society of Peoples have a moral duty to justify their preferred policies, negotiating positions, and decisions to both liberal and (decent) nonliberal peoples alike by presenting in due course (under the inclusive view) global public reasons, where global public reasons are specified by a family of reasonable political conceptions of international justice.

What, then, are likely to be some of the members of this family of reasonable political conceptions of international justice? I offer three types of conception which although distinguishable from Rawls' liberal conception (as specified by the eight principles of the Law of Peoples), may be reasonable nevertheless.

The first conception, modus vivendi, starts from the premise that when liberal and nonliberal peoples follow universal standards of behavior or principles of justice this can be in everyone's interest. The specific from of modus vivendi I wish to concentrate on recognizes a range of principles of international justice including the duty to assist burdened peoples in their striving for just or decent basic institutions. However, it recognizes this

duty only in conjunction with other principles that constrain its usage. One such principle is that of equity, meaning equal and impartial justice between peoples whose interests are in conflict.[12] This conception can be illustrated by the Obama administration's approach to climate change negotiations. When he came to office in January 2009 the President was quick to publicly recognize the gravity of the climate threat and to support a climate change bill (Obama 2009a). Speaking to students in April of that year he criticized the stance taken by President Bush saying that it was "a mistake" not to ratify the Kyoto protocol (2009b). He cited the fact that the US "has been the biggest carbon producer." He might also have cited the second principle of the Law of Peoples, "Peoples are to observe treaties and undertakings." (Rawls 1999, 37). Yet at the Copenhagen Climate Change Conference 2009 the strategy of the Obama administration was to reject a Kyoto-style treaty imposing legal obligations on emissions reductions, to insist that developing countries like China, India, South Africa, and Brazil commit to slowing down the growth of their GHG emissions, and to call for stringent standards for reporting, monitoring, and verifying emissions reductions. The justification seemed to be this. How can an international agreement on reducing GHG emissions claim to be equitable when equally large polluters (including some burdened peoples) are not bound by similar emissions targets and do not operate under the same stringent standards?[13]

The second conception, cosmopolitanism, is based on the idea that justice requires liberal peoples to treat all human beings with equal concern. According to the specific type of cosmopolitanism I am interested in, showing equal concern requires more than simply assisting burdened peoples and living up to a principle of equity. In the case of climate change this type of cosmopolitanism implies that rich, industrialized peoples should take drastic steps to reduce their GHG emissions and should fund adaptation measures around the globe as a matter of equal concern for the likely victims of climate change. Although cosmopolitans of this type appeal to different principles of international justice in making their case – such as principles based on responsibility for past emissions, capacity to reduce emissions in the future, equal entitlement to prosperity, and equal rights to the protection of fundamental interests (see, for example, Shue 1999; Caney 2006; and Gosseries 2006) – they all agree that the eight principles of the Law of Peoples do not go far enough. This type of conception of international justice can be seen in the high aspirations of the European Union (EU), not including Poland and other Eastern European countries, leading up to the negotiations in Copenhagen. Its delegation went prepared to play a "leading role", specifically, to agree to legal obligations to cut emissions by 20% of 1990 levels by 2020 or even by 30% if other large emitters such as the US and China

12] For an account of the nature and function of equity in international law, see Rossi 1993. For more on its role in negotiations over climate change, see Page 2007.

13] Similar reasons may have been at the forefront of the Bush administration's decision not to ratify Kyoto. See McCright and Dunlap 2003.

showed a similar willingness to take strong action, and to make significant contributions to adaptation funds to help the poorest and most vulnerable.

The third conception, nationalism, rejects the idea that liberal peoples owe equal concern to those living in other parts of the world. The particular form of nationalism I have in mind accepts that liberal peoples have *some* duties of justice relating to other peoples but does not accept the principles of international justice defended by cosmopolitanism and denies that liberal peoples have a duty to assist burdened peoples in their striving for just or decent basic institutions. More specifically, it denies that liberal peoples have a duty to accept legal obligations on GHG emissions reductions, or that they should commit to helping burdened peoples adapt to climate change, on the grounds that such obligations and commitments are likely to be unduly economically burdensome. This conception was played out in the strategy adopted by Poland during the Copenhagen conference. Poland remains one the highest emitters of CO_2 in the EU. However, in the years 1988 to 2007 it achieved a 33% reduction of emissions based on a shift from coal-based sources of energy to gas, oil, and biomass. As a result of these changes it enjoyed a large surplus of carbon credits. Going into Copenhagen the main concern of the Polish delegation was to secure its ability to sell carbon credits before and after the Kyoto protocol expires in 2012. For this reason it opposed the plans of the EU to accept a significant reduction in European emissions quotas fearing that such reductions would damage its emissions-trading market. It also attempted to block EU proposals to transfer billions of Euros to developing countries to help them adapt to climate change on the grounds that the proposals involved contributions based on past-emissions and this would leave Poland with "excessive" amounts to pay. After the talks in Copenhagen the President of Poland, Donald Tusk, offered the following justification for his country's negotiating position: "The Polish delegation went to Denmark in order to make sure that the ambitions of the others are not achieved at our expense. And this is done." (visegrad.info 2010).

These examples are not intended to be comprehensive or exhaustive. No doubt there are a range of other conceptions and sub-conceptions to consider. Perhaps the reasonable political conceptions of international justice to which it is appropriate to expect states and state-like entities to appeal will differ both in form and substance from the reasonable conceptions to which non-state actors should appeal. So I present these three merely as species of conceptions of international justice that might differ from Rawls' preferred liberal conception, the Law of Peoples, but which nevertheless may be reasonable according to his criteria. That a political conception of international justice is reasonable in Rawlsian terms depends on whether or not it could (1*) be the subject of agreement in the original position among the representatives of free and equal liberal peoples selecting principles of international justice for the basic structure of the Society of Peoples (Rawls 1999, 40), (2*) provide a basis for public justification in international politics (55), and (3*) satisfy the ideal of reciprocity (57). Clearly each of the aforementioned conceptions of international justice needs to be fleshed out in more detail before a final determination of reasonableness can be made. But at the very least I think a case for reasonableness can be made for

each conception using these criteria. Even liberal peoples may have reason to select, in accordance with (1*), forms of modus vivendi, cosmopolitanism, and nationalism. I also assume that these different conceptions have, under the terms of (2*), previously informed public political debate and negotiations on climate change, including meetings in Vienna, Montreal, Rio de Janeiro, Kyoto, and Copenhagen, and along with other reasonable conceptions will continue to do so in the future. Moreover, I take it as read that modus vivendi, cosmopolitan, and nationalist conceptions can each lay claim to upholding the ideal of reciprocity, as specified in (3*), in some way and to some reasonable degree.

According to the view I am proposing, then, a family of reasonable political conceptions of international justice – *inter alia* liberal, modus vivendi, cosmopolitan, and nationalist conceptions – can provide content for the public reason of the Society of Peoples. At this stage, however, it might be objected that even with a family of reasonable political conceptions of international justice on the table, it may not be possible to reach agreement concerning pressing international issues like climate change since global public reasons will prove to be inconclusive. A similar objection has been leveled at Rawls' doctrine of public reason in the domestic case, and in that regard I think Micah Schwartzman is right to insist that inconclusiveness of public reasons is not a problem but "something to be expected within the normal politics of a liberal democratic society." (Schwartzman 2004, 198). Indeed, Rawls makes it quite clear in the domestic case that there will be a conflict between reasonable political conceptions of justice, and so "they may be revised as a result of their debates with one another." (Rawls 1996, liii). By analogy, I think that it is appropriate to hold out for a global democracy in which reasonable conceptions of international justice are aired and revised as a result of free and fair debate. In other words, the correct ambition of a theory of public reason for the Society of Peoples is not to specify one set of guidelines, values, and principles but to outline a framework in which a family of reasonable guidelines, values, and principles can develop and change over time. In this way I follow Joshua Cohen's suggestion that the form and content of global public reason is itself the product of public reasoning. As he puts it: "Global public reason is better understood as a terrain of reflection and argument than as a list of determinate rules: that is part of the force of the term 'reason'." (Cohen 2006, 237).

The list of possible objections to public reason and global public reason does not end there, of course. Chantal Mouffe, amongst others, has criticized Rawls' doctrine of public reason – and Habermas' communicative democracy for that matter – for ignoring the agonistic dimension of democracy as contestation. It does not make sense, argues Mouffe, to shackle persons in the democratic sphere with the duty of civility, even one that is based on a family of reasonable political conceptions of justice, because to do so is to aim for a universal consensus which "is the real threat to democracy" (Mouffe 1996, 248). But then Mouffe must answer the return challenge: how can a society, and specifically the Society of Peoples, protect itself against the severe challenges it faces, not least climate change, if it does do not try to civilize democratic deliberation among its different members at least to some reasonable degree? It seems to me right to expect a theory of global democracy to

be able to comment on the civility of public political debate drawing on values and principles all can accept. That being said, unity and cooperation may be put at risk if existing democratic structures are unfair such that actually living up to the international duty of civility would favor some peoples over others. For this reason I also endorse Anne-Marie Slaughter's idea of "global deliberative equality" in which all participants have "an equal opportunity to participate in agenda setting, to advance their position, and to challenge the proposals and positions of others." (Slaughter 2005, 51–53).

In this article I have presented an outline of a Rawlsian account of global public reason. I have argued that there is a rationale for preferring an inclusive view of the international duty of civility, for extending its scope to non-state actors of various kinds and in different ways, and for drawing on a family of reasonable conceptions of international justice in framing the guidelines, values, and principles of global public reason and the global principle of legitimacy. Obviously much more work needs to be done on each of these scores in order to turn this outline into a complete account. But I hope this outline provides some cause for optimism over the results of such an enterprise. I have also used the example of climate change throughout rather than looking at a range of cases. However, if the application I have offered here is plausible, then there is every reason to consider applying this approach to other areas of international disagreement, debate, and negotiation, such as the extension of human rights, the status of foreign detainees, border controls and the treatment of refugees, conventions on fishing and conservation, reform of the law of the sea, international trade dispute settlement procedures, the rules and practices of international lending and debt recovery, and nuclear weapons disarmament.

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Crooked Wood, Straight Timber – Kant, Development and Nature

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Abstract. Development is a widely used political concept, yet it receives relatively little philosophical attention. Conceptual clarification can draw on Kant's writings on history and politics, which centrally include a theory of development. This theory posits developmental goals, and means of development, it presents these goals and means from a sophisticated epistemological perspective, and moreover a comprehensive perspective that includes human and non-human development. Via a discussion of the material transformations of Prussia during Kant's time, and the resonance of this transformation in Kant's writing – the "crooked wood" of the text, and the "straight timber" of Prussian "scientific forestry" – an argument is made for an extended theory of development that includes public reason as a means of development. It is argued that Kant's reasons for a concern with development and the methodological spirit and scope of his approach remain pertinent, but that it is the spirit rather than the letter of Kant's approach that can serve as a model for current theorizing.

Key words: development, public reason, sustainability, Kant, environmental history.

Due to the complexity of history, the possibility of a theory of development seems unlikely; due to wars and catastrophes a theory of development may not be desirable. It could serve as a legitimizing tool for "a set of practices, sometimes appearing to conflict with one another, which require – for the reproduction of society – the general transformation and destruction of the natural environment and of social relations" (as Gilbert Rist puts it in his *History of Development* (2006)). And yet, in spite of many and repeated criticisms, *development* has remained a widely used political concept. The often instrumental use of the concept in the context of economic growth and asymmetrical North-South relations (Shiva 1988, Sachs 1992 and 1999, Deb 2009) suggests the task of continued conceptual clarification.

This paper investigates Kant's contribution to this task via an examination of his writings on cosmopolitanism and history, and especially his *Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht* (published in 1784 in the Berlinische Monatszeitschrift).[1] The *Idea* has been primarily discussed as a contribution to the philosophy of history (see inter alia Fackenheim 1957, Yovel 1980 and Kleingeld 1995), or more specifically universal history.[2] Yet, this contribution centrally includes a theory of development, of interest for its own sake and thought-provoking for the current discussion of development. This paper first introduces goals, motivations and means of Kant's theory of development in *Idea*. Via

1] All references to this text as well as to Kant's "On the Common Saying" are from Kant (2006) edited by Pauline Kleingeld and translated by David L. Colclasure.

2] The genre 'universal history' was well established in the eighteenth century. As the adjective 'universal' indicates, it was to be history of humankind in general, and not of a specific political event or national culture.

a discussion of the material transformations of Prussia during Kant's time, and the resonance of this transformation in Kant's writing – the "crooked wood" of the text, and the "straight timber" of "scientific forestry" – an argument is made for an extended theory of development that includes public reason as a means of development. It is then argued that the epistemic status of Kant's theory is at the very least also practical rather than primarily theoretical. It is in these respects that the paper seeks to contribute to the discussion of Kant's philosophy. Drawing on this assessment, it is argued that Kant's reasons for a concern with development and the methodological spirit and scope of his approach remain pertinent for the discussion of development today, but his discussion of the goals and means of development needs to be extended, and his biological assumptions need to be replaced. It is the spirit rather than the letter of Kant's approach that can serve as a model for current theorizing.

I. KANT ON MOTIVES AND MEANS OF DEVELOPMENT

Kant's theory of development has a goal-oriented structure: "One can regard the history of the human species, in the large as the realization of a concealed plan of nature, meant to bring about an internally, and to this end, externally perfect state constitution, as the sole condition in which nature can fully develop all of its predispositions in humankind" (*Idea*, eighth Proposition). His theory posits an end goal, i.e. the development of all of humanity's 'predispositions' or 'natural capacities'. He states but does not normatively justify this end goal in *Idea* (a point that I will return to below).

Due to the relative neglect of development as a concept in current political philosophy – the philosophical discussion of development hardly shows the extent and depth of discussions of justice, equality, freedom and community – I will first introduce Kant's arguments motivating the theory of development as a contribution to practical philosophy:

1) Consolation and hope in this world (Idea, 8:30): Human history, Kant notes, makes us turn away with indignation and we doubt that we can ever find a completed reasonable purpose in it. We turn our hope to 'another world' and look for consolation there. But, there is no need to despair if it is possible to develop a theory of development. Therefore, if we think that a consoling outlook on the future is desirable[3], a theory of development is needed.

2) Acceleration (Idea, 8:27 and 8:31): If we grasp the means of development, then we can "by means of our own rational projects hasten the arrival of this point in time, which will be such a happy one for our descendants." (*Idea*, 8:27). The argument assumes that we are not indifferent with respect to future generations.[4]

3] In "On the Common Saying" Kant notes "this hope for better times, without which a serious desire to do something that promotes the general good would never have warmed the human heart, has always had an influence on the work of the well-thinking" (Kant 8:309).

4] For Kant's view on duties towards future generation see "On the Common Saying"; for a more recent Kantian argument see Rawls 1999, §44.

Kant also addresses the historians:

3) Disburdening future generations (Idea, 8:31): Historians describe the past with "otherwise notable thoroughness" – and as a result place a burden of history on future generations. But, he argues, these generations will have one primary interest in history: how have past peoples and governments contributed or harmed the cosmopolitan purpose. Therefore taking into consideration the interest of future generations is a motivation for the historian to contribute to universal history.

And he addresses the politicians:

4) Honour (Idea, 8:31): Heads of governments and their servants need to understand that they will be remembered and be honoured by future generations for their contribution to the cosmopolitan purpose. If they understand that contributions to this purpose will give them the highest and lasting honour, then development will again be promoted and accelerated, or so Kant seems to imply.

This brief survey of the motivations for a theory of development shows a concern for future generations as part of the motivation for a theory of development (especially with points two and three). This concern is today associated with the call for sustainable development in response to climate change and irreversible damages to ecosystems. As we will see below, however, the relation to the environment already plays a role in Kant's account. Finally, Kant's motivations are practical: they revolve around the idea of a cosmopolitan purpose, as already stated in the title of Kant's essay. They concern the possibility of progress.

However, there is also a theoretical motivation. In the introduction to *Idea,* Kant notes that history concerns the appearances of the will, which in his view are like all events determined by universal laws. It should therefore be possible to discover laws and causes in history. Kant ends his introduction speculating that nature might produce a Kepler or Newton to compile such a history (*Idea*, 8:17-18). According to the *Critique of Pure Reason*, theoretical reason strives to establish a systematic unity of knowledge, thus theoretical reason also strives to establish unity in history here understood as a science (Kant 1787, A653-654/B681-682; Kleingeld 2008)

As far as the means of development are concerned, societal antagonism is the primary driver of development, according to Kant. He specifies this antagonism on two levels. On the first level, he speaks of *unsocial sociability*. Kant describes human beings in terms of two contradictory inclinations (Hang): to be in society, and to isolate themselves. Kant describes the inclination to isolation in terms of a will to have everything according to one's own will. Yet, having one's will requires overcoming the resistance of others, and hence forces human beings to overcome their inclination to laziness. The conflict forces them to develop their predispositions.

The desire for honour and power, and also greed require for their attainment other human beings who have to recognize deeds, to obey and to follow property and labour

rules. The attainment of these desires therefore not only leads to a development of predispositions, it is also not possible outside society.[5]

Selfish creatures can exercise their free will only if there is a constitution that secures the freedom of these creatures from the attack and infringement of others. According to Kant, the principle of this constitution is the highest freedom of each compatible with the freedom of others (*Idea*, 8:22). But the constitution also has a disciplinary effect and as such promotes the further development of capacities. In this sense, it is an indirect means of development.

The complement to the unsocial sociability in civil society is war between states on the societal level. While this antagonism, in Kant's view, hinders the development of natural predispositions - due to the destructions of war and the necessity to be constantly ready for war – it does force the states to eventually work towards a cosmopolitan state, an idea that Kant only hints at in *Idea*, but specifies in his 1795 essay *Perpetual Peace* as a federation of republics. As such a federation promotes the development of predispositions, it is a further indirect means of development.[6]

This specification of the means of development in turn suggests where to look for evidence or at least traces of development in history: in the means of unsocial sociability and law. If only very sketchily and cautiously, Kant does claim that "a little" and "faint signs" can be discovered in history (*Idea*, 8:27, eighth proposition). The example he gives is the "regular course of improvement in the constitution of the state in our part of the world" (*Idea*, 8:30, ninth proposition).

II. CONCEALED PLANS OF NATURE AND A PRUSSIAN EPISODE

"One can regard the history of the human species at large as the realisation of a concealed plan of nature, meant to bring into being an internally and, to this end, externally perfect state constitution, as the only condition in which nature can fully develop all of its predispositions in humankind" (*Idea,* 8:27, eight Proposition). At a second look, this sentence is puzzling: why does Kant write "a concealed plan of nature . . . in which nature can fully develop all of *its* predispositions in humankind" (italics added)[7], i.e. all of *nature's* predispositions? "All of nature's predispositions" refers to more than human predisposi-

5] These contradictory inclinations leave open and enable human diversity across time and peoples. "Kant's anthropology lectures are, accordingly, permeated with claims about human role-playing in society, our 'concealing' and 'dissembling' egoistic intentions before others and with the social necessity of developing 'characters' . . . our unsocial sociability makes possible the plasticity and perfectibility of human nature." (Sturm, forthcoming).

6] In view of *Perpetual Peace* the development promoted thereby is chiefly due to cosmopolitan demand of hospitality and the commerce this makes possible (see the third definitive article of Kant's *Perpetual Peace*).

7] The original German sentence reads as follows: "Man kann die Geschichte der Menschengattung im großen als die Vollziehung eines verborgenen Plans der Natur ansehen, um eine innerlich- und zu diesem Zwecke, auch äußerlich- vollkommene Staatsverfassung zu Stande zu bringen, als den einzigen Zustand, in welchem sie alle ihre Anlagen in der Menschheit völlig entwickeln kann."

tions. Does Kant mean to say that the development of humankind is a condition for the development of all of nature's predispositions? Such a reading of the passage would not only much enlarge the scope of development, but also raise the question why humankind (and its development) is a condition for the development of all of nature's predispositions.

No doubt, it is also possible to call Kant's phrasing unfortunate, a minor ambiguity in a text that focuses on human development.[8] Still, even on this reading there remains the question how the other predispositions of nature are related to Kant's theory of (human) development. Not only humans have predispositions, according to Kant, and the predispositions of non-humans also 'unfold' or 'develop'. So how are these 'developments' related? This question, which concerns the dynamic relation of society and its environment in history, is not only a condition of acceptability for a development theory in the age of sustainability, it already plays an interesting role in Kant's theory of development.

The material transformation of the land had a prominent place on Prussia's political agenda throughout the eighteenth century. When Kant wrote his essays on morals, politics and history in the 1780s and 1790s, this dimension of policy was well established, and it therefore could be expected to be present some way or other in Kant's writings on these issues. Before turning to the respective places, a clarification of policies for material transformation of the land is called for.

In the concluding section of his chapter on Prussian water politics, historian David Blackbourn notes: "The wetlands of the North German plain were physically transformed in the second half of the eighteenth century." (2006, 75). Prussia was home to many wetlands, and especially Frederick ("the Great") had noted that the transformation of land that had no human use offered the possibility of a large-scale reclamation policy. The policy made available more agricultural land that in turn could feed a growing population and staff the military. Blackbourn's exemplar is the Oderbruch, a marshy area between Oderberg and Lebus in the East of Berlin. Areas of this kind, Blackbourn writes, could be found everywhere in Prussia (2006, 27). Land reclamation in the Oderbruch had been attempted for some time, but only with Fredrick a large-scale transformation of the area was pushed through. A team of bureaucrats, engineers and scientists (including the noted mathematician Leonhard Euler) surveyed the area, a plan was drawn up, and from 1747-1753 a major effort was made to implement it, requiring at times up to 950 soldiers from the Prussian army. In the end, the marshes had been drained, and colonists were called in to establish agriculture in the former wetlands (62).[9] "The changes brought a new physical security to men and women who settled once inhospitable land, yet they exposed much larger number of people to potential insecurity. They also destroyed ecologically valu-

8] In the second proposition Kant specifies that those "predispositions aimed at the use of reason are to be developed in full only in the species, but not in the individual". But this is a reason-specific point, and it does not follow that other predispositions in nature could not "develop" on the level of species or some other level (for example the "development" of a species due to breeding techniques).

9] For an account of the scale of the Prussian effort of this type of internal colonisation see Blackbourn 2006, 41-42.

able wetland habitats. How do we strike the balance?" According to Blackbourn, "we can choose to celebrate a triumph of modernity, or lament a world that was lost, but neither really does justice to what the transformation meant" (62).

Blackbourn notes that this transformation was made possible, in part, due to the information made available by cameralism and its statistics (43).[10] An observation that is as pertinent for the draining of marshes as it is for the sustainable growth of forests, another important domain of policy. If the water politics just described increased agricultural land (at least in the short-term), scientific forestry primarily was meant to increase revenue (Scott 1998, 12). From the state perspective, the forest was an economic good that ought to be exploited and sustained as a source of income. It is in the context of scientific forestry that the term 'sustainability' (Nachhaltigkeit) was coined with reference to nature as a resource in Carlowitz' *Sylvicultura Oeconomica* of 1713. The maxim to only cut as much wood as can be re-grown conceptually links sustainability and growth. And as in the case of water politics, the state focus is in tension with local uses and ecological functions of the forest.

These water and forestry policies in eighteenth century Prussia show the state 'developing' its environment. In this sense, nature's predispositions are 'developed' in humankind, quite selectively to be sure. The material changes to the land primarily serve as a means to promote the interests of government, especially economic and military power. Nature's predispositions (*anlagen*) appear as nature's interest rate; 'sustainability' policies coincide with a threat to ecological sustainability and local justice.

III. CROOKED WOOD AND STRAIGHT TIMBER

The transformation of the land appears in Kant's *Idea* in two ways: as evidence and as metaphor, both invoked to persuade readers of his theory of development. In the opening passage of his article, Kant notes "that the free will of human beings has such a great influence on marriages, on the births that result from these, and on dying, it would seem that there is no rule to which these events are subject and according to which one could calculate their number in advance" (*Idea*, 8:17). However, he notes that the "relevant statistics compiled annually in large countries demonstrate that these events occur just as much in accordance with constant natural laws as do inconstancies in the weather, which cannot be determined individually in advance, but which, taken together, do not fail to maintain a consistent and uninterrupted process in the growth of the plants, the flow of rivers, and other natural arrangements" (*Idea*, 8:17).

Kant was familiar with the work of statisticians such as Johann Süssmilch.[11] A Prussian theologian influenced by the English political arithmeticians, Süssmilch had

10] On this early root of "statistics" see Lazarsfeld 1961. On cameralism and scientific forestry (discussed below) see Lowood 1990.

11] Kant's readings can be accessed at http://web.uni-marburg.de/kant//webseitn/ka_lektu.htm (accessed June 3, 2009).

compiled numbers on births, deaths, and sex ratios for his main work: the *Divine Order*. The work offered a mix of politics and religion; taking God's first commandment to be fruitful, multiply and replenish the earth, it followed for Süssmilch that 'order' was best evaluated with population surveys. In *Idea,* statistical tables serve as initial, suggestive evidence for Kant's conjecture that we could discover order and development in history. Anticipating the 'statistical enthusiasm' of the nineteenth century, Kant highlights the (surprising) discovery of order by statisticians. This discovery prepares an initial plausibility space for Kant's *Idea.*

The cameral sciences also provide a powerful metaphor. Following the introduction of unsocial sociability as the primary means of development, and of the civil constitution as a necessary requirement to discipline societal antagonism, Kant notes: "It is only in a refuge such as a civic union that these same inclinations subsequently produce the best effect, just as trees in a forest, precisely by seeking to take air and light from all the others around them, compel each other to look for air and light above themselves and thus grow up straight and beautiful, while those that live apart from others and sprout their branches freely grow stunted, crooked, and bent" (*Idea*, fifth Proposition). If considered in the context of cameralism and its scientific forestry, this metaphor resonates with a major change of eighteenth century Prussia: the effort to maximise and sustain the revenue from timber via the growth of straight "normal trees"[12], the planting of commercially viable trees and the resulting monocultures. Viewed in this context, the metaphor points to the idea of a parallel development in human society - from *normalbaum* to *normalmensch*, who optimally develops his or her predispositions in the unsocial sociability of civil society. The metaphor supports a social thesis, though with characteristic caution, Kant adds in the next proposition: "nothing entirely straight can be fashioned from the crooked wood of which humankind is made" - to which foresters might have added after their many failed attempts to maximise sustained yield that trees are too crooked as well.

If this use of evidence and metaphors from cameralism and its Statistik is noted, as is not the case in the philosophical literature on Kant as far as I can tell, Kant's language resonates with and points to material changes in the eighteenth century: the work of government to maximise revenue yield from forestry, and to desiccate the land so as to increase agricultural areas and so forth. It points to "the *growth* of plants, and the *flows* of rivers" (*Idea*, 8:17), i.e. the growing of timber for maximum revenue and the rectification of rivers for transport. As noted, these material transformations introduce 'sustainability' as a concern tightly linked to political and economic power. So understood, they therefore also necessitate to consider 'unsocial sociability' – and the way the trees "compel each other to look for air and light above themselves" – not only on the level of individual antagonism, of individual against individual and of tree against tree, but also and especially on the po-

12] I take the expression "Normalbaum" from Loowood and his discussion of Georg Ludwig Hartigs "Neue Instructionen für die Königlich-Preussischen Forst-Geometer und Forst-Taxatoren, durch Beispiele erklärt" (see Loowood 1990, 332).

litical level: who compels humans and trees to grow straight, and what is the implication for the theory of development?

IV. WHAT WAS ENLIGHTENMENT?

Idea, as noted, focuses the accounts of means of development on unsocial sociability and on the power of the state (and a federation of states) for disciplining the social antagonism. The historical perspective, with an 'enlightened' absolutist ruler 'developing' land and people according to his view, puts into perspective the focus on 'unsocial sociability'/ trees compelling each other – *scientific forestry* seeks maximum sustained yield – and on the disciplinary force of the state – to what end and how does scientific forestry 'develop' the forest? The tree metaphor, considered as an image issuing from eighteenth century practices, points to political, economic and scientific power, from a focus on trees compelling each other to a focus on state power to exploit and 'develop' the land. Thus, is the account of means of development sufficient given the Kantian formulation of the end of development?

In *Answer to the Question: What is Enlightenment*, an article published in the same year as *Idea* in a later issue of the Berlinische Monatszeitschrift, Kant tells his readers that humankind is still by and large immature. Out of convenience and cowardice, human beings prefer to follow the experts rather than use their own understanding. "It is so comfortable to be immature. If I have a book that reasons for me, a pastor who acts as my conscience, a physician who determines my diet for me, etc., then I need not make any effort myself" (Kant 8:33). At first sight, this "comfortable" situation seems quite removed from the diagnosis of 'unsocial sociability'!

In the context of this Enlightenment episode of 'universal history', Kant introduces a distinction between the private and the public use of reason. The private use of reason is the use of reason in a "civil post or office with which one is entrusted." (Kant 8:37). The public use of reason is "the use that anyone makes thereof as a scholar before the reading world" (ibid.). The public use of reason, Kant argues, promotes a process of social learning that moves society closer to the state of justice. He performatively suggests that the use of public reason with respect to laws and policies is oriented by a criterion of justice. More precisely, "the touchstone of anything that can serve as a law over a people lies in the question: whether a people could impose such a law on itself." (Kant 8:39[13]). Thus, the public use of reason is not only characterised negatively as not subject to private orders (institutional requirements of foresters, military etc.). As a contribution to policy discussions, Kant subjects it to a "touchstone": are the forestry, land and water regulation appropriate to the ideal of a people imposing law on itself?[14]

13] This touchstone is closely tied to the fifth proposition in *Idea,* and to the idea of autonomy in Kant's moral philosophy.

14] Joseph Lewandowski has discussed Kant's public-private distinction in terms of freedom and

With respect to the public use of reason, the tree metaphor breaks down. Citizens do not "mutually compel each other", they address each other independently of their private mandates and offices, and they address "the entire reading world". According to Kant's famous argument, their public use of reason is critical for the process of social learning promoting development. His argument can be strengthened via a consideration of environmental history. With a view on the material transformation of the land, the public sphere and the information and considerations it makes available can play a role of taming where the state proceeds with policies (called 'developmental' or not) that incur significant costs to citizens as well as the non-human world, or that at any rate have an impact on citizens and the non-human world that is considerably more complex than what the state could see with its statistics (Scott 1998, 5). Precisely, because there are many and interrelated social and ecological functions of forests, rivers and land, the inclusion of voices that would not be heard by existing institutions, or that would not be heard "in" them, is critical (also to do justice to what that "transformation really means"). This environmental history argument is different from but not in conflict with Kant's own argument in *What is Enlightenment*, which strongly draws on the idea of a vocation of human nature to think for itself (Kant 8:41). According to both arguments, the public use of reason is a means of development (and according to the second even an end). So as to highlight the use of public reason as a development means we can speak of Kant's extended theory of development ("extended" because it is not given much consideration in *Idea*)[15].

To be sure, there are hints at the public use of reason as a means of development in *Idea* (*Idea*, 8:28). And there is also a closeness of choice of imagery in the two articles: *Idea*

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constraints in this journal. In his view, Kant "over-reaches in his characterization of the 'public' as a kind of cosmopolitanism outside of all constitutive constraints" (Lewandowski 2009:7), and Kant insufficiently addresses the inequalities and exclusions of the private use of reason (ibid. 6). In Lewandowski's view, the role of reason is to reflexively optimize constitutive constraints. But what is optimization? On one set of views (subjectivist and/or relativist), there is no general answer; on a second (economic) view, optimisation concerns the efficient allocation of resources given subjective preferences, and on a third view optimization needs to be spelled out in terms of principles of justice, equality and liberty. The second view simply blocks reflexivity ('preferences' are given) and hence is not a plausible interpretation. If the first view also is rejected (compare Lewandrowksi on Nietzsche and others, 2), we are driven towards some account of criteria of justice, i.e. a "touchstone". Therefore, I would question whether Lewandowski's account shows Kant to "over-reach in his characterization of public reason". Kant offers one way to spell out the "optimization" and "maximization" of human freedom (ibid 1). The use of public reason so understood can be "informed" by "private" considerations and knowledge, but in the limit it can raise up to the level of citizens of the world: every institution can be scrutinised by public reason with a view on its inequalities and exclusions (as viewed against the criterion of justice). The accompanying vision is not one of a "market-based democracy" (10), but if anything of a democracy-based market, or in Kantian terms a republic-based unsocial sociability. No doubt, this normative vision can be criticised (is self-imposed law and the accompanying idea of autonomy the correct normative and constitutive constraint?), but not, I think, by an argument appealing to reflexivity as optimisation of constraints.

15] As with the other means of development, public use of reason concerns *possible* development. Will local people make their voice heard, or will their voice be "reinforced" by "learned" people (*gelehrte*), will they be listened to etc.?

speaks of "childish" foolishness, destructiveness and wickedness; *What is Enlightenment* describes enlightenment as an "exit" from "immaturity", and the paradigmatic case of *unmündige* human beings are children. Still, Kant's theory of development as outlined in *Idea* does not put much emphasis on the public use of reason as a means of development. It is as if the focus on the plot of 'universal history' leads to a fading away of, and a neglect of the episode Kant witnesses in his own life. Yet, it is in this Enlightenment[16] episode that important 'development' policies of the state, involving large-scale material transformations of the land, have their beginning, and with them a vocabulary, involving the concepts of *development* and *sustainability* that still affect us materially today, and also the way in which we think about these issues.

V. THE "FINAL END": THEORY AND PRACTICE

The last section proposed a refinement of Kant's theory of development as stated in *Idea*. This section turns to the meta-level: how to think about Kant's theory on the epistemological level. Is Kant's primary interest a contribution to method in history, is his primary interest practical (advancing the cosmopolitan purpose), or is it a mixture of these interests? According to Pauline Kleingeld, Kant's purpose is primarily theoretical rather than practical. "As a matter of fact Kant solves a theoretical-speculative question, viz the question regarding the purposive unity of the world of appearance, with the help of moral-practical concepts, yet this does not turn the question itself into a moral-practical one. *Idea* is primarily philosophy of history with a theoretical purpose."[17]

In support of this interpretation, there is Kant's introductory claim that history as concerning the world of appearance ought to be subject to the laws of nature, and hence to theory-building akin perhaps even to the works of a Newton. And there is a theoretical motivation for this effort in theory-building, i.e. Kant's claim in the *Critique of Pure Reason* that the mind strives to establish a systematic unity of knowledge, universal history being one domain of application or exertion of this strife.

However, Kant not only states this theoretical interest. He immediately follows up on his introductory observation with the "hope" that we can discern a "progression", even a "steady" progress of the capacities of the human species. Thus, from the start the theoretical is directly tied to the practical concern. That this relation is not merely that of an added on hope becomes clear if the second more difficult point from the *Critique of Pure Reason* is also taken into account.

Kant's discussion of the regulative use of ideas of science in the *Critique of Pure Reason* still receives much praise (Tetens 2006, 294). However, at least for the present issue some qualifications are in order.

16] On the public use of reason as constitutive of Kantian Enlightenment see Deligiorgi 2005.

17] Kleingeld, 'Fortschritt', 31, my translation.

1) The claim that theoretical reasons naturally strives to establish a systematic unity of knowledge as a claim about what scientists actually do needs to be heavily qualified or else is simply false. A pluralist spirit that accepts and endorses the limits of scientific unity is arguably as frequent among scientists as is the spirit of systematisers who for example want to reduce all science to physics. In particular, historians frequently focus on the singular historical event rather than on law-based explanations. Thus, with a view on science as practiced, the argument for unity is far from self-evident.

2) This observation of the plurality of theoretical approaches in practice prepares a second qualification. Even the strife for systematic unity does not explain the specific focus on a theory of *development* that Kant chooses for his approach to 'universal history'. The strife for unity is prima facie indeterminate as to what system of unity is to be chosen for the temporal ordering of events: a progressing one as in Kant, one with ups and downs as in Mendelssohn, an apocalyptic one etc. According to Kleingeld, Kant for all the sophistication of his approach "fails to pose the question how one would go about choosing various competing proposals for regulative ideas" (Kleingeld 2008:527). Yet this point has to be modified if the purpose is a *practical* one. For practical reasons, a focus on a theory of development with ends and goals can be motivated (see the discussion above), and this practical purpose offers criteria for theory choice and the selection of explanatory 'mechanisms'[18]. For example, with these practical interests the Darwinian theory of evolution as such is not very "useful" (though it might provide background information and constraints). The present considerations have two implications: a) they tend to support the view that Kant rather than having overlooked the problem of theory choice, did not see the problem because his primary interest was practical, not theoretical; b) affirming this practical purpose opens a quite different question of choice: that of normative goals and their justification. The paper will return to the last point below.

3) Arguably, the *Critique of Pure Reason* offers a theoretical argument for the focus on a theory of development with goals and means. Kant claims that the purposive unity of things is the highest formal unity (A 687/B715). Thus, a systemiser with respect to history should opt for a "purposive unity". Yet, is this "highest unity" as a regulative principle always beneficial and never harmful from a theoretical perspective? For example, in the *Groundwork,* Kant uses teleological reasoning to argue that human beings are not made to be happy, because reason is a bad instrument for this end; the result is his infamous theoretical disinterest in the "science of happiness" for the first problems of moral theory (Kant 4:395). Thus, by hindsight the benefit of teleological reasoning seems doubtful here, even as a heuristic device. More importantly, perhaps, why should the teleological order be the

18] 'Mechanism' is a difficult technical term in Kant's theoretical philosophy concerning the blind causal relation between material objects (for an extended discussion see Breitenbach 2008). As the discussion of the use of public reason above will have illustrated, on the present reading, such blind causal relation fails in the present context. Following Kleingeld, this paper uses the term 'means'. The relation between 'means' (*mittel*) and 'mechanism' in the light of Kant's philosophy and his account of development is a topic that would deserve a paper of its own.

highest order? It could be argued that a teleological unity orders all appearances under one final end. Yet, no doubt it is logically conceivable to think of history as governed by *one* evolutionary mechanism (or ultimately by the second law of thermodynamics). Again, a theoretical justification of this superiority claim at the very least does not seem self-evident. However, practical purpose explains quite well why a goals-means structure is useful for 'universal history': human agency is, at least for all practical purposes, difficult to explain without the distinction of goals and means.

In conclusion, "the primacy of theoretical purpose" does not seem to be plausible with respect to *Idea*. In the text, the assertion of theoretical interest is interwoven with practical interest. Moreover, practical purpose seems to better explain the theory choices Kant makes than a pure theoretical purpose. Thus, the justification and specification of the systematizing theoretical intent at least *co*-depends on practical reason (the theoretical ones being indeterminate or simply too problematic). On the present interpretation this has two implications: What is the precise practical purpose, and how is it justified? What follows from this practical purpose for the empirical study of history and development? I will turn to the first question below. For the second, question Kant makes the point clearly: the practical purpose offers an *idea* with which to study development in history. It does not license the expectation or claim that history has been such. Rather, it orients the search for signs of possible development. In short, this is a practical and epistemically cautious perspective.

VI. DEVELOPMENT AND ENVIRONMENT

The specification and reconsideration of Kant's (extended) theory of development raises numerous questions. In this section, I would like to emphasise three issues concerning the relation of human development to the environment: 1) the relation between Kant's conceptualisations of nature and the extended theory of development, 2) the ethical significance of *all* of nature's predispositions, and 3) Kant's biological assumptions (*anlagen*).

In *Idea,* nature features as providence and as system of laws. In terms of this first conceptualisation Kant writes of the hidden "intent of nature" (*Idea*, 8:17), that "nature has willed that" (*Idea*, third Proposition, 8:29), of the "concealed plan of nature" (*Idea*, eighth Proposition, 8:27), and of "nature, or rather of providence." (*Idea*, ninth Proposition, 8:30). This conceptualisation takes a "divine" view on history from distant beginnings to the equally distant cosmopolitan purpose; and it takes a teleological view of a nature that has willed predispositions to develop (according to the *Critique of Pure Reason,* such a teleological approach is the best-available research heuristic). Kant asks whether signs of such a teleological development can be discovered, and hence whether development so understood is possible. *Idea* also includes the conceptualisation of nature as the existence of things, so far as it is determined according to universal laws. Kant invokes in the introduction to *Idea* events that "occur . . . in accordance with constant natural laws" (*Idea*, 8:17), and as noted calls for a Kepler or Newton of 'universal history' (*Idea*, 8:18).

Now, these conceptualisations of nature, and in particular the idea of providence, also play a role in the politics of development. In this introductory context, Kant draws on "statistics compiled annually in large countries." (*Idea*, 8:17). As the Prussian episode shows, such statistics were generally compiled for a practical purpose such as the physical transformation of the land according to ('sustainability') maxims and other goals: maximising and sustaining revenue from timber, desiccating the land to increase agricultural yield and so forth - in short, practical, human-imposed law. Such goals and laws can be specified by the ruler and his experts with or without accountability to those affected by them. There are various degrees and forms of accountability: from public debate to the accountability of leaders and laws in elections and referenda. But for the present purpose, a more general point is sufficient. Rulers and policy-makers can and have justified their proposals and actions as in harmony with nature or in line with or even fulfilling "divine providence". Here the conceptualisation of nature, along with the idea of progress, have played a powerful legitimising role. Yet, the consideration of the "Prussian episode" and the material transformations of the land in the last sections suggested that such 'development' require scrutiny. It is difficult to do justice to these transformations. Especially the record of 'development policy' issuing from large organisations, be it states or corporations, with no accountability to the public is poor: many human uses of nature's predispositions will be ignored, local ecological insight lost, "all of nature's predispositions" will hardly develop, and monocultures can replace biodiversity as techniques for taking nature and society into account created unprecedented possibilities for central state (and economic) power. The use of public reason is a means to open development to its multi-perspectival complexity: to do justice to transformations, and to possibly achieve just transformations.

This point on the relations between the conceptualisation of nature and the theory of development leads to a further point regarding "all of nature's predispositions". As current theorizing about development tends to be thoroughly anthropocentric, the comprehensive significance of this claim is easily passed over. And no doubt, Kant does not offer an environmental ethic that would ascribe value to nature independently and on par with the value of human beings. If anything, "all of nature's predispositions" are hierarchically ordered with human values on top (Düsing 1968). Still, two points are worth mentioning: 1) the extended theory of development (i.e. including the use of public reason as a means) is likely to better take into account nature's predispositions, which co-evolve with particular groups and their ways of interacting and using the environment, to the extent that this co-evolution can be articulated and voiced by the respective groups (Norgaard 1994); 2) Kant's hierarchical order of purposes with human purpose on top at least includes other "lower" purposes - a comprehensiveness not achieved by the majority of most recent theories of development, but no doubt a desideratum for current theorizing about (sustainable) development.

Finally, Kant's account of natural and given predispositions as constitutive part of his theory of development is hard to defend. It relies on a theory of generic pre-formation that Kant adopted from Johann Friedrich Blumenbach (Kleingeld 1996, 125ff). According to

this theory, the creator has endowed the species with predispositions. There is an a-historical, biological background to Kant's universal history: species are endowed, ab initio, with predispositions; these predispositions are given and remain the same; they only have to "develop" in history. It is a pre-evolutionary account that will be rejected by biologists. However, and this point is closely linked to the point about environmental ethics above, in abstract and vague terms, Kant's approach based on "all of nature's predispositions" is no doubt attractive. In the sustainable development discourse, it is widely understood (and governments have officially and repeatedly stated) that a mere focus on "human development" is insufficient; ecosystem functioning is an important condition of human development, and human development in turn impacts this functioning. Therefore, even if the biological assumptions of Kant's theory of development are rejected, on a more general level the epistemic spirit of his theory of development is still attractive: the theory of development ought to turn to the best current biophysical theories (as Kant had turned to Blumenbach) for a properly comprehensive theory of development, even if that necessitates the repeated revision of the theory due to the falsification process of science.

VII. CONCLUDING REMARKS

Kant's theory of development is as interesting as it is problematic. Let me therefore conclude with some remarks regarding the distinctive features of Kantian theory of development, with a view on current debates in political philosophy and sustainable development:

Development as a normative concept: If the predisposition biology is dated, is then not also the reason for the development language removed (that is the *entwicklung der anlagen*)? The consideration of the arguments motivating the Kantian theory of development – consolation, acceleration, disburdening future generations, and honour – indicate that there is a genuine normative space occupied by the theory of development. *Development*, even if often abused, is not just a concept of abuse. A further exploration of this space is required, or so I would like to suggest.

Taking nature into account: Kant's theory of development unlike many current theories is based on a comprehensive theory of development that includes the human and non-human world alike. Even if the letter of the biological theory employed by Kant will be rejected, the spirit of this approach remains pertinent. As development centrally involves the question of the nature-society relation, drawing on the best currently available biological (and other theories) seems inevitable – and necessarily raises the next issue as to how such an interdisciplinary approach is to be worked out. In addition to Kant's own suggestions, the search for "signs" or "traces" of (possible) development in history will have to look out for more than legal changes - the ways in which the land is transformed is more than a matter of metaphor.

History: I have focused on the theory of development that is a constitutive part of Kant's universal history. However, universal history also indicates something that much

current theorizing of development seems to ignore: a properly *world historical* perspective. An important task for a theory of development is the attempt to do "justice to transformations" (as Blackbourn puts it). Without such care, there is little prospect for "consolation".

Goal justification: Kant's development goals (see section 2) are posited rather than justified in *Idea*, not least, perhaps, because Kant relies on what he takes to be a plausible biological theory. However, the development of predispositions is morally and ethically considered an ambiguous process. This concern is a moot point to the extent that the predispositions-biology is rejected; however it implies the valid lesson that developmental goals require normative justification rather than postulation. Perhaps, a trivial theoretical point, but an important practical one to the extent that the focus on development as economic growth still prevails.

(Not so) Hidden Plans: Kant puts much emphasis on the idea of a "concealed plan" of nature (specified primarily in terms of the societal antagonism). However, reconsidering the Kantian theory of development in the light of the Prussian episode suggests a mixed picture. "Hidden" means such as the societal antagonism might play a role, in particular perhaps in the economy. But if public reason is considered a further, complementary means of development, then developmental goals cannot just be "hidden" – the use of public reason ultimately relies on some grasp and discussion of developmental goals, an open cosmopolitan plan in the making so to speak. This non-hidden nature is doubly important to the extent that self-proclaimed developers turn "trees into thalers", and "straighten" human crooked wood according to their visions. The use of public reason is one antidote against these objectification tendencies in real world 'development' by large organisations such as states and corporations. Finally, such a mixed account of the role of human beings as ends and means seems also required by Kant's motivating arguments for a theory of development: acceleration of development, disburdening future generations, and considerations of honour all require a plan that is at least not only concealed.

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Human Security and Liberal Peace
Some Rawlsian Considerations

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Abstract. The aim of this article is to contend that, in opposition to Begby's and Burgess' argument, the idea of human security is not able to deal with the potential conflict between individuals' and communities' claims, unless it is properly qualified by political liberalism. We sustain that it can be expected that negotiations, on behalf of different idiosyncrasies, can reach an overlapping consensus that privileges community security over personal security, institutionalizing what, from a liberal viewpoint, are oppressive practices. Then, liberal peacebuilders have to decide on the kind of incomplete overlapping consensus that would be tolerable; yet, in doing so, they have to be careful not to close the door to enable liberalism to thrive in more traditional societies which, after a long process of experimentation with democratic deliberation, may finally span the core of consensus in order to include sensitive matters.

Key words: human security, community security, personal security, liberal peace, Rawls.

May human security be part of a solution to the balance between individual and community claims? Begby and Burgess have given an affirmative answer in their article (published in Vol. 1, No. 1 of this journal), where they address the critiques of liberal peacebuilding. Since, according to these critiques, the basic sense of self of individuals and the value sets that drive the organization of their lives are only possible by means of their membership in larger communities, liberal-driven humanitarian interventions face the challenge of balancing the claims of individuals and communities. Indeed, Begby and Burgess (2009, 96, 99) argue that the idea of human security is capable of addressing such conflicting claims as it turns away from a state-centered notion of security, which tried to justify the one-time Western imposition that drove foreign-led post-war reconstruction, emphasizing the importance of the lives of individual subjects, as well as sub-state communities of subjects.

To do so, Begby and Burgess (2009, 102) argue that, rather than confining itself to offer a solution to the lack of adequate political representation, the dialectic of liberal peacebuilding as it is conveyed by the idea of human security goes further, endeavoring to lay the foundation for a lasting peace. So, their main contention is that the idea of human security is able to provide for a lasting peace as it makes room for the lives of individual subjects and sub-state communities of subjects, providing for the abovementioned balance. Certainly, the idea of human security as it was set forth in the Human Development Report (see UNDP 1994, 24 and Willett 2006) intended to go beyond the limited concept of national security in two ways: a stress on *people's security* as opposed to territorial security and on *sustainable human development* as opposed to security through armaments. For this purpose, this report gathered the threats to human security in seven main categories,

among which stand out–because of their importance for this balance–*personal security* and *community security*.

It is our contention that the idea of human security is not able to deal with the potential conflict between individuals' and communities' claims, unless it is properly qualified by *political liberalism*. Even though Begby and Burgess are on the right track, the idea of human security as it is set forth by them does not manage to settle this conflict because their analysis seems to confine itself to an open-ended, inductive approach to peacebuilding that, though valuable in itself, may have missed the big picture that the deductive approach of Kantian-constructivism provides. We will argue that it can be expected that negotiations, on behalf of different idiosyncrasies, can reach an overlapping consensus that privileges community security over personal security, institutionalizing what, from a liberal viewpoint, are oppressive practices, and that, if this were rejected in the name of a *metaphysical* or *epistemological liberalism,* it might close the door for liberalism to thrive in the long run in more traditional societies.

I. PERSONAL SECURITY VS. COMMUNITY SECURITY

Personal security is defined as security from physical violence, the threats of which take the form of gender-based violence and child abuse, among others; whereas community security may be defined as security from being banished from or having one's membership in a group taken away, which, otherwise, would normally provide for cultural identity, reassuring set of values, and practical support (see UNDP 1994, 30-32). This report acknowledges that membership in a group sometimes perpetuates oppressive practices, which collide with personal or other types of security, as, for example, female circumcision or genital mutilation practiced in some African traditional communities (see UNDP 1994, 31). Begby and Burgess contend that human security can offer a solution to the balance of individuals' and communities' claims, as follows:

> But to assert that the liberal approach is incapable – or any less capable than a competing approach – of allowing us to address such conflicting claims in any particular case is unfounded. Indeed, here is where critics neglect that the development of the concept of human security may be part of a solution, rather than just more of the same. For while the concept of human security is certainly rooted in a conception of individual rights and their political priority, it is not insensitive to competing claims as well. Human security beckons us to study the needs of concrete individuals in the concrete settings of their lives. In areas marked by prolonged and bitter conflict, certain material needs will quite naturally take precedence: freedom from persecution and the threat of violence; freedom from poverty, hunger, and sickness. But as human security marks a distinct broadening of the liberal agenda, it is simply wrong to assert that it cannot also accommodate the idea that the needs of human individuals to be part of larger communities is among their basic needs, inasmuch as it is through membership in such communities that individuals derive their basic sense of self and the value-sets around which they organize their lives. (2009, 99)

The solution of Begby and Burgess (2009, 97) relies on a "… more clear-eyed appreciation … of those more intangible but no less important needs that have more recently

been added under the heading of human security" or rephrasing the critics of liberal peacebuilding, "... what is required is more knowledge and greater sensitivity cultivated for any single case" (Begby and Burgess 2009, 100). In our view, this may not be enough to provide a solution to the problem of the collision of personal and community security. Does community security have priority over personal security no matter how oppressive the former might be considered for a liberal eye? Or, on the contrary, does personal security have priority over community security no matter how domineering the former might appear for a non-liberal eye? Hence, do liberal peacebuilding operations have to ban or allow practices that collide with personal security or vice versa?

We think that Begby and Burgess are on the right track indeed. However, we would like to articulate a concern about what may be a lack of persuasiveness in their argument running the risk of missing its target, which is to rebut critics. To our mind, in looking for the foundations of a lasting peace, they have somewhat neglected what is precisely the cornerstone of a liberal approach, i.e., *adequate political representation*, which in their article appears as a secondary goal being preceded by a sort of political institutions that are not clearly defined. In their argument, elements appear back to front in the following terms:

> In many of the cases that today prompt us to consider the humanitarian intervention, one must be open for the possibility, even the necessity, of a prolonged presence if one is to intervene at all. And here, of course, is where the dialectic of liberal peacebuilding finds its place, and not merely in response to, say, lack of adequate political representation. What one hopes to achieve by such peacebuilding is to erect the foundations of political institutions that could make for a lasting peace. (Begby and Burgess 2009, 102)

A compelling case for liberal peacebuilding should start by showing to its critics that no degree of community security is feasible anyway, unless it has reached a stable equilibrium among the contending parties, ensuring a normative core compatible with the sole internal jurisdiction of each community, which has to fall outside the overall political regulation. If Begby and Burgess argued that a clear-eyed appreciation of communities' intangible needs on behalf of peacebuilders might help to advise communities in the event of unseen opportunities for agreement, we will not disagree. However, in their argument, the sensitivity that enables one to reveal the communities' intangible needs seems to be devoid of a proper liberal framework because the analysis seems to confine itself to an open-ended inductive approach to peacebuilding that, though valuable in itself, may have missed the big picture that the deductive approach of Kantian-constructivism provides. Hence, it becomes difficult to set forth concrete institutional arrangements that would provide for a lasting peace.

II. LIBERAL PEACEBUILDING AS POLITICAL REPRESENTATION

From a liberal point of view, the only ones who have to have a clear-eyed appreciation of their own intangible needs are the communities themselves as they are the ones who have to engage in negotiations to agree on the institutions that will govern their own

prospects of living. Peacebuilders, guided by liberal motives, have to confine themselves to being guarantors that, as far as possible, negotiations occur on an equal footing and without any major strategic advantages that favor any one interested party. If these advantages take place, any semblance of stability will unravel when the aggrieved negotiating party reaches the belief that there are reasonable complaints against the established order. It is precisely here where the idea of *overlapping consensus* of Rawls (1996) can guide peacebuilders in their aim as it masterly illustrates how different comprehensive doctrines organize themselves to overcome political cleavages, so that more or less diverging interests are satisfied without privileging one over any other.

Then, peace disruption refers us to the lack of adequate political representation that makes it impossible for parties to agree on the overall political regulation of a given set of public matters. In order to reach concrete institutional arrangements that would drive all the concerned parties to embrace peace, we have to start by showing that decisions taken unilaterally and without the consent of the other parties will affect the well-being of the deserter. That is, in the absence of feelings of love or solidarity among the parties in conflict, which otherwise would prompt cooperation, it is imperative to point out in a Nashian fashion the prejudices of unrestricted competition. However, this bargainers' equilibrium depicted by Nash (1950) might not be enough as it implies a *local equilibrium* characteristic of monopolies and oligopolies (see Guerrien 1998, 149 and Morgenstern 1972, 1171), and it almost certainly would imply the exclusion of key parties.

We need a sort of *general equilibrium* concerning all or a substantial share of the parties involved. If negotiations aim to achieve peace on an equal footing and without any advantages favoring any one interested party like the Ralwsian theory prescribes, it is to be expected that the *principle of segmental autonomy* will be fulfilled, enforcing "minority rule over the minority itself in matters that are the minority's exclusive concern" (Lijphart 1979, 500-01) - i.e., negotiators have to endeavor to outline the frontiers of the sole internal jurisdiction of the groups they represent, which will not be subjected to overall political regulation because it had been agreed that anyone's particular beliefs shall not be imposed on the separate segments of the rest of the groups. At the same time, a normative core has to be outlined to fulfill the *grand coalition principle*, which means that, "on all issues of common interest, the decisions are made jointly by the segments' leader" (Lijphart 1979, 500-01) – i.e., the frontiers of a *core of consensus* have to be defined in order to specify public matters that all contending groups are concerned with as a whole.

Critics may be suspicious of the ideal outcome that this theory reaches when, simulating the process of discussion that leads to an agreement, it starts from a perfect original position and veil of ignorance. However, they have to realize that not even the most enduring polyarchies neatly match the ideal and some are so much stuffed with irrationalities[1]

1] Unlike neo-classical economics where rationality is defined by complete information, perfect forecast and choice making according to the highest positions in a scale of subjective preference, in the Rawlsian theory, rationality is given by the lack of key information that prevents strategic advantages for the benefit of actors motivated by comprehensive doctrines, as well as a normal risk aversion.

that they are close to borderline cases[2] – e.g., in the US, these irrationalities have impeded the development of a proper policy to fund primary goods, and the prospects of moving in the right direction are uncertain as the current virulent discussions on the reform of the health care system show. There is another dénouement that may be more appealing to a non-liberal eye. Given the specific kind of irrationalities that may be found in traditional societies due to their own idiosyncrasies, it is possible to anticipate outcomes that, though far from a complete overlapping consensus, reach the stable equilibrium that characterizes a peaceful state of affairs.

Experience shows that this kind of arrangements tend to reach a core of consensus the frontier of which leaves out issues that, in advanced polyarchies, all contending parties tend to be concerned with, being subjected to overall political regulation. For example, in the most long-lived democracy in a developing country, India, a set of personal matters is regulated under the sole concern of the separate segments constituted by the largest ethnical groups, the Hindu (which lawfully includes Sikh, Jaina, and Buddhist religions) on one hand, and the Muslim on the other hand (see Jenkins 2001, Lijphart 1996 and Varshney 1998). Matters like marriage, divorce, succession, inheritance, maintenance, guardianship, adoption, and custody of children are governed by separate laws (see Bilimoria 1998-1999). This has caused Muslim membership to perpetuate what is seen from a liberal viewpoint as oppressive practices, at the expense of personal security normally safeguarded in advanced polyarchies.

Despite institutionalized oppressive practices in India, it has reached a stable equilibrium essential in avoiding warfare. From a liberal viewpoint, this is not the best state of affairs, admittedly, but we cannot still find all the ideal conditions, even in the most enduring polyarchies (the list is long but just think about the condition of women in Japan,[3] citizens with North African background in France, or the uninsured population in the US). The important thing is that the foundations are laid to peacefully undertake the struggle for the fulfillment of a better balance between individuals' and communities' claims.[4] Moreover, the coexistence of a traditional community with others less traditional whose separate segments are run in a more progressive way may be a far effective mechanism to trigger a process of change within the former. This leads us to find the necessary channels of communication across cleavages.

Since we are not advocating a mere *modus vivendi* among groups or subcultures (see Gray 2000), in our view, liberal peace requires effective channels of communication

2] Bear in mind that our borderline cases are not those anticipated by consociationalism as we are qualifying this theory from a Rawlsian point of view.

3] The United Nations Committee on the Elimination of Discrimination Against Women recently called public opinion's attention to women in Japan, the world's second-biggest economy, which ranks 54th in terms of gender equality.

4] However, like the research program on consociationalism suggests, to undertake a peaceful struggle the majoritarian institutional arrangement of presidential democracies is an obstacle as it allows the underrepresentation of minorities.

across cleavages (see Lijphart 1968, 23) to progressively cross the *perception thresholds* of the concerned parties with the aim of motivating a reconsideration of their behavior pattern (see Downs 1957, 86), which ultimately will facilitate processes of change and self-determination. In India were created separate law boards in 2005 on the Shia Islamic sect's and Muslim feminists' initiative, as a response to the Sunni Islamic sect-dominated law board that, since 1972, has enforced the Islamic Law Code of Sharia, which only rules on personal matters of Muslims. This act of self-determination, prompted from within the Muslim minority itself, was motivated by what is perceived as discriminatory decisions against Muslim women, among which stands out the case of Shah Bano, a woman who was denied alimony in 1978 (see Benhabib 2002, 91ss. and Bilimoria 1998-1999). It is possible that this act of self-determination would have taken more time to occur if Muslims did not have to live together with the Hindu minority.

Based on the preceding considerations, we can sustain that, as Abizadeh (2002) has put it, liberal peace does not presuppose per se a cultural nation. Some liberals inclined to see liberalism mainly as a metaphysical or epistemological doctrine may be tempted to reject an incomplete overlapping consensus as it might temporally institutionalize oppressive practices currently not tolerated in the most advanced polyarchies. Others may be so used to a familiar core of consensus that might find counterintuitive the outcomes analytically reached when the simulation of negotiations in an original position and behind a veil of ignorance takes place on behalf of different idiosyncrasies, and this may have been the case of John Rawls. This can get political liberalism as such mixed up with the conservative and orthodox models of liberal peace, which are driven by a "one model fits all" methodology intending to replicate an idealized Western democratic peace (see Willett 2006, 2; also Richmond 2007, 5).

Sure enough, peacebuilders have to decide on the kind of incomplete overlapping consensus that would be tolerable; yet, in doing so, they have to be careful not to close the door to enable liberalism to thrive in more traditional societies which, after a long process of experimentation with democratic deliberation, may finally span the core of consensus in order to include sensitive matters. In looking for a solution to the balance between individuals' and communities' claims, human security can be an obstacle, unless it is properly qualified. To do so, it is essential to embrace liberalism as a political rather than as a metaphysical or an epistemological doctrine (see Rawls 1985) for a key move to achieve lasting peace in deeply divided societies is to put traditional communities in a position to make their own viewpoints.

III. CONCLUSION

To offer a solution to the balance of individuals' and communities' claims, the idea of human security has to be qualified by political liberalism, the deductive approach of which is essential as it provides the big picture that an open-ended inductive approach to peacebuilding lacks. Political liberalism properly illustrates how different comprehensive

doctrines organize themselves to overcome cleavages, so that more or less diverging interests are satisfied without privileging one over any other. In their way to a peaceful state of affairs, contending communities have to endeavor to fulfill the principle of segmental autonomy, outlining the frontiers of the sole internal jurisdiction of each group, which will not be subjected to overall political regulation because it had been agreed upon that anyone's particular beliefs will not be imposed on separate segments of the rest of the groups. At the same time, the grand coalition principle has to be fulfilled by means of the definition of the frontiers of a core of consensus, which specifies the public matters that all contending groups are concerned with as a whole.

Peacebuilders have to take care to avoid embracing liberalism as a metaphysical or epistemological doctrine rather than a political one. Otherwise, they may be prompted to reject outcomes that, though securing a stable equilibrium essential to avoid warfare, might turn out to be counterintuitive, as the negotiations on behalf of different idiosyncrasies can reach an overlapping consensus that privileges community security over personal security, institutionalizing what from a liberal viewpoint are oppressive practices. While this is not the best state of affairs, it can pave the way for liberalism to thrive in more traditional societies.

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Compulsory Victim Restitution Is Punishment: A Reply to Boonin

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Abstract: David Boonin has recently argued that although no existing theory of legal punishment provides adequate moral justification for the practice of punishing criminal wrongdoing, compulsory victim restitution (CVR) is a morally justified response to such wrongdoing. Here I argue that Boonin's thesis is false because CVR is a form of punishment. I first support this claim with an argument that Boonin's denial that CVR is a form of punishment requires a groundless distinction between a state's response to a criminal offense and its response to an offender's failure to comply with the sanctions imposed for that offense. I then suggest that this argument points to a definition of punishment that not only meets Boonin's own desiderata for a definition of punishment but also implies that CVR is a form of punishment. Finally, I argue that CVR is a form of punishment even under Boonin's own proposed definition of punishment.

Key words: punishment, restitution, retributivism, intention, harm.

David Boonin's *The Problem of Punishment*[1] will likely shape philosophical discourse about legal punishment for many years to come. The book is thorough, systematic, and careful. Its central thesis – that although no existing theory of legal *punishment* provides adequate moral justification for the practice of punishing criminal wrongdoing, compulsory victim restitution is a morally justified *response* to such wrongdoing – is provocative.

However, that thesis is also false. It is false because compulsory victim restitution (hereafter, CVR) *is* a form of punishment. I shall offer three arguments for this thesis. The first is that Boonin's denial that CVR is a form of punishment requires a groundless distinction between a state's response to a criminal offense and its response to an offender's failure to comply with the sanctions imposed for that offense. I then suggest that this first argument supports a definition of punishment that not only meets Boonin's own desiderata for a definition of punishment but also implies that CVR *is* a form of punishment. Finally, Boonin argues that CVR is not a form of punishment because punishment requires that a sanction be intentionally harmful and CVR does not intentionally harm criminal offenders. I demonstrate that even if CVR is not intended to be harmful, its harms are nevertheless intentional.

I. THE ITERATED SANCTIONS ARGUMENT

CVR is a morally justifiable collective response to criminal wrongdoing, but is not (according to Boonin) legal punishment.

1] This work will be subsequently referred to parenthetically as PP, followed by page numbers.

Let us approach this claim from both ends. Suppose that an individual is justly convicted of theft. A court recommending, but not compelling, the offender to provide restitution to her victim would not be punishment, so *voluntary* victim restitution is not legal punishment. Advice or admonitions are not punishment, even if issued by a mouthpiece of the law.

Suppose, however, that the court does legally mandate that an offender provide her victim restitution in the form of monetary payments, but the offender does not comply. The legal system might then reasonably respond to her non-compliance by forcing her compliance in a literal sense (using electronic funds transfer to garnish her wages, for instance) or by resorting to other coercive measures, such as incarceration. Such responses amount to punishing her non-compliance. But the state is only justified in punishing someone's non-compliance to that which they are legally required to perform in the first place. The state may, for instance, stiffen the sentence for a prisoner who attempts to escape from incarceration but only because the prisoner had a legal obligation to remain in prison to begin with.

But if imposing further sanctions on a person for failing to fulfill the legal obligations they incur as a result of criminal behavior is punishment, then why are the sanctions resulting from the criminal behavior itself– CVR, under Boonin's proposal – not also punishments? Consider an analogy to parental punishment: Suppose a parent mandates a certain sanction for a teenager's misbehavior, such as revocation of the privilege of staying out late on weekends, but the teenager nevertheless connives to enjoy the privilege anyway by sneaking out while the parents are asleep. The parent would appear to be justified in punishing the teenager over and above the existing sanction, but for the parent to tell the teenager, 'I didn't punish you before but I am punishing you now!' is to invoke a distinction with no normative difference (particularly from the teenager's point of view). Both the initial sanction and subsequent punitive measures are coercive measures imposed by the parental authority as responses to a child's violation of a parental imperative. The temporal sequence of the offenses and sanctions makes no difference to the nature of the sanctions. Both are punishments.

Likewise, the state's response to a person's initial violation of the statutory law is not fundamentally different in kind from its response to a person's failure to comply with the legal sanction imposed on her for her initial violation. In the example above, the state is entitled to utilize punitive measures to enforce its mandate that the thief provide restitution only because the thief was rightly subject to *punishment* for having stolen in the first place. Boonin's thesis that CVR is not punishment thus seems to require making morally arbitrary distinctions between these two exercises of the state's coercive power. In each instance, an individual violates a legal imperative and the state responds with sanctions that harm or constrain the offender in specified ways. If the state uses its coercive power as a response to a person's violation of a legal norm, a person is thereby punished, and neither the nature of the norm nor the timing of the state's response matters to whether its use of its coercive power amounts to punishment. Both are punishments.

Let us call this argument against Boonin the *iterated sanctions argument*. As we shall come to appreciate later, Boonin himself may not be impressed by this argument, for according to his definition of punishment, neither requiring an offender to provide restitution nor taking coercive action when she fails to provide said restitution are necessarily punishments. Nevertheless, the iterated sanctions argument highlights the deficiencies of the very definition of punishment that Boonin relies upon in order to deny that CVR is punishment.

II. A PROPOSED DEFINITION OF PUNISHMENT

The iterated sanctions argument casts doubt on Boonin's denial that CVR is punishment by highlighting two essential features of punishment. First, states impose punishments as a consequence of criminal behavior, and second, punishments involve deprivations, suffering, or constraints upon the liberty of offenders. An adequate definition of punishment that incorporates these two features illustrates why CVR is punishment.

Consider the definition of legal punishment as *any deprivation, suffering, or constraint of liberty imposed on criminal offenders by the state or judicial authority as a direct legal consequence of those offenders' unlawful behavior* (Benn 1958, Flew 1970, Hart 1995, Cholbi 2002). Admittedly, this definition leaves some questions concerning the nature of punishment unanswered. For example, this definition explains punishment in terms of criminal, rather than civil offenses, and some might worry that this definition can recognize a distinction between the criminal and civil law only by being implicitly circular. For if the notion of a 'criminal offense' is in turn defined in terms of offenses for which 'punishment', rather than some other species of sanction, is mandated, then 'punishment' and 'criminal offense' are interdefined. Although being subject to punishment rather than some other sanction is taken as a defining feature of criminal offenses, this definition is only circular if the notion of a 'criminal offense' cannot be in turn defined in terms of some other feature that demarcates from civil wrongs. For example, criminal offenses could be distinguished from civil wrongs in terms of the former being more morally serious than the latter or in terms of criminal wrongs being wrongs to society at large rather than only to specifiable individuals. My aim is not to defend any particular definition of 'criminal offense' here. Rather, I mean only to show that this proposed definition of punishment in terms of criminal offense need not be circular despite first appearances.

The proposed definition is nearly canonical in the philosophical literature, and for good reason: The definition has a number of clear merits. It accounts for the uncontroversial examples of punishments, such as execution, incarceration, and the imposition of fines. This definition also indicates how various measures that some theorists have claimed are merely 'penalties,' rather than punishments, are in fact punishments (Deigh 1988). On this definition, revocation of driver's licenses, mandatory community service, removal of children from the custody of criminally negligent parents, and the disenfranchisement of felons all count as punishments. Conversely, this definition explains why certain costs or

burdens that may be associated with punishment are not themselves punishments. Legal fees, under this definition, are not punishments because they are not consequences of unlawful behavior. The loss of one's job due to incarceration is not legal punishment because it is neither a direct effect or consequence of an offender's unlawful behavior nor is it a legal consequence of that behavior.

More crucially for our purposes, my proposed definition of punishment satisfies Boonin's criterion that a definition of punishment must be "accurate" in that it "clearly demarcates cases of punishment from cases of something else." (PP 4-5). Furthermore, it also satisfies Boonin's criterion that a definition of punishment must be "illuminating," i.e., it must not simply distinguish the class of acts that are punishments in an ad hoc fashion but must capture the essence of punishment by pointing to the facts that constitute an act being an act of punishment (PP5). Finally, the definition I have proposed is "neutral": It does not beg the question concerning the moral permissibility or justification of legal punishment. As a result, my proposed definition does not prejudge possible solutions to what Boonin calls "the problem of punishment." As Boonin outlines it, the problem of punishment is the problem of providing a defensible account of why it is morally permissible for the state to treat those who break reasonable and just laws in ways that it would be otherwise be morally impermissible for those persons to be treated. This in turn requires showing that the boundary between criminal offenders and others is morally relevant so as to generate a plausible moral justification of punishment (PP 1). Under this definition, the problem simply becomes specified as the problem of why the state may impose deprivations, suffering, or constraints on liberty on criminal offenders, where said deprivations, suffering, or constraints on liberty would be impermissible if imposed on non-offenders. Such an understanding of the problem of punishment would presumably have the assent of those pursuing retributive, consequentialist, etc., justifications of punishment.

But note that under this plausible, and nearly canonical, definition of legal punishment, CVR is punishment. To force offenders to provide restitution harms them, as Boonin acknowledges, and so CVR counts as a "deprivation, suffering, or constraint" imposed on criminal offenders. Furthermore, this harm is imposed by the state or judicial authority, rather than being, for example, a harm to one's reputation or to one's livelihood caused by the attitudes that communities may have toward criminal offenders. Finally, CVR is a direct legal consequence of the offenders' unlawful behavior. CVR thus satisfies the conditions for punishment under this definition.

III. CVR AND BOONIN'S DEFINITION OF PUNISHMENT

I have argued, first via the iterated sanctions argument and second via a plausible definition of punishment, that CVR is punishment. Yet even if Boonin rejects these independent arguments, he still has a last avenue to defend his claim that CVR is not punishment. He argues that CVR is a morally justified but non-punitive response to punish-

ment because, in his estimation, CVR does not satisfy his *own* definition of punishment. However, it is not so clear that CVR is not punishment even under Boonin's definition.

Boonin defines punishment as "authorized intentional retributive reprobative harm." (PP 26). In other words, an act of punishment must

> [1] harm an offender
> [2] must harm her intentionally
> [3] this harm must be imposed *because* the offender committed a criminal act
> [4] it must express disapproval of the offender,[2] and
> [5] must be carried out by an authorized agent of the state acting in her official capacity.

The principal reason that CVR does not satisfy this definition of punishment, according to Boonin, is that "although compulsory victim restitution typically does involve predictable harm to the offender, pure restitution does not involve harming the offender intentionally, either as an end in itself or as a means to a further end." (PP 215). Thus, CVR is harmful, but not intentionally so, and so it does not satisfy criterion (2) of Boonin's definition of punishment.

Now, the notion of an 'end' is notoriously ambiguous, sometimes designating the outcome or state of affairs at which an action aims, sometimes designating the rationale of an action. These need not coincide: In spreading vicious gossip about a rival, the outcome I seek is that he suffer a loss of reputation, but my rationale is that I will enjoy the psychological satisfactions of revenge. But let us concede to Boonin that under either sense of 'end,' a regime wherein CVR supplants orthodox punishments need not intentionally harm offenders as an end. In other words, whosever intentions we take to be relevant, be they those of lawmaking authorities, judges, juries, etc., offenders subject to CVR are not intentionally harmed as an end. Rather, (a) the end *qua* outcome of CVR is to compensate crime victims for their losses, not to cause harm to offenders, and (b) that the moral reason for imposing CVR is therefore not that it harms the offender and so harming the offender is not its end *qua* rationale.

But granting that CVR does not intentionally harm offenders as an end leaves unanswered whether CVR, as a means, is intentionally harmful. Are the foreseeable harms

2] Though my definition of punishment disagrees with Boonin's with respect to criterion [4], I shall not devote much attention here to this disagreement. I follow Davis (1991) in believing that the requirement that a punishment must express disapproval of the offender is neither a constraint on an act's being punishment nor a substantive constraint on a punishment's being justified. The expression of whatever it is punishment may express is achieved solely through a punishment's meeting the standards of justice, both procedural and substantive, that any retributive theory recognizes. A punishment handed down by the proper legal authority, in accordance with valid legal norms, proportionate to the action being punished, etc. carries on its face a counterassertion of the attitudes or beliefs implicit in the criminal's actions. Hence, the reprobative requirement will be satisfied in all cases where the authorization requirement is satisfied. Simply by virtue of a punishment's being the state's response to criminal wrongdoing will a punishment express disapproval of that wrongdoing.

of CVR intentional or not? Since Anscombe (1958), action theorists have carefully investigated the nature of intentional action, and more specifically, the relations among notions such as acting intentionally, intending, having an intention, and so forth. Though he does not say so explicitly, Boonin appears to rest the claim that the harms of CVR are not intentional on the grounds that whichever agents (legislatures, juries, etc.) would be responsible for sanctioning criminal offenders, those agents would not impose CVR *intending* to harm criminal offenders. It is uncontroversial that if an individual intends to A and does A, she does A intentionally. Thus, Boonin would presumably concede that if the sanctioning agents imposed CVR on criminal offenders intending to harm them, that the harm would therefore be intentional. But suppose we grant that the sanctioning agents do not intend to harm criminal offenders by subjecting them to CVR, even as a means. Does it follow that they do not intentionally harm criminal offenders?

On what Michael Bratman has termed the "Simple View" of acting intentionally, intentionally A-ing entails intending to A (1984). Boonin might appeal to the Simple View to argue that CVR does not intentionally harm offenders. For he might argue that those who would impose CVR on offenders do not intend to harm them and so do not intentionally harm them. But the Simple View is vulnerable to the charge that some instances of intentionally A-ing are not instances of intending to A. Gilbert Harman (1976, 433) offers the example of a sniper who fires his gun in order to kill an enemy combatant but thereby knowingly alerts the enemy to his presence. Although the sniper does not intend to alert the enemy, Harman argues, the sniper *intentionally* alerts the enemy, believing that the aim of killing the enemy combatant warrants the risks of alerting enemy forces to his presence (see also Bratman 1987, 133, and Ginet 1990, 75-76). If correct, then the sniper foresaw but nevertheless intentionally alerted the enemy, despite not intending to alert the enemy. A number of recent experimental studies further suggest that ordinary, non-philosophers reject the Simple View in many cases, apparently rejecting any tight relationship amongst intending A, intentionally A-ing and having an intention to A (Knobe 2003, 2004, 2006, Nadelhoffer 2006).

So if there are counterexamples to the Simple View, might a criminal justice system imposing CVR be among these – instances where a harm is intentional without being intended? To answer this question we must identify attributes that distinguish, within the category of acts that are not intended, those acts which are intentional and those which are not. A full analysis of 'intentionally' is beyond the scope of this project, but a few central observations are central.

We are particularly concerned here with when an act is done intentionally despite not being intended. Both intending and acting intentionally are species of rational endorsement. As Anscombe put it, intentional actions are those "to which a certain sense of the question 'why?' has application." More specifically, they are actions for which this 'why?' question is suitably answered by citing a justificatory, and not simply explanatory, reason for action, and this reason for action provides a description under which the action is intentional (1958, 9-12). Acting intentionally thus involves the endorsement of an act or

outcome that is consciously selected without necessarily being intended. For example, in Harman's sniper example, the sniper does not intend to alert the enemy to his presence because his alerting the enemy will occur, if he fires at the enemy combatant, *despite* his presumably not wanting it to take place. His believing it warranted to risk being exposed to the enemy reflects his reluctant endorsement of alerting the enemy as an unfortunate side effect of the means he must take (firing his weapon) in order to achieve his end (killing the enemy combatant). Hence, he intentionally alerted the enemy to his presence. In such cases, acting intentionally is rationally parasitic on what is intended. In the course of doing what he intended, he also intentionally alerted the enemy, and in so doing, endorsed his alerting the enemy. This endorsement is forced upon him by the facts, so that if the facts had been different (if he could have shot his enemy without bringing attention to himself, say), he would not have had to assess whether alerting the enemy to his presence was warranted in light of his intended aim, killing the enemy combatant.

To do something intentionally, then, requires a deliberative assessment that one has sufficient reason to do that act, and this is so even in cases where this act is not what one intends to do and not an act one would in fact prefer to do at all.[3] This observation may seem unhelpfully inexact, for surely not every instance in which an individual foresees an outcome that she does not intend is one in which she rationally endorses that outcome. Yet we do not need to offer precise conditions for when an individual rationally endorses an outcome, and hence produces it intentionally, in order to show that CVR would be intentionally imposed. For whoever would be imposing CVR on criminal offenders in Boonin's scheme would be rationally endorsing the harms that criminal offenders would suffer as a result and would thereby be intentionally harming them. Reasoned *comparative* judgments concerning how strongly a foreseen outcome is endorsed are still possible, and in this case, those responsible for imposing CVR on criminal offenders would be more strongly endorsing their suffering harm than Harman's sniper would endorse alerting the enemy. This is not because of the weight of the harms or consequences, but because of the relationship that these outcomes bear to what the individuals intend. In examples like Harman's sniper, the foreseen outcome is a side effect of the intended outcome. Alerting the enemy is not a way to attempt to kill the enemy combatant. In contrast, were judges, juries, legislators, etc. to impose CVR on criminal offenders, the harms thereby imposed on offenders ought to have their full endorsement as the necessary means to their end of compensating victims for their losses. The harms are no mere side effect of intending to compel criminals to provide restitution. Boonin does not after all deny that CVR harms offenders, and under most any analysis of harm, compelling offenders to provide restitution is not only a harm, but it is the only means of achieving the end of compensating crime victims for their losses. For A to compensate B for the losses A caused B to suffer requires A to suffer harm in turn, i.e., A must in some way turn out to be worse off after

3] This account of acting intentionally is influenced, in broad outline, by Anscombe (1958) and Goldman (1970, 51-6).

having compensated B for her losses. So not only is the harm a means to the end, it is the institutionally designated means to the end. As such, anyone whose end is to compensate victims for their losses and who recognizes that harming offenders is the indispensable means to achieving that end must rationally endorse harming offenders, and in so acting, intentionally harms the offender. In Anscombe's terms, harming the offender is an act for which a 'why?' question can not only be suitably addressed, but also suitably answered by providing a reason that renders harming the offender intentional: because harming the offender is the necessary means to compensating victims for their losses.

To deny this conclusion would amount to rejecting the core principle of instrumental rationality in its customary 'wide scope' sense: Whenever an individual intends an end E, and knows that E cannot be achieved without the deliberate performance of M as a means to E, then the individual must intend M or relinquish E. (Bratman 1987) In this respect, outcomes that are the foreseen means to an end are better candidates to be intentional then are outcomes that are foreseen side-effects because the former bear a closer justificatory relationship to the intended end than do the latter. Kant's dictum that whoever wills an end must will the necessary means thus applies here. In acknowledging that harming offenders is a necessary means to the willed end of compensating victims, judges, juries, and the like are willing this harm as a means. In willing this harm as a means, they rationally endorse harming as a means, and when they act on this endorsement, they intentionally harm offenders. In any event, the important point is that a plausible case can be made that CVR would amount to an intentional harm to criminal offenders even if that harm is not intended. If so, then Boonin's claim that the harms of CVR are not intentional does not look promising and he cannot utilize this claim to put CVR outside the scope of punishment as he defined it. Note that my own proposed definition of punishment avoids these intricacies entirely because it does not require careful investigation of whether the harms, etc., that are essential to punishment are intentional.

IV. CONCLUSION

I have argued, then, that contra Boonin, CVR is a form of punishment. First, the iterated sanctions argument attempted to show that the state's efforts to compel a recalcitrant offender to provide restitution cannot be morally differentiated from its efforts to compel the offender not to have offended in the first place. Second, I defended a more orthodox philosophical definition of punishment that (a) implies that CVR is punishment, and (b) satisfies Boonin's desiderata for a definition of punishment. Finally, I have shown that even under Boonin's proposed definition, CVR turns out to be punishment, for he fails to demonstrate that CVR's harms are not intentional.

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Book Reviews

Israel, Jonathan. A Revolution of the Mind: Radical Enlightenment and the Intellectual Origins of Modern Democracy. Princeton University Press. Pp. 296. ISBN: 978-1-4008-3160-9

Jonathan Israel is not pleased with the state of research into the emergence of modern democratic values. He sets out to fill a "gigantic yawning gap" by tracing ideas such as equality and individual liberty to the Enlightenment and by defending the thesis that a Radical Enlightenment in the 1770s and 1780s created a "revolution in the mind", which in turn led to the French revolution. This may sound familiar, but in fact the vast literature on the French revolution is "absurdly inadequate": It is mired either in reductionist Marxist explanations or in postmodern distrust of reason and consequently fails to take into account the intellectual background and how ideas caused events.

Israel supports his thesis with the help of what he calls the "controversialist method", giving a dramatic account of the Radical Enlightenment locked in a struggle with the "Moderate Enlightenment." Almost the entire book is devoted to exploring the philosophical differences between these two ideologies, which resulted in the triumph of the radicals. Israel introduced the Radical Enlightenment already in the first volume of a projected trilogy on the Enlightenment, the well received *Radical Enlightenment* from 2002 where he argued that the foundation of the Enlightenment, and hence of modern democratic values, is to be found in Spinoza. The second volume, *Enlightenment Contested* came in 2009. *A Revolution of the Mind*, which originated as the Isaiah Berlin lectures in Oxford, is not part of the trilogy but anticipates themes that will be covered in the third volume.

Displaying an impressive breadth of knowledge, Israel argues that the Radical Enlightenment of Spinoza is carried on by the thinkers of the 1770s and 1780s, notably Diderot, d'Holbach, Paine, and Helvétius. Although the majority of the protagonists in the book are in France where the Radical Enlightenment was strongest, Israel also singles out a great number of radicals in Holland, America, Germany, England, and Scandinavia. On the basis of Spinoza's monistic materialism, the radicals defend "the core values of modern secular egalitarianism". These include democracy and equal civil rights, freedom of speech and the press, separation of church and state, sexual freedom, and the liberation of oppressed nations. Enlightenment is the method to shape reality according to these ideals; if people just know the truth, they will eventually do what is right.

Nonetheless, the radicals also support revolution where rights are systematically violated; indeed this is one of the chief differences to the Moderate Enlightenment of thinkers like Montesquieu, Voltaire, and Kant. Based on a support for rationalism and metaphysical dualism, they either reject or are weak in their defence of democracy and equality; they support aristocracy and monarchy, accept war as a necessary feature of international relations, and, Israel argues, suffer from a "Eurocentric superiority complex." Although these thinkers too supported enlightenment and progress, they promoted gradual reforms and did not favour political revolution. These competing ideologies are explored over chapters on democracy, economics, international relations and moral philosophy as the radicals gradually won out in the period leading to the French revolution. There are occasional forays into social and political events but the bulk of

the text is an account of the many radical thinkers and their ideas, not their lives.

Israel is otherwise a supporter of Spinozistic monism but here he proceeds through a strict dichotomy, which causes difficulties. Voltaire and Locke, who are not unreasonably credited with contributing to the rise of civil rights and toleration, fit awkwardly within the Moderate Enlightenment and the same could be said for many others within either of the two teams. Thinkers are also not permitted to be somewhere in between. Take for example Kant whose *oeuvre* was an attempt at bridging the gulf between opposed philosophical traditions. He was alone, according to Israel, in attempting to bridge the Radical and the Moderate Enlightenment, but even he failed and came down on the moderate side. To make the case that Kant was a Moderate, Israel is forced to make him sound a lot less radical than he was, writing that he is "expressly rejecting democracy." But by 'democracy' Kant, along with most of his contemporaries, had *direct* democracy in mind, something not even Israel's Radical Enlightenment supported. Long discussions can be had about Kant's commitment to popular sovereignty but he certainly did not expressly reject what today is called representative democracy. Likewise, Kant is on record defending the French revolution of 1789, whereas a Radical Enlightener like Herder, who supported a "revolution of the mind," turned sharply away from the actual revolution.

The book's main thesis is that the Radical Enlightenment was responsible for the French revolution. Occasionally Israel, who has bones to pick with Marxism and Postmodernism alike, formulates this in bold terms, claiming that "books cause revolution" (as indeed many thought in the 1790s). On closer look, however, he admits that "social grievances" played a part and that the role of ideas is to articulate grievances, providing "grounding" for the revolution. Whether ideas caused the French revolution is a venerable debate, and Keith Michael Baker has identified two main ways of pursuing the claim (1990. *Inventing the French Revolution*, Cambridge: Cambridge University Press). Some grandly assume a continuous history of doctrines, often based on the ideas of one particular thinker, moving society forward with inexorable logic (was, for example, Rousseau responsible for the revolution?). Others, more empirically, study the diffusion of books and ideas among revolutionaries and their followers (which books and pamphlets were on Robespierre's bedside table?).

One might think that a careful historian like Israel, who often dwells on minor and overlooked characters, would favour the latter approach. But there is not much in this book about what books and pamphlets motivated the leaders of the revolution and their followers. Mirabeau and Condorcet are discussed, but the names Lafayette, Danton, Lally-Tollendal, Barnave and Sièyes (apart from one mention) do not appear, and there is little discussion of the great parties within the revolution. There are brief mentions of book history, but overall Israel does not dwell on how the ideas of the Radical Enlightenment achieved diffusion in the wider public.

One might think he instead supports the former approach to the problem, emphasizing a grand logic of ideas propelling history, because of his sustained emphasis on Spinoza standing behind the progress of the Western tradition. But this does not seem to match the sense of contingency conveyed by the "controversialist method", which implies that either side could have won. Eventually, it is difficult to know exactly what Israel means by ideas causing the revolution because the crucial link between thinkers and agents, between the Radical Enlighteners and the revolutionaries is barely explored and there is no deeper discussion about how ideas move minds. This is unfortunate be-

cause it significantly lessens Israel's critique of the existing explanations. Marxists did not deny that radical literature flourished prior to the revolution; they just interpreted it as "superstructure" and held the subsequent events to be better explained by the increasing price of bread.

Israel is probably right that there is a gap in the literature on the emergence of modern democratic values, but filling it requires sensitivity to the complexity of political thinkers rather than a straitjacketing of them into a bi-party system reminiscent of an American election. It also requires a more sustained exploration of how these thinkers influenced political agents. Perhaps Israel himself will tell us more about that in the final volume of the trilogy on the Enlightenment.

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Voorhoeve, Alex. 2009. Conversations on Ethics. New York: Oxford University Press. Pp. 272. ISBN: 978-0-19-921537-9

Alex Voorhoeve's book of interviews will prove an excellent document of the prevailing attitudes and standards that ruled moral philosophy at the beginning of the new Millennium. A number of eminent figures in Anglo-American philosophy, along with a few leading psychologists and economists with contributions that are particularly relevant to the field of ethics, are challenged to have "a frank discussion of some of the strengths and weaknesses of their ideas", in terms that are relatively "accessible to a non-specialist audience" (vii). Having in mind Socrates' warning from *Phaedrus* about the "orphan" nature of any written discourse, the author of these interviews is not only focusing on their main ideas and decisive arguments, but also tries to give us "a real sense of the human beings behind the writings", as Jonathan Wolff put it, addressing to the influential thinkers that are interviewed provocative questions about their intellectual development and the reasons that drove them into moral philosophy. Every discussion is preceded by a concise and accessible presentation of the central theoretical preoccupations of the approached thinker and it is followed by key bibliographical references regarding the conversation that took place. Explanatory footnotes about the more technical expressions used in the conversation, along with short explanations of some intricate thesis, are also inserted. We could say that Voorhoeve has a real gift for detecting the vulnerable parts in any thinker's argumentation and exposing them in a manner that forces the philosopher to produce a more comprehensive account of her or his views.

The conversations focus on three main puzzles that have troubled the philosophers' minds since ancient times. First, is the question regarding the reliability of "moral intuitions", our so-called "everyday moral sense" that prompts us in making moral judgments carrying strong feelings, despite the lack of sound rational justifications. Second, there is the old puzzle about the "objectivity" of our moral judgments: it appears that using the same "impersonal criteria", different rational agents seemingly well-intended may very well arrive at different ethical conclusions. In Voorhoeve's words, "we must decide how to respond to disagreements between good, though imperfect, enquirers" (4). Third, there is the difficult problem of moral motivation and the fact that moral reasons prevail in various concrete life-situations, without us being able to clearly indicate what these reasons are. The aim of this book is "to provide insight into contrasting answers

to these three puzzles" (5). Given the fact that almost every thinker interviewed has something relevant to say on each of the three topics mentioned above, the structure of the book, divided into five parts, is determined by the intention of bringing together "interviews that are most directly relevant to each other" (6).

The first section contrasts two philosophers and a psychologist with extremely different views regarding the status of our moral intuitions. While Frances Kamm claims that a moral philosopher should strive to bring into light and understand our intuitive moral judgments, our spontaneous reactions to various moral cases being in fact an expression of a deeper "structure of morality", the leading utilitarian philosopher Peter Singer reaffirms his suspicions about these intuitive judgments derived from "untrustworthy sources". From Singer's point of view, these "intuitions" are usually nothing more than remnants of "religious systems" that for centuries have shaped people's way of seeing the world and are deeply rooted into our social practices and habits of thinking because of our education. There is also a large amount of cultural prejudice regarding the permissibility of gender, race or species discrimination still governing our everyday "intuitions", as well as an inculcated easiness in accepting "social conventions that lack moral justification". Finally, some of our moral judgments (as the ones stemming from the importance we spontaneously bestow upon the idea of reciprocity) "may have biological origins but also lack any deep justification" (50). Starting from here, Singer tries to explain some of his most controversial ethical views, openly acknowledging the lack of strength that moral reasons often have on us and our incapacity of always assuming the impartial point of view. For the renowned psychologist and Nobel Prize winner in Economics Daniel Kahneman, the area of moral intuitive judgments has proven to be a fascinating field of research. But he is challenging Kamm's views, claiming that there are scientific proofs supporting the idea that "the mental operation of making sense of our intuitive judgments is a very different cognitive activity from having these intuitions" (75). If this is true, the entire case-based method in moral philosophy risks being merely a way of inventing rational justifications for what is driving our intuitive judgments in the first place. More than this, Kahneman argues that there is a methodological limitation of moral philosophy: it always has to deal with two or more cases at the same time because it is trying to establish general principles, but this stance prevents the philosopher from grasping the *real* intuitions that people might have when confronted with different cases one at a time. Finally, Kahneman holds that even if our intuitions "are indeed malleable to some extent" by means of reflection, we will always have "powerful but profoundly inconsistent intuitions", which makes the task of achieving some "fully satisfactory reflective equilibrium" (82) an impossible one.

The second section of the book is dedicated to conversations with two philosophers who are famous for their commitment to virtue ethics. Philippa Foot and Alasdair MacIntyre share the reference points in their intellectual development and explain some of their guiding ideas. Referring to her book *Natural Goodness*, Voorhoeve emphasizes that for Foot, the objectivity of our moral judgments is assured by this fact: the way we assign moral virtues and vices is nothing but an "instance" of some general kind of evaluation of all living things "as defective or sound members of their species" (7). Moral goodness and badness are only particular expressions of the natural goodness and badness, having to do with a human will which is "either defective or as it should be". Foot strongly believes that in spite of all the important cultural differences, we can still trace "a universal need for certain character traits and for certain rules of conduct"

(101). The conversation with Alasdair MacIntyre, author of one of the most incisive and influent books on moral philosophy in the 20th century, *After Virtue*, is divided into two parts. First, there is a short recollection of MacIntyre's fascinating intellectual journey, which led him from engaging in debates on Marxism, Christianity, and psychoanalysis, to a powerful criticism of all the modern moral theories and the proposal of a neo-Aristotelian conception of morality. In his view, as Voorhoeve shows, the virtues must regain their central place as "excellences of character that are both instrumentally useful" for attaining the goal of human "well-being" and also "an essential part of its attainment, their possession being itself a constituent of the good life" (114). The discussion then focuses on the differences between Aristotle's original account and MacIntyre's elaborations from *Dependent Rational Animals*, where he argues that only by realizing "our vulnerability to physical and mental illness and the nature of our dependence on others' assistance" (123) can we get rid of the "illusions of self-sufficiency" and also rectify our common opinions on justice: understanding that justice in the family originally requires a "non-calculating way" of generosity, we will be able to see that in society as well, "a certain generosity beyond justice is required if justice is to be done" (125).

This virtue of generosity conceived as an asymmetrical relation to others would seem only an accidental trait of some members of our species in Ken Binmore's vision, mathematician, famous economist and for some time a leading figure in the developing of what is known as the evolutionary theory of strategic interaction. In one of the most provocative interviews in the book, Binmore is taking on traditional moral philosophy, arguing that the starting question "How ought we to live?" is rather "nonsensical", at least when its answer is supposed to be some categorical imperative, imposing upon us a particular way of conduct "irrespective of our actual preferences and plans". "One must ask instead *how and why these* [moral] *rules survive*" (139), adds Binmore, explaining his naturalist and reductionist conception of morality as nothing more than an adaptation, "a device which evolved along with the human species" (140) because it was helpful for our ancestors to coordinate their actions "in mutually advantageous ways". It would follow that our moral intuitions are basically biological fairness norms dependent on the particular circumstances under which human beings evolved: hominids lived together in small groups where reciprocity and some kind of "mutual insurance" proved vital for survival. In order to explain how we manage to solve everyday coordination problems by finding an "efficient equilibrium", Binmore appeals to a modified version of Rawls's "original position", grounded on the assumption that we possess a capacity for "empathetic preferences" that "is written into our genes" (146). But when it comes down to the benefits that a descriptive science of morals could provide, Binmore is extremely cautious: it is not a question of imposing on us an egalitarian ideal of fairness, but simply of drawing attention to the fact that the "original position" is the *natural* device, the one that our intuitions "are keened to" (151). Allan Gibbard, the other thinker interviewed in the section about *Ethics and Evolution*, is somehow more optimistic than the Humean Binmore regarding our deliberative capacities and the way we are able to shape our behavior according to shared principles. Since "we are, in a sense, 'designed' by evolution for living together in complex social groups" (162), "we have been shaped by evolutionary forces to be persuadable" (163), capable of reaching agreement by accepting other people's norms after joint discussions. The moment we break one of these shared norms, we normally feel guilt, derived from our belief that "others would rightly feel angry – resentful or outraged – at us for our actions" (169). That's what morality,

narrowly conceived, is all about. So feelings like moral anger and guilt prove to be "relatively cost-effective ways" of policing shared norms and restoring cooperation.

The fourth part of Voorhoeve's book focuses on the possibility of producing a unified account of morality. The Harvard philosopher Thomas Scanlon believes that this rationale is to be found in the justifiability to others of our own actions. From Scanlon's contractualist perspective, acting morally means acting on principles that you think others could not reasonably reject. It is interesting that according to this view, as Voorhoeves shows, "each person wields a veto in the imaginary gathering in which principles for conduct are agreed upon" (181); this "requirement of unanimity" is for Scanlon "the way to explain the authority of deontological or rights-based principles" over the utilitarian demand of maximizing the sum of well-being. More than this, adopting such conception of morality enables us to realize that there is a strong reason to be moral: it is "the only way of standing in a very appealing relation to other people" (190), avoiding estrangement. But what counts as a "reasonable rejection"? Is there "a criterion for what someone can't reasonably reject"? "*That* is the question we should be asking" (204), replies Bernard Williams, undoubtedly one of the most influent moral thinkers of our times. In an interview given only a few months before his death, Williams explains that the attempt to provide a single fundamental reason for moral behavior and the search "for a system of ethical and political ideas that is best from a point of view that is as free as possible from contingent historical perspective" (199) are not the right manners of approaching moral and political philosophy. He focuses instead on the ways in which history and genealogy can help us "make *some* sense of the ethical" (203). For instance, we cannot fully understand our modern concept of liberty if we fail to grasp how this concept is linked to the fact that "competition is central to modern commercial society's functioning" or if we don't realize that it is only "because our legitimation stories start with less than other outlooks that liberty is more important to us" (200).

The final section of the book deals mainly with the possible relationship between moral reasons and "the reasons of love". For Harry Frankfurt, the question "How should one live?" should not be answered by imposing on us some kind of moral requirements, but rather by finding out what are the things that we really love in life, "by uncovering the desires we have and want most fervently to maintain and act on", as Voorhoeve explains. "We love something, Frankfurt says, when we *cannot help* wanting to desire and pursue it" (9). But this is "a misguided view of love" in David Velleman's conception. We have to distinguish love – which is "a capacity to *really see* another", as Iris Murdoch used to say – from the feeling of being *in* love, involving "misperception" or "transference" in a Freudian sense. So Velleman argues that both love and respect are synonyms of "an arresting awareness of a person's value as an end". Love goes beyond respect because it "disarms our emotional defences", but these two remain kindred attitudes. It follows that "love and moral respect for people are actually supportive of one another. The experience of love is an experience that develops the moral sensibility" (252), educating us in becoming aware of the "incommensurable value" that *each* person holds.

There is a fundamental question underlying all these conversations, that Voorhoeve openly addresses in the *Introduction*: what can we "reasonably hope to gain from discourse on ethics"? He confesses that the experience of making these interviews left him rather "optimistic about the prospect of finding at least partial solutions to some of our ethical puzzles" (11). Even if such a thing remains to be decided by each reader of this book on her or his own, I think that on a more general level, Voorhoeve's pres-

ent work proves to be an excellent illustration of the two desiderata that have inspired philosophical inquiry since the time of Socrates. On the one hand, there is a special ability for critical thinking that we gain from doing philosophy, which would explain, using Frances Kamm's words, why we can take it for a fact that "people who are trained in philosophy… are much better able to judge the validity of positions other than their own" (20). (And what a salutary training this may be, if it is true, as Foucault once said, that "taking distance on oneself" or "thinking otherwise than before" should be considered "the ethic of an intellectual in our day"! On the other hand, a demand for honesty and authenticity will always play an essential part in judging philosophers' claims, ruining the credibility of those "who don't live up" (21) to their moral principles.

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Cohen, G. A. 2008. Rescuing Justice and Equality. Cambridge, MA: Harvard. Pp. 430. ISBN: 978-0-674-03076-3. 430 pp.

As this review was being written, the news of G. A. Cohen's death at the age of 68 was announced by his colleagues at Oxford. Although he had recently retired from full-time teaching, no one believed that *Rescuing Justice and Equality* would the last book published during his lifetime. However, his recent book has unwittingly become an important final work, not least because it highlights the many concerns that occupied the last twenty years of Cohen's career, but also because it is a brilliantly argued attack on the almost *laissez-faire* liberalism that speaks as the dominant representative of Rawls' philosophical ideas.

In *Rescuing Justice and Equality*, Cohen attacks the dominance of one part of Rawls' theory of justice: the belief that, so long as the well-being of the worst off members of society is not made worse, any arrangement that increases the well-being of better-off members of society is morally acceptable. Following not in the foot-steps of his earliest work (for instance, the Marxist-thought epitomized in his *Karl Marx's Theory of History: A Defence*. 1978. Princeton: Princeton University Press), Cohen instead adopts what might be termed a robust defence of his previous arguments with John Rawls. In particular, Cohen attacks what he sees as an artificial separation between people's attitudes and social structure themselves, much as he did in his *If You Are an Egalitarian, Why are you so Rich?* (2001. Cambridge, MA: Harvard University Press).

However, Cohen's new book is not an attack on Rawls *per se* but rather an attack on a certain strand of liberal thought that emerges from *A Theory of Justice*. Cohen has great respect for the Rawls and describes him as the writer of a work of philosophy that is eclipsed by at most only two others books of political philosophy: *The Republic* and *The Leviathan*. In a Hegelian moment, he calls Rawls a thinker who captured the spirit of his age with his *A Theory of Justice* (the import of this compliment depends, I suppose, on what one happens to think of late-capitalist society).

Traditionally, it has been possible to level at least two leftist critiques against Rawls, both of which spring from the same intuition: that Rawls has smuggled more into the initial position then he lets on. First, he can very specifically be accused of adopting a Western normative framework – viz., abstracting from Western norms to arrive at the fundamental rights ascribed to the individual. This is the approach that Akeel Bilgrami takes in "Secular Liberalism and the Moral Psychology of Identity," (in R. Bhargava

et al. 1999. *Multiculturalism, Liberalism and Democracy*. New Delhi: Oxford University Press) wherein he argues that no Muslim would have agreed to a social structure (arrived at from the initial position) that forbids aggressive proselytizing. This approach, however, is not available to Cohen, whose Platonism comes through in the second half of the book – norms of justice are, on Cohen's telling, impervious to culture.

Another objection is however open to Cohen. The second classical objection accuses Rawls of arbitrarily adopting a division of labour between social institutions and the actions of an individual within that framework. In *A Theory of Justice*, Rawls wrote: "the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation" (1971, 7). Why the distribution of rights should be separate from the actions of individuals has never, to Cohen's mind (or my own), been made sufficiently clear.

Cohen wants to rescue equality and justice from Rawlsian liberalism, and to restore the rightful place of social existence to political theory. To that end, he quotes Karl Marx, who said that "human emancipation" would only be complete "when the individual man ...has recognize an organized his own powers as *social* powers so that social force is no longer separated from him as a *political* power" (1). In other words, he wants to fight against the separation of state and society that is so pregnant in Rawls' thought. The Rawlsian difference principle, properly understood, must apply equally to the choices of the state as to the choices of the people who inhabit it.

In the first section ('Rescuing Equality'), Cohen attacks what he sees as the inequality countenanced in Rawls' name. As I remarked above, it is thought just, under most Rawlsian approaches, to sanction differences in income if they benefit the worst off in society. The question is, however, in what way are they likely to benefit the worst off? And why is it the case that the best off need be better off to help the poor? In many cases, it is thought that differences in income will benefit the worst off by causing the more talented (and presumably better off) to work harder: a rising tide raises all boats, so to speak. If it is the case, however, that the best off will only work harder if they themselves will benefit, at a minimum it would seem that we are rewarding people's selfishness; second, it would be a very poor argument indeed to allow the rich to argue for greater wealth based on their own greed.

Cohen challenges this belief, arguing that this incentive based approach goes against our most fundamental intuitions of what justice is. The Rawlsian formulation loses sight of the fact that individuals exist not only within a polity, but within a community as well: to encourage selfishness is to allow an anti-egalitarian ethos to flourish. It would allow the rich to hold the poor hostage by refusing to work harder if they did not see sufficient benefit in it. It would only make sense to adopt this condition if we separate the state from the population, and we call justice what the state does, regardless the actions of the population. Furthermore, as Cohen argues in a very technical section of the first half of the book, the choice is never between equality and some Pareto optimal arrangement (where inequality flourishes). If there is a Pareto optimal arrangement that accrues maximum benefit to the poor while maximizing inequality, there is also another Pareto superior arrangement (superior to the original social arrangement – the one arrived at after the initial position – which we have now already moved away from) that reduces inequality while also improving the lot of the poor. In other words, Rawls' difference principle, applied in this way, is not a principle of justice

at all, merely one of expediency.

The second half of the book, the counter-intuitively named 'Rescuing Justice,' examines the implications of Cohen's attack on the application of Rawls' difference principle in standard liberal thought. On Cohen's interpretation of most orthodox Rawlsian thought, there is no injustice done when a situation of inequality prevails. Thus, all that is relevant when assessing a proposed change in social arrangement is the situation of the worst-off, relative to some baseline and not to the situation of the best off in any society. The genius of Cohen's argument, if it holds, would be to render all constructivist arguments vulnerable to same objection, viz. "social constructivism's misidentification of principles of justice with optimal principles of regulation" (275).

To say that a situation is just, Cohen argues, is not the same as to say that it is the best of all possible situations. "Constructivism about justice is mistaken because the procedure that it recommends cannot yield fundamental principles of justice" (294). The right principles of justice are not, Cohen claims, produced by the right sort of decision procedure. Constructivism makes the mistake of assuming that there can be a separation between the government and the people, on purely procedural grounds. Decisions procedures cannot produce principles of good governance identical to principles of justice, Cohen argues, because "things other than justice affect what the right social principles should be" (301). For example, one can say that certain values are too costly to implement, but one cannot then call such a social arrangement just.

Consider two examples, Cohen asks. First, someone makes maximum use of loopholes in a social arrangement to maximize individual profit, possibly at the expense of the worst off. Would such an arrangement reasonably be called just? In a second case, consider the question of something as banal as insurance deductibles. We require insurance deductibles not because we believe the unfortunate should pay for their misfortune, but because we think insurance deductibles will increase what some socially expedient acts, viz. people will be more likely to try to prevent fires if they will be partially held accountable for the loss. Under no circumstance would we call it just to say that people should be required to pay for accidents beyond their control (as would sometimes, if not often, be the case). To call such an arrangement just would be to confuse justice with a system designed to deal with the vagaries of the human condition.

Cohen's actual argument in the book is painfully simple: I've more or less completely summarized it above. The strength of the book is Cohen's excellent command of the relevant literature; yet the book's strength is also one of its weaknesses. It is hardly a free-standing enterprise, but instead it stands on a foundation of a thousand other disputes. For that reason, a useful companion is *Justice, Equality and Constructivism: Essays on G. A Cohen's Rescuing Justice and Equality* (Feltham, Brian, ed. 2009. Oxford: Wiley-Blackwell), if only for the fact that it summarizes standard responses to Cohen's position, two of which are notable: "Justice is not Equality" by Richard J. Arneson and "Cohen to the Rescue!" by Thomas Pogge. Arneson's essay, written by a philosopher who is otherwise sympathetic to Cohen's criticisms, is important in that it settles on one of the core objections to Cohen: that what Cohen calls justice is not justice, but something else entirely. Justice is justice; equality is equality, but what Cohen calls justice – relying heavily on equality – is something else entirely. Pogge, in turn, shows how Cohen engages Rawls by assuming that there are fact insensitive principles (reflecting what Pogge calls Cohen's Platonism) that subsume any constructivism (one such principle would presumably be Cohen's egalitarianism). Pogge argues that what really separates

Cohen from the constructivists (a label which Pogge eschews) is not the commitment to ultimate principles that Cohen expresses, but rather a pragmatic concern, on the part of the constructivist, to construct the best of all societies in this world – fraught as it is with human frailty.

Cohen's book should be recommended then, at the end of the day, for one simple insight: he shows what we assume when we allow rampant inequalities, even for the sake of the poor.

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