

Autonomy, Fraternity and Legitimacy:
Foundations of a New Communitarianism

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Declaration

Pursuant to The University of Edinburgh's Postgraduate Research Assessment Regulations, (section 2.5) I hereby declare that the thesis has been composed by me, that the work is my own, and that it has not been submitted for any other degree or professional qualification.

Raymond G. Critch,
Vienna, 2 November 2010

Abstract

In this thesis I explore the possibility for a renewed communitarianism. Rather than present this as a rival to liberalism, however, I present it as a supplement. I start from the viewpoint that there are two basic facts with normative consequences the reconciliation of which is the central task of moral and political philosophy. One fact is the fact of individuality, which I believe produces a normative requirement that all and only obligations that respect a certain kind of individual autonomy are legitimate. This fact is well explained by liberalism, and so I am to that extent a liberal. Where I differ from contemporary liberalism, and where I think there is room for a renewed communitarianism, is in explaining the limits of autonomy. There are, I contend, a wide array of basic and legitimate obligations that cannot be adequately explained (i.e. the legitimacy of which cannot be explained) by autonomy alone. The role for communitarianism, then, is to explain the nature of a second legitimating principle and how these two principles – respect for autonomy and respect for (what I call) fraternity – can work together to explain when various maxims and policies are legitimate or illegitimate. In the first part I explain the importance of communitarianism. In the second, I try and determine the nature of the principle that should be seen as representing the normative requirements of the fact of sociality: the second inescapable fact of moral and political philosophy, that while we are individuals we are never alone. I will ultimately argue for a version of solidarity based on the role ethical obligations play in incorporating the interests of others in one's own set of interests. In the final part I explain how the ethical obligation at the heart of solidarity should work and then how to reconcile the normative requirements of the fact of sociality with autonomy.

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RGC

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Introduction: Dualist Communitarianism

This work is an attempt to revitalize communitarianism by presenting it as a complement to, rather than a rival of, contemporary liberalism. I believe the failure of the original communitarian program, which I identify with authors like Sandel, Taylor, Walzer and MacIntyre, was because it focussed on critiquing liberalism. The version of communitarianism presented here starts from accepting the validity of liberalism but claiming that more is necessary to understand what justice requires. To have a just society we must have one in which all and only genuine *ultima facie* obligations are legitimate, or in which there is a minimum possible level of illegitimate obligations. What I claim is that liberalism offers one principle and communitarianism offers another which, when combined, can explain what makes various kinds of obligations legitimate.

This project, then, involves three central tasks. The first is to explain the need for a communitarian principle: what are the shortcomings of liberalism such that a second principle is necessary to explain what makes legitimate maxims and policies legitimate? This will be the focus of part one. The second task is to determine exactly what the communitarian principle should be. I call it fraternity, but this is a label rather than a principle. It is at this point that the dualist methodology becomes important, which I will explain in this introduction. Determining what fraternity involves is the focus of part two. Part three tends to the final task – explaining how the two principles can work to explain the legitimacy or illegitimacy of various maxims and policies. To this end I explain how my preferred candidate for fraternity works, and then how it and the principle of autonomy I draw from liberalism can work together to make maxims and policies legitimate or illegitimate.

Methodologically, I begin with a dualist framework. I believe that the central task of moral and political philosophy is the balancing of the demands of two different features of human nature. One is the fact of individuality, which I believe makes autonomy important. The other I call the fact of sociality, which I will argue requires us to recognize that a version of solidarity has inescapable value. Thomas Nagel puts this dualist methodology clearly at the outset of *Equality and Partiality*, from which I quote at length.

My belief is not just that all social and political arrangements so far are unsatisfactory. That might be due to the failure of all actual systems to realize an ideal that we should all recognize as correct. But there is a deeper problem – not merely practical, but theoretical: We do not yet possess an acceptable political ideal, for reasons which belong to moral and political philosophy. The unsolved problem is the familiar one of reconciling the standpoint of the collectivity with the standpoint of the individual; but I want to approach it not primarily as a question about the individual and society, but in essence and origin about each individual's relation to himself. This reflects a conviction that ethics, and the ethical basis of political theory, have to be understood as arising from a division in each individual between two standpoints, the personal and the impersonal. The latter represents the claims of the collectivity and gives them force for each individual. If it did not exist, there would be no morality, only the clash, compromise, and occasional convergence of individual perspectives. It is because a human being does not occupy only his own point of view that each of us is susceptible to the claims of others through private and public morality.¹

This quote sets out the main issues with which I am concerned in this thesis, and most of the introduction will be spent explaining those issues, defending my approach to them, and offering accounts of what I mean by some of the major terms at play here. I agree with Nagel that reconciling these two standpoints – or, rather, the normative requirements of the two facts I believe his standpoints represent – is the central task of moral and political philosophy. I also agree that prior to this reconciliation we must understand what the two standpoints involve and that the standpoint of the collective must, in some way, be mediated through the individual. Where we differ is on what the

¹ Thomas Nagel, *Equality and Partiality*, (New York: Oxford UP, 1991) pp. 3-4.

standpoint of the collective, or the fact of sociality, requires. While I believe we have an adequate understanding of the ethical² demands associated with the individuality, we do not yet fully understand the normative requirements of sociality. This thesis will explore why the sociality matters, why certain commonly offered options do not work, and offers a proposal for a principle that I believe does.

The methodology of the two standpoints should be seen as a form of moral and political dualism. I interpret the standpoints as representative of facts about the human condition with normative implications. The standpoint of the individual represents the fact of individuality, which can only be adequately respected by adopting maxims and policies consistent with a principle of autonomy. The standpoint of the collective should be understood as representing the fact of sociality, which is only properly respected by adopting maxims and policies consistent with a principle I call fraternity. The features of this definition naturally require explanation. I will start by explaining what I mean by the facts of individuality and sociality, how these facts connect to Nagel's standpoints and why they entail certain normative requirements.

The fact of individuality is the inescapable feature of human life that we are separate individuals with ethically inaggregable plans and interests. I will explain this in more detail in the first chapter where I discuss the nature of autonomy, but for the moment it is important that we note the connection between the standpoints and the facts I claim they represent. There is such a thing as a standpoint of the individual because there exist a certain kind of individuals. That there are individuals of the appropriate kind makes it wrong to act pursuant to certain maxims or to implement certain policies that do not adequately accord with the normative requirements that

² My use of the term 'ethical' here means to include both moral and political, as does my use of the term 'normative.' It should not be seen as giving priority to either morality or the political.

adhere to individuality. I believe autonomy – which I will characterize as involving a recognition of the importance of a life led from within through making meaningful choices – is normatively required by individuality: to this extent, mine is a liberal theory. If people were not separate individuals in the relevant ways, if we did not have plans and interests that cannot adequately be aggregated, it would not matter whether we were treated autonomously.

I believe a similar construction applies to the fact of sociality and the standpoint of the collective. Individuals invariably have moral and political obligations because of their ability to impact on the plans and interests of other individuals. This ineliminable feature of human life I call the fact of sociality. In the same way as individuality requires us to adopt maxims and policies in accord with autonomy, sociality has normative demands of its own. To this extent, my thesis is a development on the communitarian position. The nature of these demands will be the focus of this thesis, but whatever substantive norms they involve I will categorize them as the principle of fraternity.

Fraternity here is a label rather than a definition, and it is one that I make with full knowledge of the conceptual baggage that could be attached to my choice. Both in its etymology and in its historical use, fraternity is a masculine word. Among the ancients, where its equivalent was an expression of friendship held possible only among male citizens, and among the moderns, where women were only included in the social contract through their public connection to a male – their father, their husband or their sons – fraternity was a sexist concept. In its last moment of prevalence, in the enlightenment revolutions, it referred to a bond among soldiers in wartime that was also exclusively masculine. I hope to remedy that defect here. I choose this word in full awareness of its gendered history. I can only hope the uses to which I put it will be

clearly seen as informed by my feminist – that is, sensitive to the moral worth of men and women – approach to moral and political philosophy. It is this sort of sensitivity with which Susan Moller Okin critiqued contemporary liberalism for lacking that I hope to bring to bear here, my central term notwithstanding.³

I choose fraternity for two reasons. First, because I believe all its major uses are historical: it has largely fallen out of use over the past century. Rawls mentions fraternity in his discussion of social cohesion and the perpetuation of a just society,⁴ and Dworkin discusses it briefly in his explanation of associative political obligations,⁵ but neither explains what it really involves or why it would be required. Neither comes anywhere near to recognizing it as a principle akin to autonomy, representative of a second fact of ethical importance. As such, while it certainly has conceptual baggage, this is older and less closely connected to my study than the baggage that might come along with some other words. But for this problem I might have used solidarity. However given the re-emergence of concern with solidarity amongst Anglophone philosophers, there are too many connections already underway.⁶ This might not be a problem were I to adopt a version of solidarity closely linked with one or another of the extant options, the version I will advocate is idiosyncratic. It is sufficiently different from the mainstream to warrant a different label. I considered two alternatives: community and alterity. But ultimately neither is particularly apt. Community seems to imply a wide number of individuals in a

³ Susan Moller Okin, *Justice, Gender, and the Family*, (New York: Basic, 1989), p. 76.

⁴ John Rawls, *A Theory of Justice 2nd Ed.*, (Cambridge, MA: Belknap, 1999), p. 90.

⁵ Ronald Dworkin, *Law's Empire*, (Cambridge, MA: Belknap, 1986) pp. 195-202.

⁶ Recent work on solidarity includes Tommie Shelby, *We Who Are Dark*, (London: Belknap, 2005), Sally Scholz's *Political Solidarity* (University Park, PA: Penn. State UP, 2008) and a special issue of the *Journal of Social Philosophy* in 2007 dedicated exclusively to Solidarity, including contributions from Sally Scholz, Carol Gould, Jean Harvey, Larry May and William Rehg that will be mentioned elsewhere in this thesis.

way that I wish to avoid. Alterity, or 'other-focussedness' is a relatively obscure term, so while lacking baggage it might also have difficulty resonating as a valuable principle.

Returning to the methodology, I must defend the dualism of the two facts in two different directions. Put simply, one objection asks 'why two and not one,' while another asks 'why two and not more?' There is a temptation with dualist theories to attempt to reduce one principle to the other or both principles to a third. I believe that the two facts representing the two standpoints are sufficiently different that any attempt to assimilate them in either direction would fail to adequately appreciate the concerns of one or both of the principles involved. Attempts to try and explain sociality in terms that reduce it to a component of autonomy would leave any resultant principle ill suited to actually explaining what sociality involves. Likewise, individuality and autonomy are so closely connected that attempting to reduce individuality to some other principle would undermine individuality, undermine the principle, or leave only tenuous connection between the two. On the other hand, I should consider whether there are more than two facts of fundamental relevance to moral and political philosophy. While I am open to this possibility, I cannot see what these alternative basic facts would be. As I discussed earlier, while some kinds of community will doubtless require further principle owing to other necessary features, a basic account of justice must explain what is required for any society to arise among individuals. This seems to me to involve two features: that society is the thing that arises among individuals and that individuals are the things among which society arises. The first feature connects with the fact of sociality, while the second leads to the fact of individuality. If there are more, they must arise from particular forms of community that are more advanced than is necessary for basic moral and political obligations to arise.

At this point it might be helpful to explain my use of moral and political obligations and the role they play in this study. I follow Nagel in holding that the two facts are critically important in explaining what moral and political philosophy involve, but I will ordinarily frame this in terms of the legitimacy of obligations, and in particular of whether one ought to adopt a maxim or policy. Maxim, here, is meant to refer to a moral decision, while I intend to link policy with some political rule. I make no claims about the connections between morality and politics apart from that the same two standpoints underlie each sphere. That they are connected should be clear, but I will make no effort in this thesis to explain the nature of that connection.

Furthermore, I discuss maxims and policies in terms of legitimacy, but in much the same way as other authors discuss justice. In part, this is simply a matter of following Nagel's methodology, but in part this reflects a possible difference between the moral and the political. I believe that Rawls was wrong to claim that justice is the first virtue of all social institutions, since morality itself is a social institution and justice is not its first virtue.⁷ While justice seems an appropriate term for political legitimacy, it does not quite seem appropriate to call morally right actions just. Likewise, it seems awkward to call some politically just policies morally right. As such, I will use the more neutral term legitimacy to describe both. What legitimacy involves will be discussed in detail in chapter seven when I attempt to demonstrate how to reconcile the principles of autonomy and fraternity. For the moment, I will simply say that legitimacy involves a positive connection between a principle and a maxim or policy, such that a maxim or policy can be legitimate or illegitimate due to its fidelity or infidelity to a given principle.

⁷ Rawls 1999, p. 1. See also for a response to efforts to expand the category of 'social institution' to encompass things like the family and morality as a whole see Brian Barry, *A Theory of Social Justice Vol. 2: Justice as Impartiality*, (Oxford: Oxford UP, 1995), p. 72ff. Here, Barry claims that these are not properly political. For an explanation of why they are see Okin 1989.

To whatever extent this discussion applies to political questions it contributes to a theory of justice, while to whatever extent it applies to moral questions, it contributes to a theory of rightness. In either case, it is a question of what principle legitimates various proposed maxims or policies as consistent with the normative requirements of the fact of sociality.

As mentioned above, this thesis will follow in three parts. In the first part I explain why a study of the standpoint of the collective is important. This will involve two chapters. In chapter one I show how autonomy represents the normative requirements of the fact of individuality. I frame this in terms of a reply to the communitarian critique. Put simply, liberalism is right to contend that individuality is important and to whatever extent the communitarian critique relies on the claim that we are not autonomous individuals in the liberal sense it is doomed to failure. Nonetheless, I believe there is something left for a communitarian theory to do: to explain what really is required by our sociality and how these requirements should interact with the requirements of autonomy. I demonstrate the shortcomings of autonomy in the second chapter. There are many important maxims and policies, including family partiality and the obligation to obey the law, that cannot be adequately explained as legitimate by autonomy. Their legitimacy must come from a second principle, the content of which I will work out here. Finally, the ways in which autonomy fails here provide us with criteria for judging among candidates for the principle of fraternity.

Part two involves an assessment of three candidates for the principle of fraternity. In chapter three I assess whether tradition can play the role required. On its most plausible interpretation, tradition is insufficiently universalizable to account for the basic kind of ethical obligations required at the level of bare sociality. Chapter four

involves an examination of impartiality to determine whether this commonly discussed principle can adequately represent the standpoint of the collective. I find that a second-order impartiality of the kind discussed by Brian Barry is too vacuous to serve,⁸ while first-order impartiality of a Nagelian kind is incompatible with the kind of obligations we are concerned to legitimate.⁹ Chapter five looks to three different conceptions of solidarity to determine whether one of these might fit with the needs of the dualist approach. While a robust version of solidarity found in Tommie Shelby is too strong to be compatible with autonomy,¹⁰ and a weak version based on self-interest is important but lacks the necessary alterity, I argue that a moderate version can work. This would involve the idea that the interests of another generate obligations to enter into relationships of solidarity under certain circumstances and through a very basic ethical obligation. I call this Moderate Ethical Solidarity, and explain how it is plausible at the end of chapter five.

Part three picks up with Moderate Ethical Solidarity and attempts to show how a basic ethical obligation of consideration can play the key ethical role of incorporating the interests of another into one's own interest set. This is the focus of chapter six. This conception of moderate ethical solidarity via consideration, then, is my proposed candidate for the principle of fraternity: the fact of sociality requires us to enter into relationships of solidarity with another when we recognize that a common interest will be more likely met by such entry, while consideration leads us to have this recognition when the circumstances exist. In the seventh and final chapter I explain how, on a dualist approach, this principle can be reconciled with autonomy to explain when a

⁸ Barry 1995.

⁹ Nagel 1991.

¹⁰ Shelby 2005.

maxim or policy is legitimate. Ultimately, I contend that fraternity and autonomy have different valences of legitimacy. Fraternity requires a process of legitimation, while autonomy provides a standard below which obligations are difficult to legitimate. This leads to a stringent approach to legitimacy, one where each principle has a veto over the legitimacy of a maxim or policy. I defend this result as consistent with the phenomena involved in choosing from among evil options.

Part I: *Autonomy and the Prospects for a Renewed Communitarianism*

Abstract: In this part I explain why autonomy is an important but limited value. We are individuals of the kind Liberalism claims, but this is not our only morally or politically relevant characteristic. To focus on autonomy alone is to neglect the importance of our sociality and what principles it might require. In chapter one I will provide a characterization of autonomy in the context of explaining the failure of the original communitarian critique. In chapter two I will explain how the version of autonomy presented in chapter one cannot, by itself, provide a sufficient condition for the legitimacy of an important category of maxims. This should show the value of a renewed communitarian project focussed on explaining how a second principle can demonstrate the legitimacy of some basic ethical intuitions.

Chapter 1: Autonomy and the Failure of the Communitarian Critique

Abstract

This chapter serves two purposes. Firstly, it argues that the original communitarian critique has failed. The critique's negative claims about liberalism – specifically that the liberal view of the concept of the autonomous individual is not an accurate depiction of human nature – depend on its positive claims about the nature of individuality. Since the positive claim fails – because the communitarian view of the concept of individuality is itself implausible or misunderstands the liberal project – the original negative claims also fail. Secondly, this chapter gives an account of autonomy that accurately represents the liberal discussion and that can serve as a central moral and political value. This kind of autonomy combines an authenticity condition with the importance of meaningful choice. This chapter will therefore prepare the way for what follows in the next chapter, where I discuss the need for a second legitimating principle, and the remainder of the thesis where I explain what that second principle should be.

Introduction

This chapter will explore the failure of the original communitarian critique. In so doing, it will accomplish two goals. First, it explains how and to what extent the original communitarian critique failed. The core of the communitarian critique, in authors like Sandel, Walzer, McIntyre and Taylor, was a critique of the liberal view that justice requires us to treat others as autonomous because of our individuality. Communitarians based their critique on the view that we are not individuals in the way liberals contend, and so autonomy cannot have the importance it does in liberalism. In my view the problem with the communitarian critique is that individuals *are* like liberals believe:

separate selves deserving of autonomy. For communitarianism to have any role, then, it must claim that there is something more to the human condition than individuality that is relevant for explaining the legitimacy of moral and political obligations.

Second, in defending liberalism against the original communitarian critique I will present an account of what I believe is at the core of the liberal position. This involves explaining the nature and importance of autonomy to liberal thought and defending it against communitarian objections. I will show how autonomy arises from the separateness of persons. The connection between autonomy and separateness is different for different theorists. For Rawls it is based on the fundamental intuition that people are 'free and equal.' I claim, following Raz, that separateness can be seen as implying autonomy because of the incommensurability of plans and the importance of plans to individuality. These values seem, to me following Raz, to only be ensured in a society that recognizes a principle that individuals ought to be treated in such a way that they can live life from within through making meaningful choices.

Following this explanation of the source and nature of autonomy I explain why the original communitarian critique fails. As Kymlicka shows, the communitarian faces a dilemma. He must either advance a view of people – a basic ontology of human nature – that is either deeply incoherent or accept one that that is no longer problematic for a liberal moral/political theorist. However, the communitarian position need not have failed so easily. It need not be premised on the plausibility of the communitarian conception of the self, or on the implausibility of the liberal connection between individuality and autonomy. A communitarian could, instead, argue against the liberal treatment of sociality. What I believe a communitarian should argue – what remains for the critique – is that the liberal conception of the self, while coherent, is limited. It can

only represent the normative requirements of individuality, and that liberals either omit or mischaracterize the demands of sociality. The view that autonomy is important because of individuality is correct, but it is a part, not the whole, of an explanation for which maxims and policies are legitimate in a just society. While liberals are right that we are individuals, what remains for the communitarian critique is to show that this is not all that we are. I will explain the importance of this role in the next chapter and will take up the task of developing a communitarian principle in the remainder of the thesis.

I. Individuality and the Original Communitarian Critique

At its core, the communitarian critique claims that the liberal connection between individuality and autonomy is wrong. Rather than disputing the connection between autonomy and individuality, most communitarians instead challenged the liberal approach to individuality. Ultimately, the claim is that we are not like liberals think we are: we are not individuals in the supposedly ‘atomistic’ way that makes autonomy a genuinely valuable principle. There are two stages to the communitarian argument. The first is to deny the liberal claim of neutrality about the concept of individuality, while the second is to demonstrate that the conception of individuality operative in liberal thought, and on which autonomy depends, is implausible. While I will ultimately argue that this approach fails – that we are the kind of individuals liberals presume and that autonomy is an important political value – I nonetheless must present the communitarian critique first, so that we can understand both what fails and what remains.

Several different arguments are usually framed as communitarian critiques of liberalism but the important feature these arguments share – which unites them as communitarian – is an objection to the liberal understanding of the concept of

individuality. Of course, since Rawls, their primary target, claimed to be neutral about the concept of individuality, the first step in the communitarian argument is to claim that there is an implicit, if not explicit, concept of the individuality at work in liberal moral and political theorizing. This shows up in Taylor's argument against Rawls' reflective equilibrium and in Sandel's objections to Rawlsian claims of metaphysical neutrality, as I will discuss here.

In his work on Hegel, Taylor discusses a Hegel-inspired approach to the Kantian-influenced Rawlsian liberalism. The distinction between *moralität* and *sittlichkeit* is key for both Hegel and Taylor. *Moralität* is characterized as an attempt to derive universal ethical principles from a single fixed point. It is meant in contrast with *Sittlichkeit*, which is an attempt to define ethical principles based on the practices of a community. To Hegel, the former is really a veiled attempt to do the latter – to attempt to bolster the practices of a community by claiming that they have a foundation in something beyond the community. 'Hegel runs counter to the moral instinct of liberalism then and now,' Taylor says. 'Between obligations which are founded on our membership of some community and those which are not so contingent we tend to think of the latter as transcending the former, as the truly universal moral obligations.'¹¹ To Taylor, we err in favouring the universal and abstract over the communal and contextualized. Liberals make this mistake, Taylor claims, because they advance a conception of individuality that is indeterminate in a Kantian-Hegelian sense; it is without content, or 'empty.' According to Taylor, Hegel claims that the desire to be autonomous in the *moralität* sense 'expresses the demand of [*Geist*] to deduce its whole content out of itself, not to accept as binding anything which is merely taken up from

¹¹ Charles Taylor, *Hegel*, (Cambridge: Cambridge UP, 1975), p. 377.

the outside.¹² This leaves *Geist* empty because it leaves an individual who seeks freedom or autonomy only for the sake of being free rather than for the sake of the plans that freedom might allow us to achieve; a form of an individual devoid of content. Only within a *sittlichkeit* could *Geist*, grounded in the practices of a community even while trying to change those practices, find a solid foundation and avoid the view that freedom is its own reward.

Sandel's criticisms attempt to build on Taylor's initial critique. In *Liberalism and the Limits of Justice*, Sandel claims that the liberal notion of the self is problematically "unembedded." Sandel's argument is, in part, an argument from phenomena: liberal claims about the nature of the self violate our perceptions. We do not experience ourselves as unencumbered individuals. We cannot, Sandel claims, abstract away from our various characteristics and relationships to find some underlying core upon which we can then make moral judgements.¹³ In part, this can be seen as a reaction against the Rawlsian approach to the original position, but as such an argument it misses the mark. The original position is a device used to force moral deciders to abstract away from most of their morally irrelevant considerations, allowing only morally relevant considerations to influence deliberations about the fundamental principles of justice. This is not a phenomenal claim – it is not a claim that people are 'really like that,' or that people can experience themselves as unencumbered selves. Nonetheless, whether these abstractions in the original position influence the content of the principles of justice and

¹² Ibid. 369. *Geist*, in Taylor and Hegel's terms, is a polysemous word. It translates into English as 'mind,' 'consciousness,' 'spirit,' 'soul,' or, in some Hegelian contexts, as 'reason.' At this point, Taylor uses the term 'spirit,' which is also the term used in most translations of Hegel. However, I find this nomenclature misleading. It lends a critically important concept a sense of hokey supernaturalism. It should be thought of as something closer to the mind's consciousness. Particularly in Hegel's *Phenomenology of Geist*, *Geist* undergoes a journey linked to the growing and unfolding of consciousness as it explores the phenomenal world.

¹³ Michael Sandel, *Liberalism and the Limits of Justice*, (Oxford: Oxford UP, 1983), esp. pp. 24-28.

thereby prejudice the deliberations remains a potentially legitimate concern. Sandel claims that it does, but in making this claim he relies on a presentation of an alternative conception of the self. Rather than see ourselves as an ego with accidental traits, we see ourselves as inextricably ‘composed of’ our commitments and attachments. According to Sandel, individuals self-perceive as a combination of a number of traits (educated, athletic, blind) and a series of relations (friend, brother, student) rather than as an underlying, unencumbered ego.¹⁴

If people are not individuals in the way liberals claim this might undermine the importance of autonomy. However, to truly assess the success or failure of the communitarian position I must first explain what autonomy means in liberal thought. Only then will I be in a position to explain why it matters and why, insofar as it is an argument against the importance of autonomy, the communitarian critique must fail.

II. Liberalism and Autonomy

Most theories of justice, or of the legitimacy of moral and political maxims and policies, have some principle at their core. To borrow Rawls’ analogy, one epistemological theory is differentiated from others in part by how they differ about what knowledge involves or how it can be reached. Moral/political theories are the same: they differ in which principles are taken to required and how. In this regard I take a principle requiring respect for autonomy to be the central principle in contemporary liberal theories. In this section I explain the concept of “central principle” before I discuss the role of autonomy in contemporary liberal thought.

When I say that the requirement of respect for autonomy principle is the central principle for contemporary liberalism I claim that autonomy is something that a given a

¹⁴ Sandel 1983, pp. 15-24.

maxim or policy must be positively connected to in order to be legitimate, or negatively connected to in order to be illegitimate. This legitimation can work in a two different ways, corresponding to the positive and negative connections just mentioned. In the positive context, a principle can provide a source of legitimacy: insofar as a maxim or policy is formed pursuant to a principle that maxim or policy is legitimate. In the negative context, failure to satisfy the demands of a principle can render a maxim or policy illegitimate. I characterize these two versions of legitimacy as “process” and “threshold,” and they will be discussed in detail in chapter seven, where they play a critical role in determining how to reconcile the demands of individuality and those of sociality. As such, I set aside questions of how much autonomy is necessary until then.¹⁵

There is no one fixed definition of autonomy. It plays somewhat different roles in different systems of moral and political legitimacy. A communitarian who wishes to claim that their theory includes autonomy will be inclined to adopt a restricted definition of autonomy – one which makes it consistent with the communitarian’s central moral or political principle. Conversely, a libertarian will approach autonomy as a much more exacting standard. Neither approach is necessarily wrong or incoherent. Nonetheless, I believe the liberal approach best characterizes both the consequences and the sources of autonomy. However, since not all liberals are in complete agreement about the nature of autonomy, I will develop a hybrid view that I believe would be largely supported by all the major thinkers in the contemporary tradition.

My approach most closely parallels Raz’s in *The Morality of Freedom*, but it is reflected, I believe, in Rawls, Kymlicka and other authors who, in my view, represent the core of the contemporary liberal tradition. Raz presents three central features of

¹⁵ See the discussion beginning at p. 183.

autonomy: An autonomous individual has the (1) mental capacity and the (2) independence to choose (3) from a variety of meaningful options.¹⁶ All three of these requirements depend on the role of choice. The first quality sets a precondition of mental ability under which choice is possible. This reflects the care Raz takes earlier in *The Morality of Freedom* to distinguish biological self-interest from well-being.¹⁷ This distinction rests on the role choice does not play in our biological interests. Just as bees do not choose to work in hives, humans do not choose many of the things that are important to us. For humans, biological functions can be denied or overridden by other goals. Children can hold their breath until they pass out. Prisoners can starve themselves. Clergy can remain celibate. In some ways we might be best off if we did not have some of our biological urges, but we cannot choose simply not to have them. Desires to breathe, eat and mate persist even when we deny them indulgence. In the examples above, the child still has an interest in breathing, the prisoner in eating and the clergy in sex. In each case a more important interest – the child’s spite, the prisoner’s cause and the clergy’s spirituality – overrides the biological interest. This ability to override, to choose, comprises the mental capacity necessary for genuine autonomy.

The second requirement, independence to choose, introduces a threshold below which choice is not possible. If one is poor in a society where most basic goods and services require great wealth, one’s autonomy is limited. One’s autonomy would be limited, perhaps to the point of extinction, even though one would have the mental ability to choose and options that would be meaningful (to be explained momentarily) were they within the range of choices possible due to one’s circumstances.

¹⁶ Raz, *The Morality of Freedom*, (Oxford: Oxford UP, 1986), pp. 372ff.

¹⁷ Raz 1986, pp. 289ff.

The third criterion's dependence on choice is more controversial as it is imbued with Raz's perfectionism. I will briefly explain the role this perfectionism plays, and why it is not necessarily problematic. What makes an option meaningful for Raz is its ability to further the well being of the individual involved. This is perfectionistic because it establishes one feature of human existence as central: by improving that feature you invariably improve that person's life. Fortunately, Raz establishes a very flexible approach to perfectionism by making well being the central good. Since we can understand well being in a number of different ways, it is sensitive to the demands of reasonable pluralism.

What is most important about well being for Raz is its connection with an individual's plans and goals. 'Improving the well being of a person,' Raz explains, 'can normally only be done through his goals. If they are bad for him the way to help him is to help him change them, and not to frustrate their realization (except on rare occasions when this is an adequate way of getting him to change them).'¹⁸ This emphasis on an established standard – well being conceived of as the satisfaction of plans even when the plans are wrong – is closely linked with the approaches of supposedly anti-perfectionist theorists like Rawls and Kymlicka. While for Raz meaningfulness pertains to well being, for an anti-perfectionist it could be restricted to whatever constitutes meaningfulness for the individual involved. Raz's characterization of well being is broad enough to be compatible with a certain limited anti-perfectionism. Kymlicka talks about meaningfulness in showing how leading a life from within is what is important to liberals.¹⁹ This works positively and negatively. On the positive side, the ability to choose life partners is a meaningful choice because, given the impact one's spouse(s) can have

¹⁸ Raz 1986, p. 291.

¹⁹ Will Kymlicka, *Liberalism, Community, and Culture*, (Oxford: Oxford UP, 1989), p. 57.

on one's interests, this choice will almost always have value for the individual involved. On the negative side, the ability to choose among religions is not a meaningful choice to a religiously indifferent individual because - in Razian terms - it would not add to her well being or - in Kymlickan terms - because it is not a choice that has any value for the individual involved.

The centrality of choice to autonomy is most explicit in Kymlicka's *Liberalism, Community and Culture*. It comes up in his critique of Sandel's approach to embeddedness that I will discuss in detail at the end of this chapter. For the moment, consider Kymlicka's claims that what is wrong with Sandel's view about the importance of embeddedness is that 'on this view, we neither choose nor reject [constitutive] attachments, rather we find ourselves in [the attachments]; our ends and goals come not by choice but by self-discovery.'²⁰ This view is rejected as implausible because 'we can and do make sense of questions not just about the meaning of the roles and attachments we find ourselves in, but also about their value.'²¹ Choice - the ability to determine value - is a central feature of human life that characterizes autonomy for Kymlicka and other liberals, whether perfectionists like Raz or anti-perfectionists like Rawls and Kymlicka.

Rawls usually frames the ability to choose in the more overtly Kantian language of a life led from within.²² The basic premise of Rawlsian liberalism is that people are essentially free and equal. This is the central premise that influences the original position, the deliberation of basic principles and their implementation after the lifting of the veil of ignorance. To Rawls, living autonomously is how one expresses one's freedom and equality. He says 'by acting from these [basic] principles [of justice]

²⁰ Kymlicka 1989, p. 57.

²¹ Ibid., p. 58.

²² Rawls 1999, 221-227.

persons are acting autonomously: they are acting from principles they would acknowledge under conditions that best express their nature as free and equal rational beings.²³ Rawls' appeal to rationality fits well with Raz's first criterion of mental capacity, where the value of freedom is shown in autonomy's central ability to choose. The ability to acknowledge principles as our own, rather than because they are the principles of some other, is the central feature of autonomy. That we are all free and equal is why we must all be autonomous, otherwise it would make sense for the smart, strong, or wise to rule over those less capable. It would be in some of our best interests to rule and in some of our best interests to follow. Moral equality makes such a circumstance unjust, requiring all lives to be led from within by choosing and evaluating options for oneself.

Kymlicka also serves as a bridge between the Razian and the Rawlsian approach to autonomy. While Kymlicka refers to autonomy as choice in some contexts, in others he adopts the Rawlsian language of the 'life led from within.' He says, with reference to the ability to make mistakes in choosing from among meaningful options, that 'no life goes better by being led from the outside according to values the person doesn't endorse. My life only goes better if I'm leading it from the inside, according to my beliefs about value.'²⁴ Furthermore, we can see the language of autonomy as a central value in Kymlicka's Rawlsian formulation as well. Because living a life from within is always better, and lives are only better when led from within, all other potential political values must be included only in such a way as not to sacrifice that autonomy. This adopts the emphasis on choice of Raz's approach into language with which anti-perfectionists will be more comfortable. For Raz, the choices have to be among

²³ Ibid., p. 452.

²⁴ Kymlicka 1989, p. 12.

meaningful options. What counts as meaningful for Raz includes only those choices conducive to well being, characterized as the satisfaction of goals. What counts as meaningful for Kymlicka, Rawls and anti-perfectionists is defined by the values of the person involved, which is a broader class than for Raz.

Ultimately, then I characterize the value of autonomy as **the ability to live one's life from within through making meaningful choices**. This definition encompasses both the authenticity condition that we saw as important in Kymlicka and Rawls and the “meaningful choices” condition found in Raz. What is central to all is the importance of choice to a life led from within. This does not mean that one must have unlimited options, or unfettered ability to do whatever one wishes: a meaningful range of options given one's own priorities and inclinations suffices for autonomy. We will return to this definition of autonomy again in Chapter 7, where we see exactly how strong a requirement it is, but for the moment I must provide some justification for thinking that this value is what our individuality normatively requires. This justification is the focus of the next section.

III. Autonomy and Individuality

Using the criteria for political value and autonomy presented above, a respect for autonomy is clearly the central principle of liberal political systems. For Rawls, autonomy plays a critical role in generating the two principles of justice and in their lexical ordering: it explains both why the difference principle is important as a version of a principle of equality and why the principle of liberty is more important. For Raz, autonomy is that central feature of political morality that makes freedom an essential requirement of legitimate authority. For Kymlicka, our autonomy is at the core of our natures and explains why an ability to choose among conceptions of the good (and their

applications) is of undeniable importance. For all liberals it is grounded in aspects of our individuality that any moral and political theory must address if it is to explain which maxims and policies are legitimate.

A. Separateness and the importance of individuality

In each case I believe autonomy gets its value from with individuality because of a commitment to the separateness of persons. Autonomy might not be linked to individuality. Collectives can be autonomous too. A collective can make judgements and have interests apart from the interests of its constituent individuals. Collective interests are the plans and goals that give rise to collective well being, on this view. Collective plans involve choices the following of which allow a group to live an authentic, self-directed life. Collectives, just like individuals, could be seen as institutions demanding autonomy in the sense that they are institutions that could make use of the abilities autonomy is meant to encompass and protect. While the metaphysical commitments of this approach to society are problematic, the liberal claim should try and find a way to justify that individuals are the kinds of entities to which autonomy primarily pertains. The liberal claim that autonomy must be a property of individuals cannot be grounded on the belief that only individuals can have the kind of plans, goals, and ends the fulfilment of which requires autonomy. If capacity to have ends suffices to give rise to the importance of autonomy, then collectives could demand autonomy too. As such, liberals need an argument to claim that what is autonomous is the individual, rather than some other type of thing that can have interests and plans.

The liberal justification for stressing individual, rather than collective, autonomy as important relies on the separateness of persons. The separateness of persons makes collective autonomy different from individual autonomy. Collectives involve either

identification or aggregation of interests. Identification of interests happens when two people each have the same goal and the satisfaction of that goal for one of them constitutes satisfaction of the goal for both. If I have a goal of stopping global warming and you also have this goal, were these interests identifiable it would not matter which of us actually achieved the goal. In this way an identity of interests is different from a mutual interest. If we had a mutual interest in stopping global warming, this implies that we coordinate efforts to achieve this goal. If our interests identify, no coordination is necessary. Identity of interests is a significantly higher standard than aggregability of interests, since identifiable interests are necessarily aggregable, but aggregable interests are not necessarily identifiable. Identity of interests is also deeply implausible given what Rawls calls the ‘fact of reasonable pluralism.’²⁵ The fact of reasonable pluralism is the fact that reasonable people can reach different conclusions about what is important. By accepting the fact of reasonable pluralism we accept that people have different interests, and that even when they have the same interests they may value them differently. Since the fact of pluralism seems true,²⁶ complete identity of interests is a dubious ground for judgement, leaving aggregability of interests the only option for showing that persons are relevantly non-separate.

B. Aggregation and Individuality

What do I mean by the separateness of persons? There are many ways to express the intuition behind this slogan. Most ways are metaphysical. In one sense, we are separate people because we do not share a mind: I cannot know your thoughts without the mediation of some form of communication, nor can you know mine without similar circumstances. Why, however, would this be of any moral or political

²⁵ John Rawls, *Political Liberalism*, (New York: Columbia UP, 1993), p. 24n and pp. 36-40.

²⁶ The fact of pluralism will be discussed again in more detail in chapters two and five.

relevance? Strictly by itself it might not. Suppose there are only two people left on earth, living at opposite ends. If they never interact, why would their separateness have any moral and political relevance? From where would the moral and political relevance come? Furthermore, if people were able to read minds or hear thoughts they would still believe that the thoughts they would (presumably) be able to tell their own thoughts from those of others.²⁷ Even if, however, I was wrong about this, I do not depend on metaphysical separateness for my discussion. I discuss separateness in an ethical context rather than a metaphysical one. Where the moral and political relevance of the separateness of persons arises is through the attachment of individuals to interests and plans. We are separate in a way that is morally and politically relevant because we have interests and plans of our own, in which other people may or may not figure in morally relevant ways.

The question of personal identity is an ethical question because it is inextricably associated with our interests.²⁸ My circumstances and my identity will give rise to a system of value for me because they make some things appear to be better for me and other things appear to be worse for me. This valuation is, to some extent, chosen. I am capable of questioning whether some goal or some activity is ‘worth it’ for me. Indeed, some kind of weighing of interests is inevitable, given the finitude of mental and physical capacities. My life and its circumstances only provide me with the resources to accomplish so many of my possible goals. For instance, given the length of time I can reasonably expect to live and the length of time it takes to become a Symphony Conductor and a respected Philosophy Professor, I am unlikely to have the chance to

²⁷ This is, however, an empirical question that I, thankfully, cannot answer at this point. In any event, since we cannot have unmediated access to another’s thoughts, the point is moot.

²⁸ In this, I am most closely, though not exactly, following Raz’s language, as he makes the necessary distinctions most clearly. I believe the essence of what follows would be acceptable to most liberal theorists.

do both. To my knowledge, no one has. These goals are interests – it would be generally better for me in the Razian sense if I were to have them satisfied. They might also be in my interest in a different sense. It might be the case that my life will go better if I succeed at my chosen or stumbled-upon endeavours. Even if this was false, however, and I would be better off in the long run if my plans were to fail, it is still an interest (in the first sense) to have them succeed. In this way countervailing interests override rather than extinguish lesser interests, as *pro tanto* reasons for action override other, weaker, *pro tanto* reasons.²⁹ Those overridden interests do not cease to have moral weight; rather their moral weight is overwhelmed by the moral weight of some other interest.

C. How interests require separateness

The explanation of why individuals, rather than collectives, are the kind of things to which autonomy is important is closely connected with the separateness of persons, but what effectively demonstrates that persons are separate is some basic features of ethical concepts themselves. The evidence for this claim is usually framed as an argument against utilitarianism (in Rawls) or consequentialism (in Raz), but ultimately it depends on the notion that our ordinary use of the concept of moral obligation is not legitimately aggregable. Individuals' interests cannot be legitimately traded off against those of other individuals, nor can an individual's interests be partially satisfied by partial satisfaction of a set of individuals' interests of which one is a member. In Raz this takes the form of an argument against comparability. In Rawls it involves the claim that individuals in the original position would reject such a schema. Ultimately, I believe the conceptual problem underlies both approaches, but my extreme view is unnecessary to

²⁹ My use of *pro tanto* and *prima facie* reasons here follows Shelly Kagan's use in *The Limits of Morality*, (Oxford: Oxford UP, 1986), p. 17. It differs from other uses in that *prima facie* reasons are apparently reasons but may not be genuine reasons all things considered, while *pro tanto* reasons are always reasons, even if they are not what one ought, *ultima facie*, do.

prove the point. In either event, individual interests cannot be legitimately aggregated, thus guaranteeing their ethical separateness and that the relevant kind of autonomy attaches to individuals.

In the Rawlsian framework the separateness of persons plays a key role in distinguishing a utilitarian theory of justice from justice as fairness. ‘Utilitarianism does not take seriously the distinction between persons,’³⁰ Rawls claims because ‘it does not matter [to a utilitarian] how this sum of satisfactions is distributed among individuals any more than it matters, except indirectly, how one man distributes his satisfactions over time. The correct distribution in either case is that which yields the maximum fulfilment.’³¹ The trouble with this in a Rawlsian framework is that parties in the original position would not agree to it. Risk aversion means that those who are left worst off by this maximalist approach will reject it.³² However, for present purposes the Rawlsian argument illustrates the connection between aggregation and the separateness of (or, in Rawls’ term, distinction between) persons. Aggregation is illicit because people are ethically separate. It matters not a whit to those at the bottom of the social food chain how happy those at the top are made by the unequal distribution of resources among them. Aggregation would be rejected in the original position and cannot, for Rawls, form any direct part of the principles of justice.³³

³⁰ Rawls 1999, p. 24.

³¹ Ibid., p. 23.

³² Raz 1986, p. 164.

³³ I side with Rawls here against others like Harsanyi and Broome. While a full discussion of this problem is beyond the scope of this paper, I should note that non-aggregability is a controversial point. A series of articles, starting with Harsanyi’s critique of *A Theory of Justice* in 1975, details the problem. See John C. Harsanyi, ‘Can the Maximin Principle Serve as a Basis for Morality? A Critique of John Rawls’s Theory.’ *The American Political Science Review*, Vol. 69, No. 2 (1975), pp. 594-606, and John Broome, *Weighing Lives*, (Oxford: Oxford UP, 2004). For Rawls’ opposition to this see Rawls 1999, pp. 19-30 and 160-165.

Raz's perfectionist approach, however, deals with the problem of aggregation and separateness by demonstrating the incommensurability of individual plans. In his view, the incommensurability of individual interests makes them non-aggregable and thereby demonstrates that it is only by considering the individual and the smallest unit to which interests and plans attach that we can develop a theory of the legitimacy of moral and political obligations. Consequentialism depends on a belief that the interests and plans of individuals are comparable, Raz claims, before presenting an argument that they are not.

'The reasons for [a person] to be engaged in [a project, pursuit or relationship] are incommensurate with reasons for him to engage in some other projects, pursuits or relationships which are incompatible with those he has. There are two aspects to the proposition. First, the value of many pursuits to people other than the agent, their value to society, cannot be compared with the value of many alternative pursuits. Second, their value to the agent, their contribution to his well-being, cannot be compared with that of many others.'³⁴

While this can be framed in epistemic terms, as an inability to know which set of projects is more valuable overall, it is more accurately understood as a version of what Raz calls incommensurability. Two options are incommensurable when 'neither is better than the other' or 'there is (or could be) another option which is better than one but is not better than the other.'³⁵ Plans and the satisfaction of interests are a key example of this. While it is difficult enough for one individual to choose among possible life plans, it is distinctly more difficult to choose among possible life plans for multiple individuals. Indeed, it is only by treating a collective as though it were an individual that we think such a comparison possible.³⁶

³⁴ Raz 1986, pp. 340-341.

³⁵ Ibid., p. 325

³⁶ A point Rawls also makes against utilitarians at Rawls 1999 pp. 23-3. For discussion of this problem see Raz 1986 pp. 358-9.

What each of these two approaches shows is that individuality matters to the satisfaction of plans and interests in a way that makes their aggregation conceptually illicit. If people's interests are aggregable, alike plans would be equal in worth to other like plans. Plans could be commensurable if, for example, one person's success were just as good as another person's success no matter who succeeds. If a theorist treats individuals solely as the bearers of plans, non-ethically separate individuals would be individuals whose plans could be aggregated. The satisfaction of plans and interests could be pooled and individuals would be entitled to a certain percentage of satisfaction as members of a pool. However, as Rawls points out, the distribution of satisfactions matters. If aggregability were legitimate, the satisfaction of the plans of one part of the set is equally as good as the satisfaction of the plans of another part of the aggregation.

However, this is an implausible picture of individuals. Those in the Rawlsian situation would reject it, while those in the Razian picture would find it an inaccurate depiction of their circumstances. When individuals are considered as people with plans, the natural conclusion is that they are separate, and that the satisfaction of one's plans is not equivalent to the satisfaction of another's. Any attempt to make people's plans commensurable either involves an implausible approach to plans or an implausible approach to people. As I believe Raz has shown in my prior discussion, this becomes clear when we look in detail at what it is to have a plan and to have that plan succeed. This shows that the picture of the connection between individuals and their interests that allows pooling of interests is implausible from the start, and that any attempt to make people commensurable depends on this implausible picture.

D. Separateness and Liberalism

The importance of the non-aggregability of individual plans is apparent in the justification of individual autonomy throughout the liberal tradition. The separateness of persons permeates Rawls' work, arising out of reflective equilibrium's key conclusion that people are 'free and equal.' However, the connection between 'free and equal' and separateness becomes more obvious at certain key points. The clearest presentation comes in his discussion of why rationality can serve as a thin theory of the good. He claims that central to the notion of personhood is Royce's idea of a plans. He says that 'for Royce, an individual says who he is by describing his purposes and causes, what he intends to do in his life.'³⁷ (*Theory* 358) In this emphasis on plans Rawls is close to Raz and to the argument from incommensurability above. However, this is one point at which reflective equilibrium seems to be, in Taylor's phrase, holding a lot of the cards.³⁸ We know that for Rawls reflective equilibrium generates the central view that justice depends on a society where people are 'free and equal,' but we do not know why. Why this is unfortunate will be explained in a moment when I discuss the communitarian critique, but since Kymlicka picks up on the Rawlsian approach, their views should be examined in tandem.

In *Liberalism, Community and Culture*, Kymlicka attempts to clarify the concepts of Rawls' *Theory* in a way that meets, rather than accommodates, the objections presented by the early communitarian critiques. Individuality is important, and persons are separate, because the basic unit of choice must always remain with the individual. Nothing smaller than individuals can make choices based on coherent plans, and no group can have plans without depending on the plans of individuals; consequently, for

³⁷ Rawls 1999, p. 358.

³⁸ Charles Taylor, *Sources of the Self*, (Cambridge: Cambridge UP, 1989), p. 89.

Kymlicka, as for Rawls, the person, not the self, is the basic unit of morality (55-56). I am unconvinced by Kymlicka's view about the plans of collectives, or for that matter about the need for individual coherence, but nonetheless believe the connection between plans and the separateness of persons remains important.

The difficulty in this is that Kymlicka, like Rawls, simply accepts that individuals are 'free and equal' as the product of reflective equilibrium. Neither explains why it is individuals are the things that must be treated as 'free and equal' nor why they must be treated as 'free and equal' rather than as 'comrades' or 'according to rank.' Was the freedom and equality of individuals the only option for a standard for political legitimacy and the thing to which it attaches, this would not be problematic. However, because a case could be made for the sovereignty of the community, the state, the family or some other collective entity, this argumentative gap is problematic. This gap is not, however, found in Raz, who I follow in presenting the argument from incommensurability of plans above. Nor is it found in the argument against aggregation from poolability that I claim underlies both the Rawlsian and the Razian approaches to the importance of individuality.

Autonomy is central to the liberal program, but it is an individualistic autonomy. This was not the only option. Collectives, like families and clubs, can be autonomous; they can have plans and make decisions from an array of alternatives. Therefore the separateness of persons is a critical value, informing the scope of autonomy in liberal thought. Separateness arises from a number of possible contexts – from reflective equilibrium as the view that people are free and equal is but one example – but the most consistent one is the argument from incommensurability. In clubs or other associations

we look at people only as a member of that club, rather than as a member of a number of possible organizations.

I should note, however, that as Sen discusses in *Identity and Violence*, our interests might be incommensurable within individuals as well as between people. One person can have different, potentially conflicting interests depending on the presence and strength of their various attachments.³⁹ I have interests that arise from my relationships with my family, with my culture(s), with my department, and with my friends, *inter alia*. Where I differ from the collective, is that when I am choosing among incommensurable interests my dignity is not violated. I am not less of a free and equal being because of my inability to choose a good option when I am only left with varying degree of evil. I am still separate, even though the same intransitivity applies at the personal level just as it did at the social level. The ability to choose from among plans, even when that choice is made among incommensurables, is central to autonomy. However, if people are not separate in the relevant moral and political sense, those plans should be aggregable. That plans are not commensurable implies that people are separate. The communitarian critique is problematic insofar as they argue against this approach to individuality.

IV. The Failure of the Original Communitarian Critique

In this section I explain the shortcomings of the original communitarian critique. Ultimately, communitarians claim that we are not autonomous individuals in the way liberals claim. I will argue, however, that Taylor's approach denies the value of a particular kind of autonomy, but this is not the kind of autonomy to which liberals are committed. While Sandel's "embeddedness" approach denied the importance of individuality, this results in a dilemma neither horn of which leaves the communitarian

³⁹ Amartya Sen, *Identity and Violence*, (London: Penguin, 2006), see esp. Chapter 2.

with any room to stand on, as Kymlicka so convincingly demonstrates. Whatever remains of the communitarian critique it cannot be that we are not individuals deserving of autonomous treatment in the way liberals claim. What remains will be the focus of the concluding section of this chapter and the whole of the next.

Most of the various authors associated with the communitarian critique draw on the work of Charles Taylor. Taylor argued that the liberal elevation of autonomy to the level of a central principle is misguided because it imagines that freedom can be something intrinsically good. This might be a legitimate argument against some view of autonomy or of separateness, but it is not effective against the views presented above. It would be an effective argument against a view that claimed the exercise of autonomy or of separateness was good in itself, rather than good as a basic condition for moral and political legitimacy. Kymlicka allows that some might have said things amounting to the view that the exercise of freedom is its own reward, but he also agrees with Bernard Williams' arguments that these claims do not work.⁴⁰ The difference between Taylor's target and the liberals under examination here is in what constitutes freedom. Communitarians seem to believe that post-Rawlsian liberals are concerned only with what Isaiah Berlin called negative liberty, when in reality Rawlsians and liberals who have followed him are more closely concerned with advancing both negative and positive freedom. Was negative freedom itself the only liberal good, a liberal would then judge the better life the one lived like Kierkegaard's aesthete: flitting from possible pleasure to possible pleasure, seeking out the new, rather than the better or more genuine, experience. Likewise, were freedom its own reward the ideal life would be one lived in single-minded attempt to differentiate oneself from others, choosing only

⁴⁰ Kymlicka 1989, pp. 47-50. See also Bernard Williams, *Ethics and the Limits of Philosophy*, (Cambridge, MA: Harvard UP, 1985).

activities no one else had already done. Since liberals need not, and usually do not view autonomy or separateness like this, this kind of autonomy and separateness cannot be seen as their central value. Liberal freedom, encompassing both positive and negative liberty, is already situated. It is situated in the judgement of an individual rather than in the ethos of a community.

Sandel's argument – the argument from embeddedness – can be interpreted in two ways. If embeddedness is interpreted strongly, it relies on the claim that the particular ends given to a person's circumstances are fixed. This claim is implausibly strong, and rejected by Kymlicka. It seems a clear fact that many of our ends can change, including, from time to time, some of our most fundamental ends. It seems quite plausible that changing one fundamental end might, after other changes, involve changing other fundamental ends such that, in time, all our fundamental ends have changed. Furthermore, since Sandel also allows for some choice among ends, among traits and relations, demonstrating that the kind of strong embeddedness he discusses is unpalatable even to a communitarian.⁴¹ This leaves the second communitarian argument with a view compatible with the liberal project it was meant to critique. If we are able to choose among options, whether discovered – to use Sandel's term – or otherwise, that choice is enough for the liberal theorist. Kymlicka's contention that 'the advertised contrast with the liberal view is a deception' holds.⁴² The communitarian must allow that we are autonomous in the sense where the central characteristic is choice among meaningful options, on pain of attempting to argue in favour of an implausibly strong sort of embeddedness. Furthermore, since the concept of the self is one with plans, the

⁴¹ Kymlicka 1989, p. 55-57.

⁴² Ibid. p. 58.

argument for separateness from the incommensurability of plans also applies, reinforcing that this kind of selfhood is ethically separate.

Since plans are the parts of selfhood or personal identity central to the moral and political philosophy of Raz, Rawls, and Kymlicka, the positive aspect of the communitarian critique – its concept of individuality – fails. Since liberal theorists only need to conclude that we are autonomous enough to form plans and to have interests, the target of the communitarian critique becomes noticeably smaller. Charges that the kind of individuals who can do this are characterless, or that this relies on self-interest in a robust sense, are seen to be misplaced. If there is to be a communitarian critique, it will have to be on some other ground than the implausibility of the liberal view of the self because, in both its formulations, that view has become pretty plausible as a representative of the normative requirements of individuality.

Conclusion – What Remains of the Communitarian Critique?

I wish to claim that while we are, in a morally and politically relevant sense, autonomous selves, this is not *all* that we are. Where I think this opening for the communitarian critique emerges most clearly is in the move from autonomy to impartiality in Nagel. At the outset of *Equality and Partiality*, he claims that the ‘unsolved problem [of or moral and political philosophy] is the familiar one of reconciling the standpoint of the collectivity with the standpoint of the individual.’⁴³ Were this really what Nagel meant, that there are two morally relevant standpoints, one arising from autonomy and another arising from our sociality, we would have no quarrel. However, Nagel goes on to say that this question is ‘not primarily ... a question about the relation between the individual and society but ... as arising from a division in each individual

⁴³ Nagel 1991, p. 1.

between two standpoints, the personal and the impartial.⁴⁴ While the standpoint of the individual is clearly one equated with partiality or self-interestedness, a role is given to the interests of all – that is, the interests of other people and oneself together, not simply the interests of others – through impartiality. While I will discuss the problems of Nagel’s version of impartiality in chapter four, for the moment it is important to note that his formulation simply substitutes the impartial point of view for the social point of view, rather than examining other possible options for what sociality might require. By taking sociality as a fact of basic moral and political relevance, like the separateness of persons, I can show how it entails a second source of political legitimacy: the case for fraternity. This dualism would require a different interpretation of how autonomy operates. Autonomy would not be able to operate alone, or solely with the separateness of persons as its influential foundation. Autonomy would have to be balanced against another principle with another foundation.

This other foundation might, I believe, be found in looking at the communitarian argument from another angle. Instead of focussing, as earlier communitarians, on the liberal view of the self, in what follows I will focus on the liberal view of sociality and what the standpoint of the collective, or our common sociality as I interpret it, requires. This is somewhat more difficult. Liberals generally agree on what autonomy constitutes. They approach sociality differently. Nonetheless, I hope to show in the next chapter that their diverse approaches to society all undervalue sociality in their accounts of moral and political legitimacy by connecting it too closely with autonomy. How this plays out is different in for each liberal theory, but they all seem to have problems with reconciling the demands of sociality with the demands of

⁴⁴ Ibid..

separateness because they treat autonomy, grounded in separateness, as the only central moral and political value. In different ways, they are all reductive of sociality in favour of autonomy.

I will claim that this approach to sociality is wrong. Sociality is a centrally morally relevant part of the human experience just like separateness. While individuals are, in one sense, separate, we are also, in another morally and politically relevant sense, deeply social. That our sociality has a number of common features will be fleshed out in the next chapter, but just as separateness gives rise to the features of autonomy, sociality and its dependent traits give rise to various norms of moral and political importance: norms of fraternity. These norms of fraternity should become a central part of a theory of moral and political legitimacy when they are seen as representative of the normative requirements of the fact of sociality.

There are a couple of possible liberal replies to this basic claim for fraternity, which I mention here but will explore further in the chapter to follow. The first is to claim that while fraternity might be of some moral relevance, autonomy really is of primary relevance. There might be some circumstances in which the bonds of community, or family, or nationhood might come into play, but they can only do so, or can only do so justly, when done in a manner consistent with the principles of justice derived from autonomy.

I would respond that a communitarian approach that emphasizes the importance of fraternity would not necessarily be one that undermines the importance of autonomy. We can take autonomy as central and yet deny its claim to exclusive centrality. Autonomy must be balanced with fraternity rather than set against it. The argument in the next chapter will attempt to show that many of the problems that arise

for liberal theorists – including questions about the role of moral psychology and the limits of toleration – raise questions about the plausibility of autonomy-exclusive moral and political theories. Autonomy alone cannot do all the things required of a plausible moral and political principle. This failing, however, does not indicate that it is not a necessary source of moral and political legitimacy, but simply that it is not sufficient, which is where a new communitarian approach could begin.

A possible further rejoinder claims that liberals were not talking about moral and political legitimacy in general, but justice, for which a narrower, institutionalized set of criteria is all that is required. While autonomy, this response claims, might not be sufficient for establishing general moral and political legitimacy claims, it is enough for establishing what counts as just.

My rebuttal is to claim that justice goes deeper than the response indicates. If, as Rawls claims, justice is to be the central value of social institutions, its role must be far broader than simply legitimating certain narrow politically or constitutionally established abstract objects like laws and parliaments. If justice is to be the central value of social institutions it must also apply to, as others have pointed out, the economy, the family, morality, friendship, international and intercultural relationships *inter alia*.⁴⁵ All of these are basic social institutions that are explicitly outside the scope of a narrowly conceived justice.

⁴⁵ See esp., Okin 1989 and Iris Marion Young, *Justice and the Politics of Difference* (Oxford: Princeton UP, 1990). It is worth noting that Rawls did believe there were non-voluntary natural duties, but these are problematic in *A Theory of Justice*. They seem both requirements of justice in that they are part of the basic social institution of morality, and yet they operate here as pretheoretical presumptions. This project can be seen, in one way, as an attempt to justify these natural duties through an exploration of the importance of non-voluntary obligations, about which I will have a great deal more to say in the next chapter.

Chapter 2 – The Limits of Autonomy and the Need for Fraternity

Abstract

In chapter one I argued that autonomy is an important part in accounting for the legitimacy of moral and political obligations. In this chapter I argue that it cannot be the only such principle. As such, I will be attempting not to disprove the value of autonomy but to find its limits. An important limit of autonomy is its inability to adequately explain the legitimacy of non-voluntary positive obligations. I show that there are legitimate moral and political non-voluntary positive obligations before arguing that any attempt to explain these obligations through autonomy only is doomed to fail. Accordingly, this discussion will show not only that autonomy cannot answer all the questions demanded by the fact of legitimate obligations, but what an account of fraternity will need to do to meet this challenge.

Introduction

Proving that autonomy cannot be the only central principle to a comprehensive assessment of the legitimacy of moral and political obligations is this chapter's task. I will be attempting not to disprove the value of autonomy, but to find its limits. My argument will take the following form: there are legitimate non-voluntary positive obligations; the legitimacy of these obligations cannot be adequately explained by autonomy; accordingly, autonomy cannot be the only legitimating value. I show that there are legitimate non-voluntary obligations in the first section of this chapter, but the difficult work will be in the second section when I explain why autonomy cannot adequately account for these obligations. Finally, I discuss how autonomy's shortcomings are illuminating. By understanding what autonomy cannot do, we will be in a better position to assess what fraternity as an equivalent value representing the

demands of our sociality will need to accomplish. Accordingly, the final section of this chapter lays the groundwork for the search for fraternity that will occupy part two of this thesis.

I. Associative obligations and the Legitimacy of Ordinary Moral Opinion

The first stage of my argument is the claim that there are non-voluntary or associative obligations and that these obligations are legitimate. The strongest evidence for this claim is what Samuel Scheffler calls ‘ordinary moral opinion.’⁴⁶ In this section I explain what associative obligations are, which will involve an initial account of why they are *prima facie* incompatible with the account of autonomy from Chapter 1. This explanation will then require me to justify why these associative obligations are legitimate. My defence of associative obligations involves showing the central role they play in our ordinary ethical lives. In so doing I will note an interesting feature of associative obligations that will come to play a key role in my account of fraternity in the parts of this thesis to follow. Associative obligations seem to be generated by the impact individuals have on one another. Specifically, the more often and important an impact, the stronger the obligation and the less dubitable the intuitions involved.

A. What are associative obligations?

Associative obligations are duties ‘we have only to those particular people with whom we have had certain significant sorts of interactions or to whom we stand in certain significant sorts of relations.’⁴⁷ Associative obligations are to be juxtaposed with general obligations. However, to fully understand how they work we must clarify a number of the concepts in this definition. First, I will confirm how what associative

⁴⁶ Samuel Scheffler, ‘Families, Nations, and Strangers,’ in *Boundaries and Allegiances*, (Oxford: Oxford UP 2002), pp. 48-65.

⁴⁷ *Ibid.*, p. 49.

obligations are contrasted with general obligations in Scheffler's thought. Second, I will clarify the importance of interactions and relations in generating associative obligations. Third, I will note the important role particularity plays in associative obligations. Finally, I will distinguish between two sets of associative obligations: voluntary and non-voluntary obligations. These are two fundamentally different sets of associative obligations, and they present contrasting problems for autonomy. For voluntary obligations, autonomy has a difficult time explaining the circumstances under which we think that an authentic choice can be, nonetheless, illegitimate. For non-voluntary obligations, the trouble is deeper. Autonomy cannot adequately make sense of how non-voluntary obligations can be legitimate at all. I use the caveat 'adequately' carefully here. I will show, in the next section, how any attempt to construe non-voluntary obligations in a manner consistent with autonomy does a disservice either to the obligation in question or to the nature of autonomy.

Before I get into the substance of the question, I must make a few quick explanations about terminology. I will follow Dworkin's terminology rather than Scheffler's. What Dworkin, in *Law's Empire*, calls 'Associative Obligations,'⁴⁸ Samuel Scheffler calls 'Special Duties.'⁴⁹ The two are interchangeable, as Scheffler (writing after Dworkin) notes. I should also note the normativity of the associative obligations in question. Scheffler speaks of 'duties' rather than 'obligations,' due to a belief that 'obligation' is best reserved for 'moral requirements deriving from promises,' and a wish to avoid any implication that special duties/obligations could be understood voluntaristically. While I can sympathize with his motive, I feel no such stricture and will use the terms 'duty/duties' and 'obligation/obligations' interchangeably. Furthermore,

⁴⁸ Dworkin 1986, pp. 195-216.

⁴⁹ Scheffler 2002, p. 49n.

whatever term I happen to be using at the time, I intend always to refer to *pro tanto*, rather than *ultima facie*, responsibilities, unless I clearly indicate otherwise.

Associative obligations become important when they are contrasted with general obligations. Scheffler formulates the difference as one of scope. I owe general obligations to all people, regardless of who they are in relation to me. A Kantian obligation not to lie and a Millian harm principle are good examples of general obligations in Scheffler's approach. If I am in negotiations with you for the loan of your book, I have an obligation not to lie to you that does not arise because we've entered into negotiations. This obligation precedes the negotiations. I owe you the truth because, for a Kantian, lying would mean treating you as a means rather than an end in yourself, violating the categorical imperative. I think, however, that this formulation does not go far enough toward explaining the generality involved in a general obligation. The obligation not to lie to my negotiating partner is too specific for a real contrast with general obligations; I can simply remain silent and refrain from engaging with you and still meet my obligation not to lie, but it seems that I have also changed the nature of our relationship when doing this. By interacting with another, in this case by negotiating, I have already 'particularized' an underlying obligation. To preserve the importance of particularity in associative obligations, I would formulate the matter differently. Rather than focusing on obligations 'to people as such,'⁵⁰ I would frame general obligations as 'standing obligations.' To use the above examples, I have a general obligation to treat others as ends, for a Kantian, or, for a Millian, to maximize pleasure and minimize pain. How those obligations turn into specific acts in particular circumstances seems, to me, to move them from general to a very broad class of associative obligations: obligations I

⁵⁰ Scheffler 2002, p. 49.

owe to a particular individual because of some relationship, however brief, with them. The relationship here shifts the obligation from a general one grounded in an agent neutral reason to a special one grounded in an agent relative one. However, if I am overstating this difference, little depends on it. Differences in the scope of particularity and connections between it and interaction don't undermine the basic approach to associative obligations. There will still be a category of associative obligations arising from interactions and to which particularity is important.

This formulation points toward the important role that interactions play in the generation of associative obligations. A hermit has general obligations; alone in the desert he is as subject to the categorical imperative or the greatest happiness principle as anyone who lives in a crowded city. Where the hermit and the city dweller differ is in how often they will have associative obligations. Because the hermit does not interact with anyone, he has very few associative obligations.⁵¹ He has no one with whom to negotiate, contract, or converse. The urbanite, however, is constantly interacting with others. She must sign a lease or a deed. She must buy food and communicate with others to achieve her ends. In doing all these things she interacts with others and, in interacting, takes on associative obligations – applications of the more general obligations under which both her and the hermit live that have a different character because of their basis in the relationship.

Because interactions generate associative obligations, particularity will play an important role in how they are to be satisfied. The city dweller's obligation not to lie will be satisfied only by not lying to the particular people she meets at the particular times when they meet. It only rises to the level of an associative obligation because they are

⁵¹ Because no one is born or raised a hermit even they will have some associative obligations to their parents, families or early caregivers.

already engaged in communication. It is because of the particular nature of associative obligations that contractual examples play such a central role. They illustrate clearly the intransitivity of ethical obligations, which gives rise to the importance of particularity. If I contract with you to provide coffee for a workshop, and someone else gives me coffee, my contract with you might diminish in importance but it does not lose any of its enforceability. I still have the (moral, political and, often, legal) right, if no longer any strong reason, to compel you to bring me the coffee you promised. Furthermore, a contract is between you and me, so for someone else to bring me coffee does not satisfy your obligations unless, through some other agreement, you arranged for them to bring it and I consent to this modification.⁵²

The importance of contractual examples in explaining associative obligations is overstated and, in Scheffler's view, misleading. Within the category of associative obligations there are two very different kinds: voluntary and non-voluntary obligations. The emphasis on contracts obscures the significant nature of non-voluntary interactions in generating associative obligations. Furthermore, the kind of particularity involved in contracts is not as strict or as tightly connected to the interactions as the kind of particularity involved in non-voluntary obligations. However, the most problematic aspect of the emphasis on contract is that it obscures the difficulty an autonomy-focused approach to the legitimacy of moral and political obligations will have in accommodating both voluntary and non-voluntary obligations. While I will explain this more fully in the next section of this chapter, some aspects of this feature of non-

⁵² Ordinarily, a contract would involve something to the effect of compelling consent for an equivalent service provided on behalf of the promisor. This does not change the special nature involved.

voluntary obligations must be pointed out in order to understand how they work as a species of associative obligations.

Many non-voluntary interactions give rise to associative obligations. The key examples so often commented on in the literature are family and friendship,⁵³ but I prefer to frame this discussion in terms of neighbours. I do not ordinarily choose my neighbours, nor do they ordinarily choose me. While there are often some predictors as to the kinds of neighbours I am likely to have that correspond to the neighbourhood in which I live, these predictors are neither exact about whether I statistically ‘should’ be living in that neighbourhood nor whether my neighbours ‘should’ statistically be there either. Furthermore, even relatively strict residency requirements – racial, economic, aesthetic – cannot determine which particular people will be living within shouting distance (an important test) of one’s residence.⁵⁴

Without getting too deeply into the specific obligations that can arise from neighbourliness, I wish to show how what obligations there are arise from interaction. Let us assume that the neighbours we are discussing all live in a block of apartments. Neighbours on each floor share a hallway and the stairwell leading up to their level. This joint ownership is a form of interaction. If the stairwell is particularly narrow (spiral, perhaps), a neighbour who leaves his bicycle chained to the rail will be impeding the movement of his neighbours. It seems reasonable that the bicycle-owner has a duty to store his bicycle in such a way as to minimize his impact on his neighbours: by keeping

⁵³ For a good account of this see John Horton ‘In Defence of Associative Political Obligations: Part One,’ *Political Studies*, v. 54 iss. 4, pp. 427-443.

⁵⁴ My discussion here will focus on urban and, to a lesser extent, suburban living. Rural living typically involves having fewer neighbours and, owing to the greater distance between residences, less interaction **as neighbours**. Rural living typically involves frequent interactions in other capacities – associated with tradition, community, religion, education, civil government, etc... but these are not interactions as neighbours in the strictest sense. I will discuss neighbourliness more broadly later, but that will be a significantly different concept from the use of neighbours as a heuristic here.

it in the wider hall or in his apartment, perhaps. The obligation here is not voluntary – he cannot choose to have it or not to have it. It arises simply by virtue of living in the same building as others and sharing a narrow stairwell with them. If the bicycle owner lived in the building alone no such obligations would arise – he would have no neighbours with which to interact. As such, we can see that the associative obligation the neighbour has to keep the stairwell clear arises through interaction with the other residents of his building through their joint ownership of the stairwell.

Likewise, particularity is as important for non-voluntary associative obligations as it is for voluntary ones. However it is often couched in terms of role rather than individual. I owe my particular neighbours obligations, rather than the individuals who happen to be my neighbours. If some of the bicycle-owner's upstairs neighbours move, and new people move in, the duty remains the same even if the individuals to whom the duty was owed have now changed. Nonetheless, the obligation to keep the stairwell clear is not something owed to neighbours in general – suburban single-family dwelling life doesn't give rise to this kind of neighbourly obligation. It is owed to the particular neighbours one happens to have when one happens to have them. A similar feature could apply to keeping one's pets out of the neighbour's flowerbed, if that were a genuine obligation of suburban life. It would apply to whoever owned the particular flowerbed rather than to a particular individual.

Furthermore, the importance of relationships that arise from the kinds of interactions that give rise to particular non-voluntary associative obligations illustrates a closer connection between the interactions involved and the particularity of the associative obligations in question. One has duties as a brother, friend, or neighbour because of the interactions implicit in that role, rather than because one happens to fit

many of the criteria of that role. Take, for example, Tom, Dick and Harry. Tom and Dick have the same biological father but different biological mothers. They knew nothing of one another's existence until they were adults, but are nonetheless biological brothers. Tom and Harry were raised together by the same woman who each acknowledges as his mother but who is only biologically related to Tom. Who, in this scenario, is more Tom's brother? An ambiguity lurks in this question. One could reasonably favour the biological or the social and argue in that way. However, if brotherhood involves certain ethical obligations – say, for example, the obligation to treat a brother's children as one's nieces and nephews – I think ordinary moral opinion would be clearer about that. I think it's safe to say that Tom should treat Harry's children as his nieces and nephews, if there is such an obligation. They share a relationship formed through years of interactions that Tom and Dick do not have, and it is the relationship founded on interaction on which we base the non-voluntary obligation. In the neighbours case it is sharing a stairwell that generates the obligation, rather than the mere fact of neighbourhood.

The difficulties an autonomy-focused theory will have in accommodating non-voluntary obligations should be apparent. Autonomy aims to protect an individual's dignity by safeguarding their ability to live life from within by making meaningful choices. If choice is what is central to autonomy, non-voluntary obligations cannot be directly legitimized by autonomy. However, the relationship between non-voluntary associative obligations and autonomy is more complex than this basic assessment. There is more to autonomy than choice, and so a more sophisticated analysis is necessary. However, in order to make such an analysis worthwhile we must first show that non-voluntary obligations are important enough to need accommodating. As such, defending

the importance of non-voluntary associative obligations is the focus of the next subsection, while assessing the limits of autonomy will be the focus of the following section.

B. Are associative obligations legitimate?

Non-voluntary associative obligations form an important part of our moral phenomenology. Nonetheless, denial of their reality is one strategy some use to undermine the view that they are legitimate. Some, notably A. J. Simmons, claim that belief in the importance of non-voluntary obligations – specifically ‘associative political obligations’ like the obligation to obey the laws of a jurisdiction – is a product of false consciousness.⁵⁵ However, there are two problems with this view. First, it fails to distinguish between the allegedly illicit ‘political’ obligations and other, supposedly apolitical, non-voluntary obligations that might be genuine. Second, given the importance of this phenomenology to ordinary human life, a case that this is a product of mass delusion would have to be very strong to be convincing. Simmons’ arguments amount to little more than a repetition of the claim that only voluntary obligations are legitimate, which merely begs the question against ordinary moral opinion.

Underlying Simmons’ attack is an implicit division between ‘political’ and ‘non-political’ obligations. His primary claim is that associative political obligations are illicit, which says nothing explicit about the status of non-political associative obligations.⁵⁶ He claims that advocates for associative political obligations are drawing a false analogy between the kinds of obligations among family members and the kinds of obligations among citizens. While his intent is to critique this analogy and claim that the way the

⁵⁵ Simmons, ‘Associative Political Obligations,’ *Ethics*, v. 106 no. 2 (1996), pp. 247-273.

⁵⁶ Simmons 1996 does refer to the possibility of moral obligations with political import (at p. 250 in his discussion of particularity in associative obligations), but focuses on overtly political obligations, specifically the obligation to obey the law.

family works cannot explain the way the state works, this move rests on the validity of the claim that there are non-voluntary familial obligations. Simmons's reliance on this divide is suspect. While the associative political obligation to which Simmons objects is the obligation to obey the law, there are a whole spectrum of less strident yet nonetheless political obligations that fall short of the basic duty of citizenship. Feminist philosophers have been arguing for a generation, convincingly to my mind, that the family is itself a political institution.⁵⁷ Political decisions determine what counts as a family and impact deeply on how families arrange their affairs. Likewise, as Aristotle recognized, friendship is often political. The highest form of friendship could only exist among the ethically [including politically] good,⁵⁸ and some of the lesser forms of friendship were predicated on individuals being of [potentially political] use to one another. As such, any critique of the associative obligation to obey the law must show that it is substantively different from the rest of the spectrum or attempt to undermine the institution of non-voluntary obligations entirely.

Some of what Simmons says indicates that he would favour the latter option. For example, he does not attempt to distinguish between the obligation to obey the law and various other non-voluntary obligations, focusing only on non-voluntary obligations. However, denying the existence of any legitimate non-voluntary obligations is a very difficult road. What an opponent of non-voluntary associative obligations must do is show in some way that, while it is normal to feel the weight of a non-voluntary obligation, this feeling nonetheless attaches to a maxim or policy that is not in fact obligatory. He must separate out the legitimacy from the phenomenology. One way to

⁵⁷ Okin 1989, and Young 1990.

⁵⁸ Aristotle, *Nicomachean Ethics*, 1158b25-1171b28.

do that would be to claim that all and only voluntarily adopted obligations can be legitimate. This is, in the end, Simmons' tactic.

Simmons' approach is to deny that the phenomenology involved is actually legitimate. Feeling that I ought to obey the law because I happen to be a citizen, rather than because I have chosen citizenship, is, for Simmons, inaccurate. This is the most robust form of what Scheffler calls the voluntaristic objection.⁵⁹ As he puts it, 'this objection does not deny that we often have special duties to people who are related to us in certain ways and to the members of various groups with which we are affiliated, but it insists that such duties or responsibilities must always arise from our own voluntary acts.'⁶⁰ A first problem with the voluntaristic objection arises when we ask what, then, demarcates the voluntary from the involuntary or the non-voluntary? In Simmons' work this is combined with a cosmopolitan view of the relationship between the individual and the state to support the claim that we can choose what laws pertain to us by choosing where we live. However, if the voluntarist's target is not simply the obligation to obey the law but all non-voluntary associative obligations, then the voluntarist seems to treat as identical links between the family, friends, neighbours and co-nationals as equally suspect. Are they? This unexplored consequence of Simmons' approach is troubling to even the narrowest individualist. Even if a voluntaristic requirement seems to fit with our basic intuitions about how we interact with our co-nationals, does it not do great violence to the idea of family? Such rampant voluntarism is this kind of consideration that leads David Miller to claim that co-nationality is one of those things, like family and friendship, the lack of which is always a loss.⁶¹ Even if this

⁵⁹ Scheffler 2002, esp. pp. 67-73.

⁶⁰ Ibid., 68.

⁶¹ Miller, *On Nationality*, (Oxford: Oxford UP, 1995).

is not true of co-nationality (and arguments could be made in either direction on this point) it seems unreasonable to deny it about family and friends.

Furthermore, the voluntarist objection – even in its weaker, more plausible form – seems problematic. The voluntarist claims that obligations arising from non-voluntary relationships are not legitimate because they are not voluntary. This presumes, rather than proves that only voluntarily adopted obligations, or obligations arising from voluntary relationships, are capable of legitimacy. This is a critical issue, and will be dealt with fully within the next section, but for the time being I should simply point out that this view seems to lead to a dilemma. A voluntarist might claim that some apparently non-voluntary relationships are in actuality voluntary, but this seems to fundamentally misconstrue the nature of those relationships. On the other hand, a voluntarist might argue that obligations arising from non-voluntary relationships are illegitimate notwithstanding their importance. However, this kind of voluntaristic fetishism is both rare and implausible. Any account of the legitimacy or moral and political obligations that cannot explain the demands of family, friendly and neighbourly relationships as legitimate seems so remote from ordinary life that almost any other account should be preferred.

However, there is another, non-voluntaristic objection to non-voluntary associative obligations. Scheffler is particularly concerned with explaining what he calls the distributive objection.⁶² This objection claims that the problem with associative obligations is not between those involved in the relationships but on the impact these demands have on those outside the relationships. This view claims that special relationships create a sort of “in-group,” which will lead to disadvantages for those

⁶² Scheffler 2002, pp. 56ff.

outside the relationships involved. This is particularly important when addressing questions of global justice and the distribution of wealth between richer and poorer countries. If co-nationals have relationships that give rise to weighty obligations not owed to foreigners, and those obligations impact on the distribution of wealth, the rich are justified in preserving an unequal distribution of resources and perpetuating global injustice under the moral cover of (potentially non-voluntary) special relationships.

The first response to note when addressing the distributive objection is that it applies equally well to voluntary and non-voluntary associative obligations. It attacks the special character of these obligations, rather than their potential for arising from non-voluntary obligations. Accordingly, the distributive objection does not depend on any distinction between voluntary and non-voluntary obligations. Nonetheless, it is important since, if it holds, it undermines the important relational character of non-voluntary obligations. Scheffler's first line of defence doesn't adequately take this into account. In his first assessment of the distributive objection⁶³ he claims it is non-problematic because it focuses only on the advantages that arise to members of the in-group through that membership. Essentially, this argument claims that the distributive objection ignores the reality that belonging to the in-group is just as likely to increase the burdens on a member as to alleviate them. However, as Scheffler later realizes, this is of little comfort to the theorist advocating the distributive objection. The distributive objector realizes that relationships give rise to benefits and obligations, and objects to each equally. It is the reliance on an in-group to legitimize obligations that worry the objector. Claiming that these might end up being burdensome to its members does

⁶³ The chapters of *Boundaries and Allegiances* correspond to previously published material. As such, the chapter 'Families, Nations, and Strangers' derives from his 1995 Lindley Lecture (University of Kansas). His later discussions, in the chapter 'The Conflict between Justice and Responsibility,' follow four years later.

nothing to address whether they are the kinds of things that can give rise to legitimate obligation.

Accordingly, Scheffler takes a different approach in his later work on associative obligations. He defuses the impact of the distributive obligation while recognizing its basic legitimacy. All it takes to reconcile the distributive objection with associative obligations is to recognize the *pro tanto* character of the latter. That someone is my neighbour or my co-national is a basic reason to favour their interests, but this basic reason needs to be weighed against other reasons I have, including the general obligation to treat individuals as equally deserving of moral wealth. Where the two conflict, we must acknowledge the conflict rather than claim that one or the other is simply “not really a reason.” As such, the distributive objection is legitimate insofar as it reflects a kind of general duty of fairness in distributing wealth, and non-voluntary associative obligations are legitimate as well, even when they conflict. Otherwise, the distributive objector must maintain, even more stridently than the voluntaristic objector, that relationships are simply not the kind of things that can give rise to legitimate obligations.

II. The Limits of Autonomy

In the end, the legitimacy of non-voluntary associative obligations rests on the basic intuitions that there are some legitimate maxims and policies that are I do not choose but that I am nonetheless wrong not to adopt. No account of the legitimacy of moral and political obligations can do justice to these intuitions and use autonomy alone as a central principle. Each of these intuitions conflicts with some important aspect of autonomy, but two are particularly problematic. The first is that there are relationships that are legitimate despite being unchosen. The second is that, from time to time, one’s

non-voluntary obligations will override other, potentially voluntary, obligations. Shades of the first problem can be found in Scheffler's reply to voluntarism, while the second is highlighted in his response to the distributive objection. In the end, this section will show that there are legitimate obligations that cannot be accounted for by an autonomy-focused theory of the legitimacy of moral and political obligations. Doing this involves exposing as false the dilemma mentioned earlier, in which an obligation is either construed voluntaristically or dismissed as illegitimate. I will show that neither option is really open, and accordingly that a fuller picture of legitimacy requires something more than autonomy.

A. The Non-Voluntary Character of Obligation

The first approach, adopted by voluntaristic theorists ranging in sensitivity from the blunt dismissal of Simmons through Kymlicka's nuanced and sympathetic multiculturalism, is to characterize our obligations as voluntaristic. There are two main lines this approach could take. Simmons dismisses the basic intuition as a product of false consciousness. This, however, seems too harsh when dealing with such basic moral institutions as family and friendships. That overreach makes it a less compelling view when it comes to other, less intimate, forms of society like neighbourhood, co-nationality and citizenship.⁶⁴ Kymlicka is deeply sympathetic to the demands of culture, but he adopts another approach to these obligations that nonetheless misconstrues them in an effort to reconcile them with his basic liberal voluntarism.⁶⁵ His aim is to reconcile minority rights with the basic tenets of Rawlsian liberalism. However, by

⁶⁴ For the purposes of this thesis I distinguish between co-nationality and citizenship. Co-nationals are members of the same nation, defined as a cultural group with an historical claim to territory. Citizens are individuals who fall within the legal jurisdiction of a government. As such, someone who was born and raised in Glasgow might be in a co-national relationship with someone from Inverness but not Liverpool, but would be related as a citizen to both.

⁶⁵ Kymlicka 1989. His later work is more sympathetic to the view presented here, but in no way makes explicit the connections I will advance later in this chapter.

‘voluntarizing’ cultural obligations – characterizing them as involved in advancing the demands of individual autonomy – he misconstrues their essential nature. What both Simmons and Kymlicka’s approaches attempt to do is claim that what we thought were non-voluntary obligations either *just are* voluntary or are intimately connected with other voluntary obligations in such a way that to serve the non-voluntary obligations implies serving the voluntary obligations. Both of these approaches fail, and so the voluntarist cannot truly deny the non-voluntary character of some intuitively central obligations.

Central to Simmons’ arguments against the legitimacy of associative political obligations is his claim that their basic intuitional support is a product of false consciousness. Simmons seems, through most of his essay, to be arguing against the view that all and only obligations arising from association are legitimate, though whether this is an accurate characterization of his opponents’ position is doubtful. He opposes the claim that ‘insofar as membership in political societies clearly carries with it certain duties or obligations, the nonvoluntary character of membership entails that our political obligations also fall on us independently of our voluntary choices.’⁶⁶ As part of this, he routinely questions the role and the existence of the basic ‘intuition of belonging’ that underlies the non-voluntarist’s position. He asks

[w]hy would we think that this kind of identification with a social or political role is either a necessary or a sufficient condition for possessing a moral obligation to abide by the rules of local practice? ... Oppressed people are frequently brought by long periods of humiliation and indoctrination to identify with their subservient roles and to acknowledge as their own the degrading, locally assigned obligations of second-class members ... And even when immoral practices are not at issue, people can mistakenly identify with certain social roles (and feel obligated by the locally assigned requirements for these roles) ... We should not be likely to conclude from such mistaken identification, however, that I have certain associative moral obligations for as long as I mistakenly identify with a role in this way, but cease to have those moral obligations at the moment the truth is revealed. (264)

⁶⁶ Simmons 1996, p. 249.

In this key passage, Simmons raises two problems. The first is the possibility of false consciousness through unjust coercion. The second is the possibility of false consciousness through mistake. The first is a serious concern insofar as it addresses a legitimate problem that naturally arises through role-based approaches to obligation. I believe the second presents less of a problem for the associative obligation theorist in that one could simply accept the intuition Simmons finds controversial. He presents three examples: false ethnic identification; mistaken parentage; mistake as to whether another is a neighbour.⁶⁷ In the case of the first example, belief in the importance of a particular culture makes that culture important, and would make the cultural obligations important to the individual involved. Much the same happens in the case of a religious conversion. In the case of mistaken parentage, again, the associative obligation theorist can deny the intuition. Parentage, I would claim, is a matter of a social rather than a biological relationship, and intuitions to the contrary are misinformed. Finally, if I mistake someone for my neighbour this does not mean that I no longer have obligations to my neighbour, it only means that I don't have obligations to that individual as a neighbour. I am mistaken about the reference of the 'neighbour' indexical, rather than about the obligations owed.

Simmons' more troubling claim is the possibility of genuinely false consciousness produced by something tantamount to brainwashing. Whether the brainwashing leads an individual to believe they have unjust obligations is not, in itself a problem. After all, non-voluntary special duties are *prima facie*, not *ultima facie*, obligations. They can still be tempered or overridden by more pressing concerns, including general duties. Where the brainwashing could be problematic is that it raises

⁶⁷ Ibid., p 264ff.

the possibility that many of our most deeply held and basic intuitions – about obligations to families, friends, and neighbours as well as to our communities at large – could be suspect. In the end, however, Simmons will have to do more than raise a sceptical spectre for his brainwashing point to be taken seriously. That there have been oppressed peoples, and that people in non-oppressive situations also develop adaptive preferences, illustrate the reality of the possibility, but they also illustrate the limits of that possibility. In the end, Simmons’ claim deserves much the same reply as all sceptical claims; on what basis should we doubt how we feel, particularly when the object of our sentiments is something so elemental to society as family, friendship and neighbourliness? Without serious evidence showing that these widespread intuitions are suspect, we should give little credence to sceptical posturing.

Simmons does allow for one other approach to non-voluntary obligations that mirrors an approach better explored in Kymlicka’s work. This involves an attempt to voluntarize the apparently involuntary. In Simmons’ work this is dismissed, justly, as contradictory with the basic character of non-voluntary associative obligations, but Kymlicka’s more subtle approach deserves consideration. *Liberalism, Community and Culture* represents Kymlicka’s attempt to reconcile minority rights with the broad tenets of a Rawlsian liberalism that is usually antithetical to them. In the Rawlsian schema, Kymlicka claims,

‘individual liberty is so important that the only legitimate ground for restricting a particular basic liberty for everyone – like the right of political participation – is to secure a more extensive system of overall basic liberties for everyone. And the only legitimate ground for unequally distributing such a basic liberty is to secure for the less free person a greater system of basic liberty than she otherwise would have had. Other than that, “the system of equal liberties is absolute.”⁶⁸

⁶⁸ Kymlicka 1989, p. 163. Quoting from Rawls, *A Theory of Justice; 1st Ed*, (London: Oxford UP, 1971).

For Kymlicka, the trouble here is that many measures taken in otherwise liberal societies to protect minority communities, notably North American aboriginal communities, are illegitimate under the strict Rawlsian approach to liberty. Measures to restrict voting rights, property ownership, and to promote the locally dominant, globally minority culture through the education system create further inequalities and not for the benefit of the locally disadvantaged. Kymlicka's approach is, first, to construe Rawls' liberalism as grounded on the basic value of self-respect. Consequently, a measure intended to enhance self-respect acquires the status of a primary good. He then claims that the importance of culture to liberal theorists is in its ability to provide a 'context of choice'⁶⁹ according to which individuals can come to make evaluations. Without an important array of cultures, individuals cannot 'become aware, in a vivid way, of the options available to them, and intelligently examine their value.'⁷⁰

There are two different issues that undermine this approach. The first is to wonder whether Kymlicka's self-respect focused Rawlsianism is adequate. An analysis of the role of self-respect in a liberal theory shows that self-respect is associated with liberalism, but the nature of that association is debatable. Self-interest could inform autonomy, be on a par with autonomy as a consequence of some prior feature, or be grounded in autonomy. I think the 'grounded in autonomy' interpretation is most likely, and will briefly attempt to show this. The second problem deals with whether approaching minority rights as intended to foster self-respect is true. This problem is more important for my purposes. I will show how even if self-respect is a fundamental part of autonomy, rather than one of many competing values it generates, this will not

⁶⁹ Ibid., p. 166.

⁷⁰ Kymlicka 1989, p. 166.

reconcile cultural membership with autonomy-only liberalism because doing so misconstrues what it means to be a member of a culture.

The connection between self-respect and autonomy in Kymlicka is pragmatic. Kymlicka claims, following Rawls, that self-respect 'isn't so much a part of any rational plan of life, but rather a precondition of it.'⁷¹ However this is not closely connected with his primary justification for minority rights. His main claim is that individuals that lack self-respect will not be in a position to take advantage of the opportunities that come with being a member of society. This should be clear, given the current conditions of aboriginal communities following decades of assimilationist policies.⁷² Accordingly, protections for minority cultures are necessary so that the individuals who are members of those societies can come to respect themselves and engage with the broader society. Promotion of a single culture within a community is, therefore, good because it allows the individuals from that community to better engage with the members of the wider culture.

It seems, however, that there is a deep conflict between Kymlicka's goal here and the means he claims are necessary to achieve that goal. Promotion of individual self-respect is a laudable goal, one completely consistent with, and potentially demanded by, liberal individualism. Let us presume, then, that having a 'context of choice' is a necessary condition of self-respect. Two problems arise. First, why does the need for a context of choice justify protection of minority cultures? Second, does not the attempt to protect minority cultures from the influence of outsiders deny (a) outsiders within the minority community the same protection and (b) the members of the minority culture a

⁷¹ Ibid.

⁷² Ibid., referencing A. Selzer, 'Acculturation and Mental Disorder in the Inuit,' *Canadian Journal of Psychiatry*, v. 25.

genuine choice? In the end, understanding these problems will show why an autonomy-focused approach cannot adequately account for non-voluntary obligations by construing them voluntaristically.

The importance of cultural membership in helping individuals generate values – a major part of living a life from within through making meaningful choices – is dubious. Earlier in this work I used Kymlicka’s claims to illustrate the important role of choosing among values as central to the liberal project, contra the communitarian critique.⁷³ To now argue that context is a necessary component of choice seems awkward, given that a communitarian could make much the same argument. However, why does the need for “context” mean that that context must be “cultural” in the narrow sense used here? Of course, there must be some “cultural” features that inform value judgements: some aspects of life must be considered valuable, whether intrinsically or instrumentally, and ‘aspects of life’ are the constituent parts of a ‘culture.’ However, that is not what is meant by ‘culture’ in this context. A culture here is a more or less stable group of social features like language, political structure, religion and other kinds of what Rawls would likely call ‘basic social institutions.’ The importance placed on culture as providing a ‘context of choice’ worthy of protection seems to run counter to both the basic principles of justice and to the reality of cultural change Kymlicka recognizes in his discussion of the ‘Quiet Revolution.’⁷⁴

The kind of practical proposals that follow from Kymlicka’s argument – aboriginal-language only education, restricted non-aboriginal voting rights and property rights – might make sense if cultural membership were a primary good, but they also seem to undermine their own application. If cultural membership is necessary to

⁷³ Kymlicka 1989, pp. 47-59.

⁷⁴ Kymlicka 1989, p. 167.

provide a context of choice, outsiders who enter into aboriginal communities seem to need the same protections from those communities as the aboriginal community seeks from the larger body politic. Their ‘context of choice’ would be undermined by requiring attendance at a native-language only school; by elimination of their rights to civic participation; by the instability that comes with denial of property rights. These measures seem like an attempt to crystallize aboriginal cultures so that its members can then engage with the outside world. However, in attempting to accomplish this sort of “reconciliation without assimilation,” we deny the reality of cultural change and fail to genuinely reconcile the cultures. We end up ghettoizing one group, thus further depriving them of the benefits that come from social cooperation liberalism is meant to ensure. That this separation is accomplished in the name of accommodation is the ultimate irony.

In the end, Kymlicka’s focus on trying to justify minority rights as ‘in the service of autonomy’ is misguided. As Berlin frames the issue;

‘The desire for recognition is a desire for something different [from freedom, positive or negative]: [it is a desire] for union, closer understanding, integration of interests, a life of common dependence and common sacrifice. It is only the confusion of desire for liberty with this profound and universal craving for status and understanding, further confounded by being identified with the notion of social self-direction, where the self to be liberated is no longer the individual but the ‘social whole’, that makes it possible for men, while submitting to the authority of oligarchs or dictators, to claim that this in some sense liberates them.’⁷⁵

Cultural relationships might advance an individual’s interests, and therein autonomy, but Berlin reminds us that these relationships are not of value only when free, and certainly not because they advance the cause of freedom. While a theorist could tie himself in knots attempting to reduce the value of cultural membership to some other feature

⁷⁵ Isaiah Berlin, ‘Two Concepts of Liberty’ in *Liberty*, Ed. Henry Hardy, (Oxford: Oxford UP, 2002) p. 204.

more consistent with autonomy, Kymlicka's attempt shows the difficulty. Since autonomy is the only central value advanced by contemporary liberalism, that we do value such relationships in non-autonomous terms indicates its limits.

B. The Importance of Non-Voluntary Obligations

But are these limits nonetheless legitimate? The autonomy-focussed theorist has one option left – deny the legitimacy of obligations that do not further the ability of an individual to live life from within through making meaningful choices. It seems at this stage we have entered a war of conflicting intuitions. Those who believe strongly in the legitimacy of non-voluntary associative obligations find a particular set of intuitions both basic and compelling, and either (a) reject other intuitions as false accordingly or (b) reject the view that the two sets are mutually exclusive. I believe either of these options is open, but those not convinced by my denial of Simmons' contradictory intuitions should nonetheless be satisfied with the weaker, latter, option.

Simmons need not deny the authenticity of our phenomena. He could, and at times does, deny their legitimacy instead. His denial rests on the basic intuition that we cannot be held responsible for non-voluntary aspects. For example, while he rejects the view that people can have obligations arising from involuntarily identifying as a member of a group due to the possibility of false identification, he seems to claim that a voluntary identification with the same falsity could nonetheless give rise to legitimate moral demands. Voluntariness, here, cures all manner of ills. This seems to rest on something akin to Rawls' principle of desert: individuals cannot justly benefit from, or be harmed by, qualities for which they are not morally responsible. In this principle, moral responsibility is closely connected with choice: we deserve the consequences of our intentional acts, and not the consequences of our involuntary acts. The basic

intuition underlying this approach seems to be a negative one: I am not responsible for that which I do not control. There are two ways to counter this view. The first is to question its primacy; is this intuition really basic? The second is to question whether it really weighs more than the other intuitions in question – that I am right to prefer the interests of my family.

Ultimately, the view that the intuitions underlying the principle of desert are not basic cannot hold. There are better and worse intuitions in a number of spectra: depth, pervasiveness, indubitability, and elementariness. These spectra are not discrete; they often blend one into the other. Depth is a phenomenological quality – an intuition feels deeper or shallower. Pervasiveness is more numerical – a pervasive intuition is one held by more people. An indubitable intuition is one the contrary of which is difficult to believe or is self-defeating – Descartes' cogito is an example. Elementariness is a quality of indivisibility – an elementary intuition cannot be easily broken down into more basic intuitions. On this view, the intuition underlying the principle of desert is a basic one. It is deep, largely pervasive, difficult to contradict, and hard to divide into more minimal intuitions. The intuition of responsibility for choice, and non-responsibility for non-chosen outcomes incites the emotions in a way characteristic of a deep intuition. It is common, and satisfies pervasiveness accordingly. It cannot easily be divided into smaller intuitions. While it does not have cogito-like certainty, it is still difficult to argue directly that the intuition is wrong – it is more plausible that it is simply not ultimate.

However, it is equally difficult to dismiss as basic intuitions underlying non-voluntary associative obligations. This is a version of Bernard Williams' 'one reason too many' problem.⁷⁶ The basic intuition in Williams' case is that I am right to save my

⁷⁶ Williams 1985.

spouse not simply due to various ethical theories but simply because of our relationship. The obligations arise directly from the relationships involved. This intuition also matches the depth, pervasiveness, incoherence and elementality of a basic intuition – at least as much as the intuitions on which a voluntarist relies. As such, using one intuition against the other will result in a stalemate. Both intuitions are basic, but they have many contradictions.

Given that there are two different, basic intuitions, we cannot reasonably dismiss both. Some kind of accommodation is necessary. Kymlicka's work illustrates one attempt to do this. As mentioned earlier, he attempts to reconcile liberal individualism – in which the principle of desert plays a major role – with the importance of cultural membership. However, his reductive approach will not work. In the end, reductive approaches like this have one or another problems. Either the 'more basic' principle is compromised to explain the 'less basic,' or vice versa. Kymlicka has the second problem; he characterizes cultural membership as legitimate because done for the promotion of individual autonomy. For the reasons already discussed, this account cannot work. What this failure illustrates is a deeper problem. Part of the importance each of these intuitions has is due to their elemental nature – the one cannot be reduced to the other in any coherent way without compromising its basic character. This kind of reductive reconciliation is too much to ask of basic principles. What is needed is a kind of compatibilist accommodation instead. We must (and, in chapters 6 and 7, I will) find some way for the principles that arise from these equal yet irreconcilable intuitions to function together without changing their nature.

III. The Demands on Fraternity

Simmons' assessment of political obligations as depending on an analogy with familial obligations is mistaken.⁷⁷ The link between the obligations of citizenship and the obligations of family is not analogy. The basic source of all obligations is not the mere existence of separate individuals, but the *relations between separate individuals* as depicted in the relationship between the fact of individuality and the fact of sociality. There are two operative terms in this ontology, not just one. In an autonomy-centred liberalism, the individual alone is the basic unit of morality because only individuals have moral worth. This claim is suspect. While individuals do have moral worth, worth is not the only kind of basic property for which moral and political philosophy must account. Obligation is another, and obligation cannot directly arise from the separateness of persons. Obligations arise because of the other salient term highlighted above: relations. That obligations ordinarily attach to individuals does not mean that understanding individuality alone, or reducing sociality to some feature of individuality, will suffice to explain how they are legitimate. Obligations also attach to communities, to groups, and to institutions. As such, the existence of separate individuals is not a sufficient condition for the legitimacy of obligations. Furthermore, that there are separate individuals does not necessarily give rise to any obligations in itself. An individual alone on an island will generate no new ethical obligations. He may have prior obligations – a promise he made to quit smoking, while moot in his current context, is still valid. It is only through interaction with others⁷⁸ that obligations arise. Even autonomy, the central ethical principle generated by the fact of human separateness, only gives rise to obligations

⁷⁷ Simmons 1996, pp. 257-260.

⁷⁸ A great deal more could, and perhaps should, be said about whether one can owe obligations to oneself. I think it unlikely that one could except over time, when the case of one individual is more analogous to multiple individuals. See Derek Parfit, *Reasons and Persons*, (Oxford: Oxford UP, 1984), p. 327ff.

because of the presence of other individuals in a society, which has to be examined on its own to properly understand how those obligations work.

If we take the relation as the basic unit of obligation, we can see the obligations of family and of citizenship as two examples of the same underlying phenomenon. We have, involuntarily, relations with our family members and our fellow citizens. The former are generated through a life lived together, while the latter are brought about by being subject to the same laws (which generate an equal moral obligation on all such subjects). In either event obligations come about through interaction, and when those obligations come about through involuntary interactions they generate non-voluntary obligations. In this formulation, general obligations are simply associative obligations owed universally through universal sorts of relations; for example, membership in the same species, and occupation of a common planet seem to generate obligations to all.

This account is meant to explain the ‘ordinary moral intuition’ that I do have obligations to others that do not arise from and cannot be explained by my voluntary actions. This is, it seems to me, an inescapable feature of basic ethical life for all people. A morality that characterizes inescapable features of ordinary human existence as wrong is not a morality worth having. While various elements of this schema will play a central role in the following chapters, the point here is that there is a *prima facie* plausible basic ontology that can explain non-voluntary obligations alongside general obligations, that can account for the duties that arise from a wide array of involvements, and that explains our moral phenomenology rather than dismiss it like Simmons’ anarchist approach or omit it like Kymlicka’s Rawlsianism.

This is, as should be apparent, a dualist approach to moral and political obligation. Legitimate obligations are generated by relationships governed fraternity, and

must, in some way, coalesce with autonomy as the central value of our inherent individuality. However, I think what is important here is to find an approach that can accommodate, rather than reconcile, fraternity and autonomy. This will leave some situations irreconcilable. However, as a methodological maxim, I believe the purpose of an account of moral and political obligations is not to find some single unifying principle, some ultimate calculus that makes one of many. Often, the best an ethical theory can do is account for and explain irreconcilability. ‘To demand more than this,’ Berlin says, ‘is perhaps a deep and incurable metaphysical need; but to allow such a need to determine one’s practice is a symptom of an equally deep, and more dangerous, moral and political immaturity.’⁷⁹ As such, the schema set out in the following chapters will not attempt to find right answers to all the difficult questions. Rather, I will try and set out a schema that makes clear what makes some questions difficult and accommodate autonomy and fraternity when I can.

⁷⁹ Berlin 2002, pp. 217. This is the last sentence of ‘Two Concepts of Liberty.’

Part II: Options for the Demands of Sociality

Abstract:

In this part I examine three alternative candidates for the normative demands of sociality – tradition, impartiality and solidarity – and explain why most versions of these do not adequately explain its requirements. While each has something to commend it, none can ultimately explain the demands of sociality. However, a characterization of fraternity that incorporates some of their elements is possible, and will be presented at the end of Chapter 5 as a version of solidarity.

Chapter 3: Tradition and the Scope of Sociality

Abstract

In this chapter I analyze the demands of tradition as a possible candidate for the moral and political demands of our sociality. First, I explain the way in which some authors, focussing on Edmund Burke and Roger Scruton, use tradition as a value meant to legitimate some of the non-voluntary obligations we discussed in chapter two. Both Burke's 'entailed inheritance' approach and Scruton's 'cultural' approach face serious problems that make them unacceptable candidates to explain the ethical demands of our sociality. In addition to potential problems of internal consistency that would undermine any candidate, tradition cannot be universalized in the way a principle of fraternity must.

I. Introduction: Preliminary Considerations

While this chapter will focus on the question of whether tradition can play the role required of a principle of fraternity in explaining the basic demands of sociality, a note explaining the methodology of this section will be helpful at the outset. This part of my thesis is devoted to explaining what sociality requires. I will proceed by examining a series of potential candidates, looking both at their philosophical value – measured by internal consistency and ability to explain the phenomena in question – and at whether they are appropriate for the role at the heart of this enquiry. At the end of the second chapter we saw that there are things a principle of respect for fraternity must be able to do if it is to adequately explain our basic sociality and represent its demands. We are looking for a principle that is universalizable, that can explain the kind of alterity involved in non-voluntary obligations, and that is consistent with the version of autonomy as a life led from within through meaningful choice presented in chapter one.

Three major candidates seem to fit some, if not all, of these criteria, and should be examined to determine whether they fit. In this chapter I examine whether tradition is an appropriate value to place at the core of fraternity, while in the two that follow I look to impartiality and solidarity.

The importance of reconciling fraternity with autonomy cannot be overstated. Nonetheless, unlike the other constraints noted above, it is methodological rather than substantive. Like any concept, there will be multiple interpretations of fraternity that are both internally consistent and that meet the substantive criteria. What we should do is favour the version of fraternity that best accords with our substantive criteria but seems least likely to conflict problematically with autonomy. Whether such a version is possible remains to be demonstrated, but I believe that it is. This methodological principle will, I believe, play a key role, but that will become more apparent as the examination of the candidate value unfolds. For the time being, the question of compatibility with autonomy can remain in the background as a straightforward methodological constraint.

The substantive criteria are more important for this part of the paper. The first of these, universality, illustrates the scope of a moral and political demand. Any individual can, *prima facie*, be in a society with any other individual or any group of individuals, depending only on circumstances. Simply put, almost any encounter of more than one person is a kind of society in this context. Consequently, the values incorporated in the principles by which societies are governed must be capable of being applied in this universal way. This is not to say that a principle must give the same result for every individual in the same situation, but that a principle must be capable of giving

some answer to every individual in the same situations.⁸⁰ It must, so to speak, cover the field. Tradition fails this standard. In most of its advocated versions, tradition as a social value is of dubious value on general philosophical grounds – it is potentially incoherent and has little explanatory power at the level of bare sociality – but it also has trouble on methodological grounds. I raise them nonetheless because the non-universalizability of tradition shows the way to the next possible candidate, impartiality, which I will discuss in chapter four to follow.

The second of the substantive criteria arises from the limitations of autonomy. A theory of moral and political legitimacy cannot hope to be accepted as explaining sociality if it cannot explain what it is that makes certain institutions legitimate even though they are not freely chosen and what makes their rejection always a loss. It is this criterion that makes tradition attractive. It seems like tradition might have some normative force that can explain why certain non-voluntary obligations, including family obligations and the general duty to obey the law, are legitimate. Nonetheless, I think the problems that tradition faces in satisfying my other criteria undermine this apparent ability to explain the kind of alterity involved in non-voluntary obligations.

In this chapter I will conduct the first of the three examinations required. I will examine two different accounts of what tradition involves and how it offers an account of the legitimacy of the kind of non-voluntary obligations discussed in chapter two. The first version is Edmund Burke's 'entailed inheritance' approach to tradition. This approach claims that we have certain rights and liberties and duties because our forbearers acquired them and passed them on to us in trust for future generations. The non-voluntary obligations may be some of these entailed obligations. Alternatively,

⁸⁰ It is, I believe, a more limited form of universalization than the kind on which particularists focus their objections. See Jonathan Dancy, *Ethics Without Principles*, (Oxford: Oxford UP, 2004).

Roger Scruton's conservative traditionalism involves the claim that our culture legitimates non-voluntary obligations. His approach here is akin to the Hegelian *Sittlichkeit*, but without the idealist metaphysics or methodology. While this position is more plausible than Burke's, it nonetheless has serious conceptual and methodological difficulties that preclude it from playing the role of fraternity in an explanation of the normative requirements of sociality.

II. Tradition and the Social

On the surface, tradition does not seem to arise from sociality in the way some other candidates might. Nonetheless, for some thinkers, it meets some of the criteria of a legitimating value and plays some of the roles sociality must. Tradition's answer to the question of why some relationships have an unchosen value comes from cultural background of the people involved in those relationships. I call this view traditionalism, though it is often seen in various strands of conservative political thought. In this section I will distinguish between conservatism, which includes many general moral and political principles also found in other approaches, and traditionalism, which is simply one aspect of contemporary conservatism, focussed on the legitimating potential of tradition. I will then show that the proponents of traditionalism face a dilemma. It can be interpreted strongly, so as to give a substantive role to the purported traditions. This strong interpretation, however, is a myopic traditionalism, out of sync with many basic features of ordinary social life that are subject to change without losing their legitimacy. The weak interpretation, soft traditionalism, while consistent with reality, is nonetheless inconsistent with the universalizability criterion and is ill suited to serve as a principle representing the demands of sociality.

A. Burke and Tradition as Inheritance

Tradition plays a central substantive role in conservative thought. Nonetheless, what constitutes conservatism is a point of great dispute, not in the least because of its position in the claims of partisans and opponents in the political arenas of most western democracies. Nonetheless, the patchwork nature of conservatism is found in its earliest clear exposition – Edmund Burke’s *Reflections on the Revolution in France*. Originally a letter to distinguished members of the French Assemblée National, the author’s reaction to the revolution, and to claims that the revolution is consistent with the English ‘Glorious’ Revolution of 1688, provides a number of possible sources and principles of conservative thought. However, several of those are more matters of political, moral and jurisprudential good sense. Two exemplary candidates are prudence and argument by analogy. Prudence, Burke claims, is a key conservative virtue. His view of prudence is best summed up in the now-cliché proverb ‘fools rush in where angels fear to tread.’⁸¹ However, in this way, prudence is more of an ordinary virtue that could be adopted by liberals, libertarians, or communitarians. Liberals need not be radicals, and communitarians have often looked like conservatives with the emphasis they put on social cohesion and the importance of tradition in establishing inflexible social roles.⁸² Likewise, argument by analogy – the principle that new rules should be made in a manner consistent with old rules according to the analogousness of the new situations with old – plays a critical role in the jurisprudence of every common law court and has since their foundations in the middle ages. Liberal and conservative judges use it, but simply draw different analogies from similar facts and legal principles.

⁸¹ Edmund Burke, *Reflections on the Revolution in France*, (London: Penguin, 1986), p. 134.

⁸² A case more plausibly made of Alasdair McIntyre’s Thomist-influenced critique of liberalism than of others like Sandel and Walzer. See his *After Virtue*, (London: Duckworth, 1985), and references to him in Kymlicka 1989, p. 56.

The legitimating role of tradition is the truly distinctive feature of conservative thought. For Burke, the source of rights, responsibilities and other features of the English constitution provides those features with their value. ‘The idea of a liberal descent,’ he says, ‘inspires us with a sense of habitual native dignity ... By this means our liberty becomes a noble freedom. It carries an imposing and majestic aspect. It has a *pedigree* and illustrating ancestors.’⁸³ The importance of pedigree in this argument by analogy is key. Like a show-dog, the basic rights and obligations of Englishmen derive their value not simply from their current usefulness or attractiveness (a difference between late-18th century conservatives and reformers like Bentham) but from the line of their descent.

While the “pedigree” argument by analogy is an interesting one, it is not Burke’s primary argument for the legitimacy of tradition. Burke’s main focus is on rights as an ‘entailed inheritance.’⁸⁴ An inheritance is something passed from one generation to the next, but an entailed inheritance is an inheritance subject to conditions. In this case, the conditions are twofold – preservation and acquisition. First, the rights are passed on subject to the condition that they be preserved for the next generation. Such restrictions were once more common in property arrangements, like family heirlooms and manorial houses, but have become rare in our culture and are often overruled by contemporary courts. Second, these arrangements ‘leave acquisition free; but [they] secure what [they] acquire,’⁸⁵ for future generations. Unlike his mention of ‘pedigree,’ Burke’s discussion of inheritance is not an argument by analogy. Burke is speaking literally about a matter he

⁸³ Burke 1986, p. 131.

⁸⁴ *Ibid.*, p. 119.

⁸⁵ Burke 1986, p. 120.

believes to be empirical fact when he talks of the importance of inheritance to the legitimacy of the rights of Englishmen. He says

‘You will observe, that from the Magna Charta to the Declaration of right, it has been the uniform policy of our constitution to claim and assert our liberties, as an *entailed inheritance* derived to us from our forefathers and to be transmitted to our posterity; as an estate specially belonging to the people of this kingdom without any reference whatever to any other more general or prior right.⁸⁶

This statement shows the importance of inheritance as a legitimating concept in conservative thought. What is legitimate in a conservative interpretation of a political or moral scheme is that which is grounded in an inheritance relationship. The “general or prior” rights any citizens might have are of no value in determining the legitimacy of the rights in question. Accordingly, they are legitimate whether they are chosen or not, and indeed because of the ‘entailed’ quality, they cannot be shirked or sundered because of the impact of this change on the liberties and obligations of future generations.

While Burke usually spoke about rights and liberties, he would also include the obligations of Englishmen in his entailment. A principle of tradition like Burke’s could attempt to explain the legitimacy of various non-voluntary obligations, then, by claiming that they are an entailed inheritance that one does wrong in failing to observe and preserve. Take, for example, the case of family obligations. Parents have certain rights over and certain duties to their children that are not voluntary. That these rights are a part of the tradition of a society might explain why they are legitimate much as precedent determines judgements in a court governed by *stare decisis*. How well this works will be examined in the following sections, but I note here that it is not *prima facie* implausible.

⁸⁶ Ibid., p. 119.

B. Scruton and Culture as a Legitimizing Value

More contemporary resonances can be found in a number of conservative and not-quite conservative authors. David Miller's approach to nationality is partly analogous to, and partly reliant on, a traditionalist approach to legitimacy. Nationality, like tradition, can require the allegiance of its members over and above any choices they might make.⁸⁷ Nonetheless, he attempts to distinguish himself from what he calls 'Conservative Nationalists,' like Roger Scruton. While national membership, when present, requires some loyalty in Miller's view, for Scruton and conservatives, the term used is 'piety.'⁸⁸ Scruton is best known for his work in aesthetics, but his interest in that field comes from an underlying moral and political conservatism much like Burke's traditionalism. A society's cultural inheritance, particularly its high culture, is what demarcates one society from others and must, especially in a non-religious society, serve as the template from which that society draws its ethical doctrines and lessons.⁸⁹ We learn what duties we owe because of the appreciation of the art objects of our culture – its stories, poems, sculpture, architecture, etc. This serves to reinforce the conservative claim that various ethical norms are valid because of their grounding in a common culture.⁹⁰

Scruton's views are not new. If anything they are a form of ethical Hegelianism without the idealist metaphysics or the dialectical methodology. The foundation of

⁸⁷ Miller 1995, pp. 49-80.

⁸⁸ Ibid., p. 124.

⁸⁹ Nussbaum makes a similar point with regard to Ancient Athens in *The Fragility of Goodness*, (Cambridge: Cambridge UP, 1986) while Rorty's 'ironic liberalism' makes a similar move for contemporary liberal societies in *Contingency, Irony, and Solidarity* (Cambridge: Cambridge UP, 1989).

⁹⁰ See, generally, Roger Scruton, *Culture Counts: Faith and Feeling in a World Beseiged*, New York: Encounter (2007), especially C. 3 and 4 on how aesthetic judgement arises and how it influences a moral education.

morals is not located in the individual or rational choice but in the adherence to the ‘transcendent’ or ‘objective’ standards of the community. Scruton claims,

Impiety is the refusal to recognize as legitimate a demand that does not arise from consent or choice. And we see that the behaviour of children toward their parents cannot be understood unless we admit this ability to recognize a bond that is “transcendent,” that exists, as it were “objectively,” outside the sphere of individual choice. It is this ability that is transferred by the citizens from hearth and home to place, people and country. The bond of society – as the conservative sees it – is just such a transcendent bond, and it is inevitable that the citizen will be disposed to recognize its legitimacy, will be disposed, in other words, to bestow authority on the existing order.⁹¹

The success of the central conservative claim – that society imposes unchosen but legitimate moral obligations on individuals through tradition – does not depend on whether one accepts the claims about children and parents. Scruton does, but at this point that example is meant as an illustration rather than an argument. In grounding the legitimacy of ethical principles in membership in a society, Scruton starts conservatism down the path to traditionalism, but only because society is viewed as the bearer of culture and tradition.

Scruton is explicit about his belief that consent is not required for political legitimacy. Like me, he partly uses the family to make this case. In *The Meaning of Conservatism*, family operates as an analogy with society. ‘The family,’ Scruton says, ‘is a small social unit which shares with civil society the singular quality of being non-contractual, if arising not out of choice but out of natural necessity.’⁹² In this statement civil society is the group from which a culture arises. Natural necessity could be understood as claiming that the family is beyond political legitimation, but this version would run into the same problems as the Rawlsian take, as amply illustrated by the

⁹¹ Roger Scruton, *The Meaning of Conservatism*, (London: Penguin, 1980) pp. 32-33.

⁹² Scruton 1980, p. 31.

feminist critique.⁹³ Alternatively, it could mean that whatever their source, choice or natural necessity, the family and civil society are legitimate institutions because of the role they play in individual lives. Since tradition is the constitutive principle of these institutions, it is the principle by which maxims and policies are declared legitimate or illegitimate within them. While this approach has problems it does not rely on an arbitrary distinction between types of societies and should be preferred here accordingly.

Scruton's claim is that the insufficiency of choice in explaining legitimate institutions necessarily leads to the view that tradition plays the legitimating role. While my full arguments against this view will follow in the next section, one point is required first. In Scruton's view society legitimately demands allegiance, and it is in viewing allegiance as an end, rather than as a means, that his conservatism comes to depend on the value of tradition. It is through viewing traditions as constitutive of a society that observance of those traditions is seen to entail the acceptance of the legitimacy of the society constituted by them. In other words, Scruton claims that by participating in the rites of a given society, I declare myself a member of that society and furthermore that the society's control over me is legitimate. The American Pledge of Allegiance, or standing for national anthems, are examples, but Scruton's preferred example involves the British monarchy.

Consider the Englishman's allegiance to the Crown, as he envisages and enacts it ... It is not the personal qualities of the Queen that draw the Englishman to her, not is it any considered knowledge of the function and the history of the Crown. It is rather a sense of the monarch as a symbol of nationhood, as an incarnation of the historical entity of which he is a part.⁹⁴

In this example, the allegiance owed does not depend on knowledge of the tradition, but on respect for the tradition without any demand for knowledge. That a policy or

⁹³ Okin 1989.

⁹⁴ Scruton 1980, p. 39.

practice is a part of the society's tradition is sufficient to render it legitimate. To fail to observe these practices would violate tradition and be illegitimate within society or tantamount to declaring oneself outside the social union: far too heavy a price to pay for a choice to be meaningful.

II. The Inadequacy of Tradition – Applicability and Universality.

There are two problems with the view that tradition provides an explanation of the ethical demands of the social.⁹⁵ The first is that tradition, particularly interpreted in Scruton's strong sense, does not seem to fit with a comprehensive view of what people are basically like. In this, it corresponds closely to several of the problems Amartya Sen raises for identity politics in *Identity and Violence*. The second problem with tradition as a central social value is that it does not fit one of the important substantive criteria we found in the last chapter. Tradition is not universalizable. In Scruton's formulation it does not intend to be, but in other formulations it could appear so. Nonetheless, I believe it is not universalizable in the way that a candidate for the normative requirements of sociality should be. I believe it is quite possible to be ungoverned by tradition and nonetheless subject to the kind of unchosen demands important to sociality.

A. The Applicability of Tradition

In my view Scruton's faith in the non-controversial nature of his examples is misplaced. Institutions he presumes legitimate need not be. While Scruton exempts the family from the social sphere, this exemption is not as thorough as it seems. The interconnectedness of civil society and the family is easily seen when we consider the

⁹⁵ A third problem would be whether it would be reconcilable with autonomy, as Scruton and Burke explicitly disavow the autonomy of individuals, and in Burke's case, the autonomy of a society. However, this problem is one of interpretation. An interpretation of tradition could be proposed that would not necessarily constantly conflict with autonomy in every sense. None will be given here, and due to the other more pressing problems with tradition, I feel little motivation to try.

example of an abusive family. If the parents are raising their children in ways that conflict with the interests of society, civil society is permitted or compelled to intervene.⁹⁶ However, if the family is a self-contained source of legitimacy, on what does society ground the legitimacy of its intervention? Two possibilities present themselves. In the first instance, the society could intervene because happenings in the family sphere impact on the social sphere. If a family is sufficiently dysfunctional it may impede on the sphere of the social through involving the criminal justice system in its actions or by creating children who become a burden on society, either through reduced capacities or through active criminal behaviour. Alternatively, a society could recognize that what counts as a family is not some sort of universal constant. Families are mutable, particularly in the sense that the sphere of individuals to whom a duty is owed changes between societies. Some norms are constant – while the children are in their minority, parents have duties of care to their children, and children have duties of obedience to their parents; every society has incest-related taboos – but other norms are equally important for a society but are nonetheless not universal. In some cultures, heterosexual married couples move to the husband’s family’s village, while in others they gravitate toward the wife’s kin. In some polygamy is accepted, while in others it is forbidden. In certain western sub-cultures (which Scruton would probably call decadent in the classical meaning of the term), close-knit groups of friends take on many of the care responsibilities normally reserved for family members. The notion of a university as an ‘alma mater’ arose from its role of taking on the family’s supervisory and care role, a

⁹⁶ This is different from parents who are acting in the violation of the children’s best interests, interference with which can often be legitimated by principles rooted in autonomy. Here, I will focus only on parents indoctrinating their children in serious anti-social behaviour.

practice that continues in many cases despite changes in the notions of what constitutes 'care' for a young adult.

For a traditionalist, either of these options is acceptable, but each raises problems. Recognition of the impact of one sphere of life on another is not problematic in itself, but over the long term can expose a traditionalist to another set of problems. As spheres interact, changes in one sphere will demand changes in others, and sometimes tradition will be silent on how to approach these changes. Burke and Scruton speak of an 'analogistic' approach to gradual change, but there are times when the analogy approach is not necessarily conclusive, nor is it necessarily gradual. In federal constitutions, some powers are reserved to the national government while others are reserved to regional governments. However, problems arise in determining what happens when an action involves elements that affect both jurisdictions, and in dealing with new matters not addressed under the original constitution. International relations are usually reserved to federal governments, while the power to implement social programs are usually regional. However, international agreements often require local implementation. Likewise, whole new issues, like environmental protection and telecommunications, require legislation but since there is no clear delineation, whatever principle we adopt must find a way to address these problems. However, sometimes tradition will speak for both possible solutions to the jurisdictional problem. It can, in other words, contradict itself and is of no help in determining a legitimate outcome here.

Furthermore, societies can change such that traditions once considered valuable become obsolete or offensive, indicating that what is really valuable is not tradition for tradition's sake. Quebec in the 1960s underwent what is usually called the 'quiet

revolution.’ In the late 1950s, Quebec was an impoverished, culturally backward province. Its education, infant mortality, birth, and marriage rates were more similar to third world countries than any of the other Canadian provinces. Its primary moral and political influence was the Catholic Church. However, by the mid 1960s it was more ethically liberal, more nationalistic, better educated and less religious than any other province in Canada. Consequently, what was once considered a valuable tradition like schooling in strict Catholic schools for francophone children became an unwanted oppression. Without serious outside influence, a society changed such that policies tradition would have legitimated were no longer really legitimate for that society.⁹⁷ Similar circumstances happened in Spain following Franco’s death and following the collapse of the Soviet Union.⁹⁸ Spain’s example has mirrored Quebec’s in the shift from conservative Catholicism to liberal individualism, while near-libertarian individualism has taken root in the formerly collectivist parts of Russia.

A traditionalist can nonetheless account for some of these problems of coherence. One could claim that in changing particular traditions, the society is nonetheless protecting others. The decline of the importance of Catholicism in Quebec coincided with a rise in Québécois nationalism, such that the traditionalist could claim that the rejection of the former tradition was connected to the protection of the more valuable latter. There is, indeed, some evidence for this. Likewise, in Spain, the decline of many centralizing traditions, including, again, Catholicism, can be connected with efforts to protect other decentralizing traditions. The rise in Catalan, Basque and

⁹⁷ When I say ‘without serious outside influence’, I mean only direct influence. Quebec was not conquered in the early 1960s, nor was it subject to any serious international or interprovincial influence. Nor, indeed, was this a violent cultural revolution as was its Chinese counterpart. The Quebec example is discussed in Charles Taylor, *The Ethics of Authenticity*, (Cambridge MA: Harvard UP, 1991) and Kymlicka 1989.

⁹⁸ Taylor 1991.

Galician nationalism in the years following Spain's transition to democracy seems to evidence this fact. Still, there is a contradiction here, as one tradition – the nationalism – seems to be in conflict with a second – religion – such that tradition itself leaves no way of deciding among these.

The problem these examples illustrate is that even if some version of tradition could be found that was internally consistent, it could not fit the facts of contemporary life. In explaining how this works I will first explain how there are two different 'facts of pluralism.' One is Rawls', and traditionalists claim to be able to address this.⁹⁹ This is the fact that different people can reasonably disagree about the nature of the good. In traditionalist language, this is equivalent to saying that different people have different traditions. These people would then not genuinely be in society with one another, even if they manage to coexist through a *modus vivendi* or an overlapping consensus. The other is Sen's. This fact of pluralism is like Rawls' only it reminds us that individuals can, and almost always do, have more than one set of ultimate ends.¹⁰⁰ In traditionalist language, this translates as individuals have multiple traditions and belong to multiple societies. This raises the possibility of internal conflict of the sort for which traditionalists do not ordinarily account.

The fact of pluralism in Rawls is the social fact that different people can reach different reasonable conclusions about the nature of the good. In the terms of a traditionalist, where what is good is determined by the traditions a person is obliged to respect, this means people are bound to different, potentially incompatible traditions. On the surface, this seems problematic for a traditionalist. After all, it sure seems like people with different traditions form one society from time to time. Scots, English and

⁹⁹ Rawls 1993.

¹⁰⁰ Sen 2005.

Welsh, after all, have different traditions or different approaches to the same traditions, leading to different evaluations of the same maxims or policies in either case. Nonetheless, they are British as well, and form part of the same society in that way. However, a traditionalist can account for this much as Rawls accounts for different conceptions of the good. A traditionalist can claim that there is an overlapping tradition that binds all these supposedly distinct societies together that runs through the set of traditions each member is bound to observe. It would thus simply be a part of what it is to be Scottish, Welsh and English that one is also British.

Nonetheless, this example highlights an additional difficulty for the traditionalist that cannot be escaped as easily. The second fact of pluralism is not that individuals have different conceptions of the good, it is that any single individual likely has multiple, potentially conflicting, conceptions of the good. Each individual is a plurality of goods, or in traditionalist terms, a plurality of traditions and a member of multiple societies. This perspective becomes clearest in Amartya Sen's *Identity and Violence*. In a social context, any individual is not normally associated exclusively with one identity. In Sen's case, he is Bengali, British, Anglophone, Son, Father, Husband, Professor, Alumnus, Supervisor, Economist, Laureate, etc. He, like anyone, is the sum of multiple different identities, each with their own particular claims to his allegiance. A traditionalist should claim that as a member of each society, he is bound to observe the traditions of that particular society. However, the sheer number of possible identities should make clear the difficulties involved in this. An example, focussing on the important traditions that attach to nationality, should suffice to illustrate the problem.

Traditionalists are often inclined to adopt something like ‘the cricket test’ in determining social membership.¹⁰¹ This was seriously proposed as a method of determining whether someone was ‘truly British’ or whether one still bore more allegiance to another country by watching how that person cheers in a cricket match. Aside from obvious problems of limitation (plenty of people don’t care about cricket, or any sport), scope (some people cheer for quality of play or other factors rather than partisan nationality), and forgery (people can pretend to cheer for a country), the cricket test fails to account for the second fact of pluralism. Any one person can have multiple legitimate reasons for each side of a conflicting decision, even when both reasons are of the same kind. As Sen explains, a person of Bengali origin who has lived their entire adult life in the UK could easily feel compelled to cheer for both, and could do so. They could simultaneously feel joy for the victors and sorrow for the defeated. They are partial to multiple, conflicting traditions, or they could be partial to no tradition at all.

There are two difficulties here. The first is that traditions, even in their more dispute-resolution modes, can conflict, and do not necessarily provide any way of recognizing or resolving those conflicts. Second, there comes a point at which tradition is silent. Just as we are unlikely to have basic philosophical intuitions about extremely unusual ethical dilemmas, there comes a point beyond which tradition has nothing to say because the members of a society have not necessarily encountered anything analogous to a situation before. Such conflicts and such novelty are ordinary parts of the human experience. Together, they undermine tradition’s claim to provide an explanation of the ethical demands of sociality because of internal contradictions within the

¹⁰¹ Sen 2005.

principle of tradition itself. If it cannot keep its conceptual house in order it cannot represent the normative element of our sociality.

B. The Universality of Tradition

The second major problem with tradition is that its view of society is too narrow for it to play the role of a central legitimating value. There might be some types of society in which tradition plays a role in making some policies legitimate, but that sphere is not the broader sphere of the ethical demands generated by the bare kind of sociality at issue here. The crux of tradition's problem is that it cannot be universalized. There are several different approaches to universality, and it is clear on examination that tradition meets none of them. The three main approaches are the empirical approach, the rationalist approach, and the transcendental approach. An empirical approach looks to instances of society and determines by induction whether tradition is a necessary part of each of those collectives. A rationalist approach attempts to derive the central legitimating value from some a priori feature of our sociality. Neither of these approaches is particularly promising for the traditionalist. Finally, a transcendental approach asks whether tradition is a necessary precondition of any social ethical demands. While this seems more like what most traditionalists, including Scruton, have attempted, counter-examples abound and undermine this possible approach.

The traditionalist claims that tradition plays the same role in society as nature plays in the family, and attempts to give examples to support this claim. Arguing by example is sometimes effective, but it depends both on the effectiveness of the examples and the immunity to counter-example. As I discussed above, the examples used by Scruton and Burke – particularly of political institutions like the crown – are highly mutable entities. In Burke's case, his example of the continuity involved in the

'Glorious' Revolution is greatly overstated, and is further undermined when one looks to the English Reformation, a hundred and fifty years before the 'glorious' revolution.¹⁰² A society persists, and can persist legitimately, even after one or more radical changes in their political institutions. France has seen five republics, two monarchies, and a couple of dictatorships over the last 220 years but persists nonetheless, despite Burke's warnings to the contrary. Countries have rejected many of their founding traditions when the content of their inheritances have become too burdensome. The United States, with a great deal of difficulty, rejected slavery. Many south-east Asian nations have rejected or vastly curtailed their monarchies. My home province of Newfoundland rejected a tradition of independence to join Canada when the economic burdens of autonomy overwhelmed that freedom's value. Newfoundland, Nepal, Japan, and America continue to exist even though they have had radical institutional change. When looking at the world more broadly than Burke or Scruton we find not only that the examples they use are suspect, but that counter-examples abound.

A rationalist approach, one that tries to derive traditionalism from some a priori principle of society, remains largely untried by traditionalists. While a transcendental argument would claim that some kind of concept of tradition was a necessary condition of the possibility of society, a rationalist argument would claim that the existence of society necessarily generates tradition as a legitimating value. Set aside, for the moment, the concerns about the possibility of generating an "ought" from an "is," since we should consider society as something already normative. How, then, could tradition be generated by society in such a way as to be a necessary component of any legitimate

¹⁰² Locke's *Two Treatises of Government* were written, in part, as a defence of the Glorious Revolution and the right of citizens to overthrow monarchs. John Locke, *Second Treatise of Government*, Thomas P. Peardon, Ed., (Upper Saddle River, NJ: Prentice Hall, 1997), see esp. Chapter XIX, 'On the Dissolution of Government.'

society? I claim it cannot. The non-voluntary obligations at the core of society do not depend on any kind of tradition to be legitimate, nor do they automatically generate traditions of their own. Tradition requires a host of background features that would not be present in many fleeting collectives or in the early stages of more permanent societies. Again, this is not to say that tradition might not be an important, even necessary, feature of some kinds of societies. It is, rather, to say that tradition is not an essential feature of the kind of sociality at the root of all societies.

These problems also seem to pose a problem for a transcendental approach to tradition as a central legitimating value. Nonetheless, the argument would run in the opposite direction from a rationalist approach. It would claim, as Scruton does, that one only has a society when one has a set of established traditions to provide a moral education.¹⁰³ I believe this mistakes an epistemic for an ontological solution, and even then is short-sighted. We may only “know” that we have a society – in some rather advanced sense of the term like nation or community – when we have a set of traditions, but that does not mean that without the traditions we have only some kind of proto-society. Societies exist whether we are aware of their existence, or their practices, or not. However, even if we accepted Scruton’s order of explanation, tradition is still inadequate as a condition of the possibility of society. Some trivial instances of society – individuals passing one another on a street; fellow passengers on a train – are too fleeting to develop traditions, yet they are nonetheless collectives that entail moral and political obligations of the kind a principle of fraternity must explain.

There may be some kinds of societies in which tradition is a necessary legitimating criterion; societies that cannot be understood without understanding how

¹⁰³ Scruton 2007.

they are governed by various sorts of traditions. However, not all societies have this feature. Since we are looking here for the most basic kind of legitimating criterion – one that applies to all possible collectives, however durable or fleeting – tradition is inadequate. It cannot explain the necessary moral and political demands of sociality.

Chapter 4: Impartiality and the Demands of Sociality

Abstract

In this chapter I will examine the second of the two most plausible candidates for a principle reflecting the demands of the fact of sociality – impartiality. This is the view, best expressed by Nagel, that liberal societies are premised both on partiality to the self and objective impartiality. I believe impartiality faces a dilemma, neither horn of which allows it to legitimate the kinds of maxims and principles a principle of sociality must justify. While there is one sense in which impartiality might be a central value, I believe this sense – the sense called second-order impartiality by Brian Barry – is too vague to be genuinely useful in determining whether a maxim or policy is legitimate unless it also implies the other, more specific, sense. However, the more specific, first-order sense of impartiality – more akin to the kind used by Nagel – is far too closely linked to autonomy to helpfully explain the kind of non-voluntary, relationship-based maxims the second principle is meant to address.

Introduction

Impartiality, in one form or another, is the principle adopted most often by liberals to explain the normative implications of sociality. It is not, in my view, up to the task. The two authors who are clearest about the importance of impartiality in explaining how maxims and policies are legitimated in a liberal society are Thomas Nagel and Brian Barry, and as such my efforts in this chapter will focus on demonstrating the inadequacy of their proposals.

At the outset of *Justice as Impartiality*, Barry makes the critical point that there are two different levels of impartiality. First-order impartiality requires individuals to act from impartial motives or according to impartial reasons in choosing what to do and

how to live.¹⁰⁴ This kind of impartiality is not what liberals have in mind, Barry claims, and is unnecessary to ensure the success of the important, second-order kind of impartiality they believe is required for a just society. He then shifts to focus on second-order impartiality, the kind of impartiality involved in establishing social norms at the abstract level of an original position. This kind of impartiality faces a critical dilemma that leaves it unable to adequately explain the demands of sociality. In the first section, I explain how impartiality works in Barry and in Nagel. In Nagel's case it is the principle arising from the standpoint of the collective, and maxims or policies that an individual would like to pursue are to be examined in its light to determine whether they are legitimate. In Barry's case, impartiality is the central requirement of justice, accommodating both autonomy and equality in much the same way Nagel's 'two standpoints' approach tries. However, Barry's synthesis here leaves some dangerous ambiguities that come into focus in the critical sections to follow.

I. The Case for Impartiality: Nagel and Barry

Nagel makes the connection between sociality and impartiality clearly, but it plays an even more significant role in Barry's approach to justice. In the first subsection I discuss how impartiality plays the role of the normative requirements of sociality in Nagel, in order to demonstrate the problems with this approach in the next section. Nagel discusses impartiality, framed in terms of equality, as one of two criteria a maxim or policy must accord with in order to be legitimate. Then, I will explain how Barry tries to develop a theory of justice grounded in impartiality as its central value, incorporating both autonomy and equality, which he, following Nagel in a certain way, takes to represent the normative demands of sociality. Once we understand how impartiality

¹⁰⁴ Barry 1995, p. 11.

works in these accounts we will be in a better position to understand why it cannot address the demands of sociality.

A. Nagel and Impartiality as the requirements of sociality

Nagel begins, as I do, from the methodological view that there are two basic ineliminable factors, each of which generates independent demands that a moral and political philosophy must appreciate and reconcile. Furthermore, he appreciates that these factors must both be, in some respect, a part of the individual. That is, insofar as individuals choose from among, and determine the legitimacy of, maxims and policies pursuant to principles that accord with one or another of the two standpoints, the demands of those principles must be acknowledged and balanced by an individual agent. However, Nagel quickly moves from this internalization of the demands of sociality to the claim that the sociality requires the individual to assess his desires, wishes, plans, and reasons for action according to the impartial perspective. I will first discuss what the impartial perspective, in Nagel's view, consists in before I assess its demands. Then I attempt to explain why Nagel thinks that impartiality is what sociality requires.

We start, for Nagel, in our own partial viewpoint, but given this, he claims, we are only one abstraction away from understanding the impartial point of view. 'Nothing further than abstraction from our identity (that is, *who* we are) enters into ethical theory,' he claims, juxtaposing this sort of abstraction from the more advanced kind of abstraction involved in scientific theorizing.¹⁰⁵ This is not, however, to claim that the impartial point of view is all that is required for ethical theorizing. To do this would omit the importance of partiality and individuality. What Nagel ultimately proposes then is a two standard test. For a maxim or policy to be legitimate in the lights of each of the

¹⁰⁵ Nagel 1991, p. 10.

two factors it must be both partially and impartially acceptable. As I explained in Chapter 1, Nagel's approach to the partial point of view accords nicely with the value of autonomy as other liberals characterize it, but his focus on impartiality here is unique.

Impartiality, in Nagel's view, requires that the individual making the judgement about whether a maxim or policy is legitimate ensure that that maxim or policy respects a certain kind of equality among individuals. The role of equality is critical here, since it is not the only option a theorist interested in impartiality might have chosen. From the impartial view it is not obvious that every individual's interests are of equal weight. Some individuals will have plans that will ameliorate the condition of a great many people, while others have goals that will make a great many other people worse off. Impartiality could concern itself with the promotion of the plans of the former individuals and with condemning the plans of the latter group. This is Hare's approach to impartiality, but it is not how impartiality works in Nagel.¹⁰⁶ Hare's maximalization approach violates the kind of autonomy liberals hold important, which is one of the two aspects Nagel has in mind when he talks about 'the duality of the self.' Impartiality is the other. 'If we accept the duality of the self,' Nagel says, 'then from the impersonal standpoint two general judgements will emerge which there is no obvious way of combining, viz: 1. Everyone's life is equally important. 2. Everyone has his own life to lead.'¹⁰⁷ In the second of these two judgements we can see the principle of autonomy, while in the first we find a characterization of how impartiality works for Nagel. He says 'instead of morality being more like politics in its sensitivity to the balance of power, we

¹⁰⁶ Nagel 1991, p. 44. In this, as in many other things, Nagel is consistent with the Rawlsian tradition's rejection of utilitarianism on the grounds that it fails to respect the autonomy of the individual.

¹⁰⁷ Ibid.

should want politics to be more like morality in its aim of universal acceptance.¹⁰⁸ This links his project with the Kant-Rawls tradition where the truly legitimate society is one that achieves unanimity among its members on the central principles, and the only way to achieve this unanimity is to treat individuals as autonomous and as of equal worth. Furthermore, given the closeness of these two characteristics, Nagel's two general judgements above have a built-in means of reconciliation: everyone's life is equally important because everyone has his own life to lead. We are equals, then, because we are all autonomous.

Nagel's approach seems to me to fail to adequately appreciate the demands of sociality. Ultimately on this view sociality produces no demands that would not be produced by the individuals involved. In other words, it has the normative implication of reducing society to the sum of individual obligations, without reference to obligations they might have to one another. This is not enough to explain the demands of sociality. Society is, to borrow the Moorean phrase, an organic unity; a whole not reducible to the sum of its parts.¹⁰⁹ There are demands that arise uniquely from sociality rather than from the sum of the demands of individuals. Such an approach to sociality could not justify the kind of non-voluntary obligations central to the demands for a second principle. It might recognize that they are legitimate, much as Rawls recognizes some 'natural duties' as legitimate, but it could not adequately explain their legitimacy as a product of the theory.¹¹⁰ However, I will explain this criticism shortly, alongside a critique of a similar issue in Barry's approach to impartiality.

¹⁰⁸ Nagel 1991, p. 46.

¹⁰⁹ G. E. Moore, *Principia Ethica*, (New York: Barnes and Noble, 2005) at p. 32.

¹¹⁰ For Rawls' approach to natural duties see Rawls 1999, pp. 98-100. He recognizes their legitimacy, but cannot explain it as a product of the two principles of justice.

B. Barry and Justice as Impartiality

There is a sense in which Barry picks up where Nagel leaves off. Both attempt to present theories that use impartiality as a central but are nonetheless faithful to the Rawlsian tradition. However, central to Barry's approach to impartiality is a disambiguation between what he calls first- and second-order impartiality. In Nagel, as in other liberals and their critics, these two different and not necessarily connected levels of impartiality are often problematically conflated. In this subsection I explain the difference between first- and second-order impartiality and discuss Barry's approach to second-order impartiality. He claims that a version of second-order impartiality is a sufficient principle for explaining when a maxim or policy is legitimate. This discussion leads to next two subsections where I argue that Barry is wrong. If impartiality matters in the way that a candidate to explain the normative requirements of sociality must, there must be a connection between first- and second-order impartiality such that the latter implies or requires the former. Once we understand this connection it becomes easier to see how impartiality is either too vague to be a meaningful legitimating criterion or cannot adequately represent the demands of sociality.

The distinction between first- and second-order impartiality is key to Barry's approach, since most of the criticisms of impartial conceptions of justice focus on problems with what he calls first-order impartiality. In Barry's view, first-order impartiality is the idea that individuals are to be guided in their moral deliberations by an impartial ideal and that moral obligations arising from partiality are illegitimate. This is a quite different kind of impartiality than second-order impartiality. While first-order impartiality is 'a requirement of impartial behaviour incorporated into a "precept," what second order impartiality 'calls for are principles and rules that are capable of forming

the basis of free agreement among people seeking agreement on reasonable terms.¹¹¹ Second-order impartiality, then, is whatever the outcome of an original position-type exercise will produce given willing participants and a goal of reasonableness. This is, however, more of a label than a requirement, as becomes clear when we examine exactly what second-order impartiality requires and how it is supposed to lead to a just society.

Barry's approach to impartiality is intended to further the liberal tradition started by Rawls and further developed by Scanlon.¹¹² The Rawlsian approach used an autonomy-focussed account of fairness as a central value, but Barry argues that impartiality plays a key role in explaining the concerns of fairness. He locates this in Rawls' argument against utilitarianism. While Rawls acknowledges that 'the utilitarian principle – maximizing the average expectation – might seem to be an attractive gamble from the point of view of the original position,' Barry claims that 'inequalities that arise under the Rawlsian principles of justice can be justified to those who fare least well under their application, whereas those that arise under the application of utilitarianism cannot be justified to those who do least well.'¹¹³ The difference here is that the Rawlsian position is fairer than the utilitarian position because of its sensitivity to the least well off. However, in Barry's view Scanlon's approach to the original position is an improvement on Rawls' take. He notes two key differences – continued awareness of own interests rather than total ignorance of their position in society and a 'desire for reasonable agreement' rather than self-interest – and how these lead Scanlon to the "no reasonable rejection" standard.¹¹⁴ In Barry's view, this standard better reflects the

¹¹¹ Barry 1995, p. 11.

¹¹² Barry 1995, pp. 52ff.

¹¹³ Ibid., p. 65.

¹¹⁴ Ibid., p. 67, quoting Scanlon 'Contractualism and Utilitarianism' in Amartya Sen and Bernard Williams (Eds.), *Utilitarianism and Beyond* (Cambridge: Cambridge UP, 1982) at p. 115, n. 10.

impartiality already implicit in Rawls' justice as fairness by spelling out how fairness requires impartiality. For Barry, impartiality is the principle by which informed people with a commitment to reach agreement choose from among various maxims and policies. Impartiality requires agreement on principles as fair, Scanlon's approach leads to fair principles through the use of a principle of equality, therefore justice as impartiality will require a principle of equality.

Barry contends that this second-order impartiality neither implies nor requires first-order impartiality. He mounts a more thorough defence of non-requirement in the final part of *Justice as Impartiality*. He defends his view against three different critics of impartiality: the Williams, Kohlberg and feminist approaches. The Williams approach draws from Bernard Williams' attacks on the role of impartiality in both Kantian and consequentialist approaches to morality. Williams argues that failure to accept partiality is a major shortcoming of every major system of morality, but Barry claims that Williams' arguments are off-target.¹¹⁵ While Williams is right about particular versions of consequentialism and Kantianism, Barry claims that these versions are themselves inadequate and, as such, arguments against them have no real bearing on more nuanced approaches to impartiality like his. Because of this misdirection, Barry holds that nothing in Williams' approach makes it necessary for a second-order impartiality theory to require first-order impartiality, and so it only has purchase against theories with first-order impartiality. In this sense, Barry's attacks on Williams miss the mark themselves. Since Williams says nothing about the connections between first- and second-order impartiality so central to Barry's approach, critiquing Williams' approach is itself unnecessary.

¹¹⁵ Barry 1995, pp. 217-233.

The Kohlberg approach is based on a statistical analysis claiming to show what ordinary people think morality requires.¹¹⁶ Based on a methodologically unsound set of studies conducted during the 1960s and 1970s, Lawrence Kohlberg argued that the apogee of ordinary morality is found in either of a utilitarian or Kantian approach to impartiality.¹¹⁷ Without getting into too many of the empirical details, Barry demonstrates quite effectively how Kohlberg's approach does not demonstrate any way in which first-order impartiality is required by second-order impartiality. Rather, Kohlberg argues in the opposite direction: claiming that the prevalence of commitment to first-order impartiality should lead political philosophers to use something like second-order impartiality in establishing the justice of political institutions. In addition to the clear commission of the naturalistic fallacy here, Barry accused Kohlberg of skewing the studies to ensure the primacy of the utilitarian/Kantian outcome by generating an unrealistic scenario on which to evaluate the subjects' attitudes and by arbitrarily limiting the tabulation of results into his overly narrow characterizations. However, the weakness of Kohlberg's position means that while Barry's separation of first- and second-order impartiality is safe for the moment, it remains to be seen whether it was under genuine attack from Kohlberg to begin with.

The feminist critique of impartial morality grew out of opposition to the Kohlberg studies. The 'ethic of care' advocated by Carol Gilligan and many feminist authors who followed her is based directly on an objection to Kohlberg's methodology. Relationship-based ethics, of the kind many contemporary feminist philosophers advocate, was allocated a third-level status by Kohlberg, two notches below his

¹¹⁶ Barry 1995, pp. 234-246.

¹¹⁷ For a discussion of the methodological unsoundness of the Kohlberg studies see Carol Gilligan, *In a Different Voice*, (Cambridge, MA: Harvard UP, 1993) esp. pp. 20ff.

preferred approaches. In Gilligan's view an ethic grounded in relationships, rather than one grounded in justice, should be seen as a rival to the Kantian and utilitarian camps dominant in philosophy, but the former approach rejects impartiality while the latter makes it a central value.¹¹⁸ Barry's approach to this is to try and claim that there is room within an ethics of justice for an ethic of care. When justice is silent for whatever reason – its considerations balance out or the matter is deemed 'private' rather than 'public' in some relevant way – an ethic of care can appropriately answer the question of what one ought to do. However, when there are impartial considerations that require a course of action, Barry contends that the ethic of care does wrong to insist on the value of partiality in such circumstances.

Barry's approach here seems to miss the main focus of the feminist critique, that the personal is political.¹¹⁹ In this context, deciding about what is public and what is private is itself a question about which the ethic of care and the ethic of justice might give different answers and to which neither can presume the legitimacy of pre-theoretical intuitions. Take, for example, the decision about whether to hire one individual or another in a small business. In one sense, we think it perfectly acceptable that some businesses are able to remain within a family, but when the business becomes important in some way – by growth or by providing an essential service at a critical moment – such hiring practices will be seen as problematically nepotistic. While an ethic of care will promote hiring based on relationship and will consider the family business to be a personal matter, an ethic of justice insisting on full equality of opportunity will consider all hiring to be a public matter (since it involves the distribution of limited goods, namely work opportunities) and will insist on an open competition or some

¹¹⁸ Barry 1995, pp. 246-257.

¹¹⁹ Okin 1989, *inter alia*.

other impartialist procedure. What makes an issue public or private is itself a question that Barry illicitly presumes should be answered by impartial justice. Failure to adequately deal with this problem undermines Barry's approach, as it demonstrates the potential for second-order impartiality to require actions that, from some angles, are seen as private. This makes the second-order impartiality imply the kind of first-order impartiality Barry sought to avoid as obviously problematic.

II. Second-order Impartiality

Second-order impartiality without first-order impartiality is not an adequate conception of justice. Put simply, my claim here is that in Barry's approach to 'justice as impartiality,' impartiality itself is not doing any of the normative work. Rather, all the work is done by the various principles built into Barry's account of what reasonableness in a Scanlonian 'reasonable rejection' test would require and that reasonableness is not equivalent to impartiality. First, I explore Barry's contention that a 'reasonable rejection' test would reject first-order impartiality. While I can appreciate the approach, I find his objections unconvincing. Then, I move into the explanation of what reasonableness requires for Barry to demonstrate that impartiality itself plays no real role in determining whether a maxim or policy is something another could reasonably reject. This leads to the view that whatever justice requires according to Barry, it does not require second-order impartiality. Therefore, for impartiality to serve as a principle representing the demands of the collective standpoint, it must be something more like first-order impartiality.

A. Does reasonableness preclude first-order impartiality?

Barry's strongest argument for the claim that second-order impartiality does not imply its first-order counterpart is the argument that the former precludes the latter. He

argues that individuals in a Scanlonian or Rawlsian original position would fail to endorse a norm of first-order impartiality. However, I believe the plausibility of his argument here rests on a failure to adequately examine the standard of reasonable rejection. Barry says

‘that the people in a Scanlonian original position could not reasonably reject established norms governing first-order impartiality provided they fell within a certain range. However, this range does not extend as far as a norm of universal first-order impartiality or anything like it. The people in a Scanlonian original position could reject a norm that did not leave sufficient scope for individual discretion.’¹²⁰

To this end Barry examines three different problems with a universalized first-order impartiality: control, coordination, and compliance. I will examine each of these in turn and demonstrate that they fail to make the case for reasonable rejection.

Barry believes justice as impartiality can reject universal first order impartiality for three reasons. The first is what he calls ‘control.’ This is essentially an argument that the importance of a sphere of privacy leads individuals in the original position to reject universal first-order impartiality. ‘Regardless of our conception of the good,’ Barry claims, ‘we all want some ability to control our own corner of the world ... to put it another way, we all want some room for discretionary choices within the areas that are the most important to us.’¹²¹ How this would be affected by a norm of universal impartiality is not spelled out, but should be clear nonetheless. Barry believes that if there is a requirement of first-order impartiality, the projects, property and well-being of one individual can be sacrificed for the benefit of another. This, then, is simply a claim that autonomy, in the sense discussed in the opening chapter of this thesis, is important enough to exclude first-order impartiality as a principle. However, while this is a good post-hoc argument for explaining why we might not want to adopt impartiality writ

¹²⁰ Barry 1995, p. 200.

¹²¹ Ibid.

large, it does not explain why it could be reasonably rejected by individuals in the original position – particularly if those individuals adopt many of the values Barry seems to give them elsewhere. Earlier in the book he focuses on the role of equality in the basic intuitions underlying impartiality, but equality does make impartial demands limiting the sphere of the private for the benefit of the sphere of the public. Equality requires transfers of personal property from one individual to another to promote the cause of a just society. Equality does not care about how important those resources were to the first party.¹²² That a multi-millionaire might have done something truly brilliant with his money is of little comfort to nearby starving children. If equality is important and implies impartiality, then it implies first- and second-order impartiality even at the expense of autonomy.

Ultimately Barry's claims about control depend on his claims about coordination and compliance. While control seems to be the factor involved when Barry says 'life goes better if what I do with my toothbrush is my own business,'¹²³ ultimately his defence of this claim is not that it is better all things considered if each individual has a right to a sphere of privacy including personal property but that 'I should not be under any obligation to ask myself whether somebody else could make out a better case for using my toothbrush than I can.'¹²⁴ The core of the problem of control, then, is one of coordination. It is too difficult for each of us to spend a lot of our time determining how to best allocate our finite resources. This seems sensible enough, but to presume that first-order impartiality would require such an effort seems a bit of a leap. First-

¹²² Or so resource egalitarians claim. See Ronald Dworkin, *Sovereign Virtue*, (London: Harvard UP, 2000). A welfare egalitarian will tell a different story, but in this case he will care about the importance of the resources rather than their objective usefulness to various parties. G. A. Cohen, *Rescuing Justice and Equality*, (Cambridge, MA: Harvard UP, 2008).

¹²³ Barry 1995, p. 201.

¹²⁴ *Ibid.*

order impartiality could require the optimal distribution of toothbrushes without requiring each individual to think about how this distribution should be achieved. To a limited extent, Barry acknowledges this. ‘Either coordination would have to be done by some public authority operating impartially according to general norms,’ He says, ‘or [coordination] will have to come about through private actions governed by a norm of universal first-order impartiality.’¹²⁵ Nonetheless he dismisses each of these two possibilities as ineffective without much explanation as to why.

This dismissal is too quick. A moral and political division of labour is one of the most ordinary features of modern life. We have rules – ranging in demandingness and enforceability from norms of etiquette to corporally punishable laws – that govern a wide range of situations from when to start eating at a dinner party to how much tax an individual has to pay to when the state can and must kill its citizens. Each of these egalitarian, first-order norms is a relatively novel invention that we have nonetheless effectively coordinated. There is no *a priori* reason to think that first-order impartiality could not be solved by the same coordinative devices as other moral principles and no better empirical reason to think this than there was to think the same about taxation and egalitarian dining practices several centuries ago.

Similar comments apply to Barry’s use of compliance. He maintains that ‘in an attempt to secure strict impartiality in all areas of life a huge number of decisions that are now left to private judgement would have to be turned over to public officials; and all decisions left in private hands would be open to scrutiny and censure on the basis of the hypertrophied positive morality of the society.’¹²⁶ Firstly, whether this morality is hypertrophied depends on whether our current morality is considered healthy, a claim

¹²⁵ Barry 1995, pp. 204-205.

¹²⁶ Barry 1995, p. 205.

needing support unoffered by Barry. Second, why should we think that justice as impartiality would stand in any greater need of bureaucratization with a first-order requirement of impartiality as without? Given the importance of equality to impartiality, and the great deal of bureaucracy required by an egalitarian state, why should we worry about it in an impartialist state?

In all of these criticisms of first-order impartiality Barry treats the public/private divide as though it were a natural fact rather than as something that is itself a question of justice. Whether toothbrushes or the use or destruction of other scarce resources is a private or a public matter is itself a question of justice. To use such a divide in an attempt to claim what justice does and does not require introduces a problematic circularity of which Barry seems unaware. This makes it seem as though Barry here is attempting to use justice as impartiality to claim that no one can reasonably reject the status quo, when in reality justice as impartiality might require a much more radical reorientation. In any event, problems arising from control, coordination and compliance do not have the force Barry believes. They do not prove that a society in a Scanlonian original position can reasonably reject a principle of impartiality.

B. Does reasonableness require impartiality?

It seems to me that without first-order impartiality, Barry's justice as impartiality does not really involve impartiality at all. I believe the normative work in Barry's approach is done by the concept of reasonableness, which only looks like impartiality because of the closeness of some of its constitutive principles to first-order impartiality. As such, if I am wrong in the prior subsection, and Barry's approach to second-order impartiality does not require first-order impartiality, then it is not really a theory of impartiality. Barry sets out a definition of impartiality at the outset of his approach that

is barely reflected, and carries no normative weight in the substantive approach he adopts. Ultimately, this leaves me with the impression that impartiality is a label for a theory rather than a description of that theory's content. If this is what Barry means by justice as impartiality, then it becomes quickly clear that this is not a kind of impartiality that can explain the needs of sociality.

Barry has three questions that set out the methodology meant to guide our understanding of what a theory of justice must involve. 'First, what is the motive (are the motives) for behaving justly? Secondly, what is the criterion (are the criteria) for a just set of rules? And thirdly, how are the answers to the first two questions connected?'¹²⁷ Barry's answers to these three questions constitute his explanation of what justice as impartiality involves and his advocacy for it. To this end, Barry adopts Scanlon's reasonable rejection test wholesale and then explains how this test satisfies each of the three questions.¹²⁸

The answer provided to the first question involves advocating a desire for reasonable agreement over mutual advantage as an answer to the 'why be just' question. This is in addition to their desires to pursue their individual aims, and so should be seen as a supplement to the desire for mutual advantage that drives the Rawlsian answer to the first question. Barry does not discuss how two motives can easily conflict. A desire to pursue particular ends might be compromised by my desire to reach general agreement. A goal of world domination might not be possible, or, at least, might not be just, in a society based on agreement. Even if it were possible, such an end would likely conflict with my desire to reach agreement with others, unless they all happen to have a

¹²⁷ Barry 1995, p. 46.

¹²⁸ Barry naturally does more than just this. He also explains why other approaches, notably Rawls' and Nozick's, do not adequately answer these three questions. Here, however, I must focus on his positive account of what justice as impartiality involves so that I can better demonstrate that it does not really involve impartiality.

desire to be relieved of the burden of governance, a coincidence on which Barry cannot rely. More importantly, Barry does not explain any way in which this motive (these motives) leads to impartiality as a requirement. This is not too serious at this point as impartiality could be involved in the answers to the second and third questions. But it is noteworthy because if there are difficulties involved in connecting his answers to the second and third questions with impartiality, Barry cannot use the ‘desire to reach agreement’ motive as a source of impartiality.

The criterion Barry, following Scanlon, adopts is that of reasonable rejection. Quoting Scanlon, Barry characterizes this as follows: ‘an act is wrong if its performance under the circumstances would be disallowed by any system of rules for the general regulation of behaviour which no one could reasonable reject as a basis for informed, unforced general agreement.’¹²⁹ Naturally, such a principle stands in need of explanation on several points, and Barry does an admirable job of making its implications clear. However, these implications do not seem to connect reasonable rejection with any sort of substantive principle of impartiality. While Scanlon is focussed on acts that are wrong, Barry is focussed on rules that are just, but little depends on this distinction. The nature of unforced and informed decision is important for both Barry and Scanlon. An unforced agreement in their view precludes coercion or allowing for disparate bargaining power. In other words, that I could do better without an agreement than you is no good reason for me to reject an otherwise reasonable system of rules. Meanwhile, Barry claims to depart somewhat from Scanlon on what counts as informed. While Scanlon would exclude “agreement based on superstition or false belief about the

¹²⁹ Barry 1995, p. 67, quoting Scanlon 1982, p. 110.

consequences of actions,”¹³⁰ Barry contends that ‘one person’s superstition is another person’s belief.’¹³¹ While Barry recognizes that some informed belief requirement is necessary, he believes this should take a proceduralist form. Parties to the original position should be aware of the way their society works and of the alternatives. This seems to leave open the possibility of agreement based on superstition or false belief, provided it is universally held or universally seen as reasonable.

What counts as reasonable is, however, underexplored in Barry’s account. While it seems clearly connected with universalizability, this condition is already an explicit part of the standard. Furthermore, given the possibility of multiple reasonably acceptable systems of rules, this principle gives no further determination about which of them to choose. We can look for clues to reasonableness in Barry’s determinations about what is and is not reasonable, but in these I find little insight. I find little in the way of explanation for his claim that ‘it is one thing to be praised for behaving generously against a background norm which leaves the act optional and quite another to be led by generosity to accept a rule that would expose one to moral condemnation unless one were to sacrifice oneself unilaterally. It would not be reasonable to accept the latter.’¹³² It seems far from obvious to me that there are not circumstances under which one does wrong not to sacrifice oneself which, on a Scanlonian proceduralist account makes such acts required by justice. While we can hope for these occasions to be rare this rarity does not make them any less important for a comprehensive theory of justice. While the Scanlonian approach to the motive for agreement does incline towards generosity, Barry seems to wish to tailor this generosity by making what counts as

¹³⁰ Barry 1995, p. 69, quoting Scanlon 1982, p. 111.

¹³¹ Ibid.

¹³² Ibid., p. 70.

reasonable closely tied to the pursuit of one's own inclinations. This is quite different from the approach to rationality in Scanlon's later work *What We Owe to Each Other*, which focuses on a very restricted approach to irrationality leading to a broad approach to rationality. For something to be rational, for the later Scanlon, is just for it not to contradict a proposition one currently endorses.¹³³ That this might involve limiting one's generosity in the original position is a possibility, but neither Barry nor Scanlon explain how these are to be counter-balanced.

Finally, nothing in this discussion of the Scanlonian approach to justice indicates the importance of impartiality. There is a certain emphasis on equality, but it is more of a prioritarian than an egalitarian approach, and a prioritarian approach is less committed to impartiality.¹³⁴ Prioritarians explicitly favour those who are worst off and require amelioration of their position excluding the possibility of levelling down. Inequalities in the Scanlon/Barry approach must be justified to all, including those who are worst off, but universality and unanimity do not necessarily require impartiality. This implies that fairness plays an important role in this approach, but again fairness is not the same as impartiality. If we start, as Barry does, from the point of view that fairness requires certain moral features, we are already a significant way from the Scanlonian starting point where fairness is one of the things that has to be determined by the reasonable rejection test. Finally, any attempt to insert a more normative version of fairness would fall afoul of Barry's own warning against making too much of the concept of equal treatment, where he says 'we can talk about equal treatment only after we have settled the prior issue of what should count as relevant and what should be excluded as

¹³³ T. M. Scanlon *What We Owe to Each Other*, (Cambridge, MA: Belknap, 1998), at chapter one.

¹³⁴ Derek Parfit, 'Priority or Equality' in *Contemporary Political Philosophy: An Anthology (2nd Ed.)*, Robert E. Goodin and Philip Pettit, Eds., (Oxford: Blackwell, 2006), pp. 462-472, and Richard J. Arneson, 'Luck Egalitarianism and Prioritarianism,' *Ethics*, v. 110 no. 1 (2000), pp. 333-349.

irrelevant.¹³⁵ Fairness has to be determined through the original position or via some process of reflective equilibrium defended on its own merits. Neither of these are options Barry has available to him at this stage in his enquiry.

What this leaves us with is the label ‘justice as impartiality,’ but with no substantive impartiality in its content. Therefore, to whatever extent impartiality is required by our sociality it cannot be Barry’s second-order impartiality. Whether it could be a different sort of impartiality, closer to how Nagel uses the term, is a final option that I will examine in the next section.¹³⁶

III. First-order Impartiality

Nagel starts from the assumption that impartiality represents the normative requirements of sociality, but, as mentioned before, I believe his approach here is mistaken. If some sort of first-order impartiality is an ethical requirement at all it must be from some other source than the basic demands of human sociality. I believe Nagel presents this version of impartiality as a sort of equality of autonomy. I contend here that this version cannot adequately explain the kind of non-voluntary character of the obligations addressed in chapter two and it fails to explain the kind of alterity that seems to be important to our sociality. Yet if we understand impartiality more like Barry’s first-order impartiality, this principle might be deeply incompatible with autonomy in violation of another of my methodological presumptions here. In this section I examine

¹³⁵ Barry 1995, p. 228.

¹³⁶ One could object that even if Barry’s approach is not genuinely about impartiality it is surely about some other value that could, even if impartiality cannot, represent the normative requirements of sociality. Put simply, that might be true, but it does not undermine the claim that if impartiality is to represent the demands of sociality then Barry’s account of second-order impartiality will not work. While I will comment further on the possible role for general moral principles in developing an account of solidarity, the point in this section was to examine whether impartiality could play such a role. That Barry claimed to be talking about impartiality makes a discussion of him appropriate – that impartiality does not actually do any of the normative work in his ‘second-order impartiality’ is a problem for him and, in the context of my assessment of whether impartiality can play the role required by a second value, a fatal one. This leaves us with Nagel’s approach and the kind of first-order impartiality it contains and that Barry rightly rejects.

each of these possibilities in turn, concluding that the demands of sociality cannot be properly represented by impartiality.

A. Impartiality as Equality

While my earlier discussion focussed on how Nagel might not have chosen equality as the requirement for impartiality – he might have followed a utilitarian route and required maximalization of interests – my discussion here will focus on the fit between equality and the impartial point of view. For Nagel, impartiality both reflects and requires equality. It reflects equality in that a sort of formal equality arises from the abstraction from the personal to the impersonal point of view, while it requires equality because this is the normative consequence of the abstraction.¹³⁷ Nonetheless, I believe this kind of ‘impartiality as equality’ cannot be what sociality requires because, strictly speaking, formal equality does not require anything. The normative force of egalitarianism comes because of the moral worth individuals are taken to have. In Nagel’s case, this arises by making the impartial/egalitarian principle include the interests of the individual in a way tantamount to autonomy. In this kind of impartiality autonomy is doing all the work and equality, effectively, none.

While I set out the connections between impartiality and equality briefly earlier in this chapter, a brief rehearsal is in order before I begin critiquing the position. The abstraction from the partial point of view to the impartial point of view is accomplished by omitting from consideration only the fact about which interests are one’s own. Once we have abstracted away from our own identities we are left with a world of equal individuals/interest combinations. The individuals themselves are not necessarily what is

¹³⁷ Nagel 1991, pp. 10-12.

important as much as the individuals and their attached interests. They are equally important because they are all equally attached to interests and plans.

However, impartiality does not necessarily follow from the kind of abstraction Nagel presumes here. Some plans and interests are, or seem to be, more important than others. It does not seem unreasonable to presume that an individual whose plan will make the plans of many others more likely to succeed ought to be favoured by the impartial point of view over some other individual whose plans will help fewer individuals or, indeed, whose plans will harm other individuals. Nagel needs some non-aggregable property here to prevent the kind of aggregation involved in this kind of maximalization approach. It is in this way that we can see the extent to which the impartial point of view is influenced by the importance of autonomy. We are all equal, but the equalisandum, what we are equal in, is autonomy. What is important, then, is not the satisfaction of plans but the satisfaction of the individuals with plans. Otherwise, aggregation would be more of a problem for Nagel.

The importance of autonomy to impartiality is, however, pernicious and undermines Nagel's root claim that the standpoint of the collective is best understood as requiring impartiality. The inclusion of autonomy as the equalisandum by Nagel demonstrates a key feature of egalitarian theories. While the theories focus on equality, what we are all equal in is autonomy. We are all equally deserving of having our interests met and our plans come to fruition. The difficulty with this is that it ultimately reduces to the kind of autonomy-only theory, the shortcomings of which I explained in chapter two. Egalitarian theories like Nagel's combine an account of formal equality with some substantive moral principle to determine what sociality requires, or what a just outcome

involves. The trouble is that the equality condition is vacuous and the substantive condition does all the normative work.

I believe there is a bi-conditional at the core of formal equality claiming that we ought to treat one individual in a certain way (say, as an autonomous individual) if and only if we ought to treat another individual that way. In this case, we ought to treat A as an autonomous individual if and only if we ought to treat B as an autonomous individual. However, the same result – the treatment of A and B as autonomous individuals – can be accomplished without any reference to equality. If A deserves treatment as an autonomous individual because A has interests and plans and B deserves treatment as an autonomous individual for the same reason, then justice requires us to treat A and B as autonomous individuals. They happen to be treated as equals because they are both deserving of the same treatment, but equality plays no role in determining the treatment they are due. This leaves the view that treatment as an autonomous individual matters, but equality does not. It adds nothing, leaving a fairly basic conception of desert and the connection of individuals and interests we characterized as autonomy from the outset, doing all the normative work.

This can be seen in Nagel's approach to impartiality as well, particularly in how he distinguishes his egalitarianism from utilitarian egalitarianism. In Nagel, what we ought ultimately to satisfy are the plans of individuals (one of whom is oneself), rather than plans simpliciter, the plans we would see from a level of abstraction one beyond Nagel's, where we abstract away from all individuals as well as from oneself. Interests simpliciter can be aggregated, and we could legitimately choose to satisfy those leading to the greatest good. That we cannot do that illustrates the importance of autonomy; that we cannot aggregate plans means that what is treated as equal is the autonomous

individual. Individuals are due treatment according to certain norms of respect, dignity and through the satisfaction of their plans: a standard roughly equivalent to my approach to autonomy from chapter one. However, the individuals need not be seen as equals to accomplish this. They need only both be seen as bearing the same trait (individuality) entailing the same normative consequence (autonomous treatment).

What this leaves Nagel with is an attempt to represent the standpoint of the collective as ensuring the autonomy of the individual. This violates the desiderata of chapter two, in which we discussed the shortcomings of autonomy and how it cannot adequately explain why certain important features of our ethical and political lives are legitimate. Nagel's impartiality as equality is ultimately a version of impartiality as autonomy, and cannot adequately represent the demands of the fact of sociality.

B. Impartiality as Non-partiality

It remains to be seen in the final part of this chapter whether a version of first-order impartiality, of the kind Barry dismisses but to which I believe his theory is committed, can adequately represent the normative requirements of sociality. Using Barry's characterization, I will briefly explain what first-order impartiality involves. There are a few different options. As Barry presents it, first-order impartiality could be an overriding obligation to act according to the results of some impartial utility calculus such that someone always does *ultima facie* wrong in failing to act accordingly. Following Barry, I will call this Kagan-style impartiality, though I believe Barry's use of Shelly Kagan's 'extreme' approach to morality is an uncharitable reading of the latter's work.¹³⁸ Alternatively, impartiality could involve a *pro tanto*, rather than *ultima facie*, reason for action. While this is a more acceptable option than the Kagan-style approach, it

¹³⁸ Barry 1995, discussing Kagan at p. 24-25, referencing Shelly Kagan, *The Limits of Morality* (Oxford: Oxford UP, 1986).

nonetheless cannot adequately respond to the type of concerns that a principle of fraternity representing the demands of sociality is supposed to address. Put simply, there are obligations arising from partiality that we believe to be legitimate and that any value attempting to explain the importance of sociality must address. First-order impartiality, even in its more plausible form, is ill suited to explain the legitimacy of these obligations and, therefore, is an appropriate candidate for explaining the demands of sociality.

Barry is quick to dismiss first-order impartiality, and therefore his discussion of it is brief. Nonetheless, in that brief discussion he does provide some guidance as to what a first-order impartialist approach to legitimacy (or justice, in Barry's terms) would require. Kagan's goal in *The Limits of Morality* is to examine whether there is a plausible case for what he calls 'ordinary moral opinion,' but what it results in is a strong case for a version of 'extreme' morality. Extreme morality involves a *pro tanto* obligation to maximize the good with no legitimate countervailing obligations. This results in an *ultima facie* obligation to maximize the good, where the good is viewed impartially. What this leaves us with is a view that any maxim or policy inconsistent with the dictates of impartiality is illegitimate, and impartiality requires us to maximize the good.

While there are aspects of Kagan's approach to morality that I find convincing, Barry's use of it here as a strategy to explain a consequentialist approach to first-order impartiality is incompatible with my methodology. I start from the presumption that there are two facts, sociality and individuality. A framework like Kagan's leaves little room for individuality. If there is always an *ultima facie* obligation to pursue the good, there can be no real autonomy since the choices of individuals would always be subject to the demands of impartial morality. The maximalist approach Kagan uses here contradicts the separateness of persons explained in chapter one, which is why it

undermines the kind of autonomy that relies on the separateness of persons. It is, therefore, not a particularly helpful candidate for explaining impartiality as an expression of the demands of sociality.

Nonetheless, Kagan's approach to impartiality as the maximalization of the good could be softened to make it a more plausible approach, though this softening is not apparent in Barry's discussion. If the *pro tanto* obligation to pursue the good were merely one *pro tanto* obligation among many it could offer a form of impartiality that, while also inconsistent with autonomy (and as such not preferred on my account) might nonetheless be plausible. In this version impartiality is one reason, while autonomy is another, and conflicts between the two must be resolved through some procedure I need explain here.¹³⁹

I need not get into this explanation because there are deeper problems with first-order impartiality that infect even more moderated versions. A first-order impartiality that requires us to maximize the good cannot explain the legitimacy of special obligations of the kind that played such an important role in chapter two. While second-order impartiality might allow for, or even legitimate, some special obligations – particularly those to the family or the obligation to obey the law – first-order impartiality stands directly opposed to the kind of partiality that is central to such obligation. Family partiality, obligations to co-nationals, the whole set of special obligations cannot be justified if first-order impartiality is the legitimating principle invoked. It is too far removed from the kind of alterity we need here, and as such cannot do the kind of work that a principle representing the demands of sociality must.

¹³⁹ I will spend most of chapter seven explaining the different ways to reconcile principles in a dualist framework, though impartiality will not be one of the principles.

Conclusion

While some liberals have used impartiality to explain the demands of sociality, it is ill suited to explain that fact's normative requirements. I believe Nagel's approach to impartiality as an explanation of the demands of sociality is misguided. While second-order impartiality seems promising, it is ultimately either vacuous or only valuable because it implies first-order impartiality. However, first-order impartiality, even in its most plausible version, is at odds with the phenomena any candidate for the principle of fraternity must explain as legitimate. Impartiality is not, then, what our sociality requires.

Chapter 5 – Solidarity and the Grounding of Fraternity

Abstract

In this chapter I examine whether a concept of solidarity might play the role needed for a value of fraternity. I distinguish between interest- and identity-based approaches to solidarity, and explain why I favour an interest-based approach. I examine the normative and motivational requirements of the obligation to enter into solidarity with others and the obligations that arise from a solidaristic union. Then I analyse three different kinds of solidarity. While common self-interests alone cannot suffice for solidarity, they are a necessary feature of a valuable account. Solidarity grounded on prior relationships seems like a candidate, but violates autonomy in important ways. However, a version of solidarity where the interests of another are incorporated into one's own interest set through one's own conscience seems to me like a plausible candidate. It may also represent the demands of our sociality.

Introduction

Alterity is at the core of solidarity, and explains why it is a candidate for a political value that arises from our basic sociality. Alterity in general involves a focus on the other. In an ethical context, it narrows to a focus on some aspect of the other's well being. Impartiality was lacking in alterity, but solidarity is grounded in it. Solidarity exists when there is some unity among individuals, some identification with another leading to common support for a common goal. Initially, I must distinguish some of the normative features of solidarity. Ordinarily, Solidarity is discussed as a valuing of some common property individuals share. I argue that this approach to solidarity is short-sighted and pernicious if solidarity is to help explain the legitimacy of moral and political obligations. Instead, solidarity ought to be understood as involving identification with the interests

of another. I then explain the nature of solidarity's normativity. There are two distinct obligations involved in solidarity: entry and union obligations. While each is a kind of *pro tanto* reason for action, one is weak but nonetheless difficult to defeat, while the other is stronger but more often overridden. This forms the content of the first section of this chapter.

Once I have explained the nature of the obligations involved in solidarity, I turn my attention to the mechanism by which another individual's interests can become incorporated with my own. I examine three possible answers. The first, based on common self-interests, tells part of the story but not all. I explain how self-interest plays a necessary role in an account of solidarity, but that basing solidarity wholly on common interests misses critical elements of what the normative requirements of sociality should include. Some of those elements might be provided by an account built around individual loyalty, the second possible mechanism. However, since the kind of loyalty on which solidarity would, I argue, depend is deeply incompatible with a principle of respect for autonomy it fails on methodological grounds. The third possibility, which I call 'moderate ethical solidarity' grounds the solidarity relationship in our pre-existing ethical obligations. I believe this approach, when combined with the common self-interest requirement, can give us a plausible account for what fraternity as the value required by the fact of sociality.

I. What Solidarity Involves

I believe solidarity involves the recognition that individuals identify with one another through a common interest that will be ameliorated through collective action. This is clear in the commonly used metaphor 'we're all in the same boat.' My task here is to explain what this formulation involves: only then will we be able to see whether or

how it can meet the requirements of sociality and be reconcilable with autonomy. First, I explain the identification involved in solidarity. This identification is not with the other individual as a whole, or with some of that individual's traits, but with that individual's interests. Most approaches to solidarity rely on some prior common trait of the individuals involved to establish solidarity. I call these identity-based approaches, and contrast them with interest-based accounts. Interest-based approaches ground the unity solidarity requires in some sort of identification with another's interests. Second, I will explain the normative requirements of solidarity. As there are two types of obligations involved in any discussion of solidarity, I deal with both entry obligations and union obligations throughout. Entry obligations are *pro tanto* obligations to enter into a relationship of solidarity that can, and I believe often do end up as *ultima facie* obligations, while union obligations are stronger *pro tanto* obligations that result from entry into solidarity and that must be reconcilable with autonomy. Each kind of obligation can be overridden, but once solidarity is established, our obligations within such a union take on added strength because of a prior entry obligation.

A. Identity and Interest

Usually solidarity, when discussed at all, is discussed as an identity-based practice. Some kind of pre-existing unity is postulated on the basis of a shared identity, on which the specific obligations are superimposed. I believe this picture cannot do the work of a foundational value in moral and political philosophy. Instead, I argue for an interest-based approach to the identification with another involved in solidarity. On this view, individuals should adopt a form of solidarity because they have a common interest, on which the union obligations are then based. If individuals do not identify

with another's interests, entry into solidarity would no longer be ethically or politically required, and the union obligations would not arise.

The interest approach has a number of advantages over the identity approach, not the least of which is that so much of identity-based solidarity involves the 'dubious category "race."' ¹⁴⁰ This is well discussed in Tommie Shelby's attempt to construct an interest-based approach to African American solidarity. While Shelby is indebted to the work of W. E. B. Du Bois, particularly in his assessment of the relative duties of black elites and the middle and working classes, unlike Du Bois, he moves very deliberately beyond identity as a basis for entry into solidarity. ¹⁴¹ The central problem is that race and the identity-based approaches that mirror it, no longer have any intellectual currency. Race depends on a sort of biological essentialism: there is some inescapable feature of an individual contained in their genes and manifest in their physical traits. ¹⁴² Shelby wishes to maintain that there is a valuable role for unity among black people while rejecting essentialism. While the essentialist approaches based their unity or 'race pride' on common phenotypic traits, Shelby's conception of solidarity is grounded on a common experience of unjust treatment common interest in remedying that injustice which happen to arise due to a shared trait.

A key advantage of the interest-based account is that even non-essentialist notions of identity that attempt to treat it as monistic are now recognized, in philosophy if not yet in the broader culture, as deeply implausible. While identification with a particular trait is both common and unproblematic, attempting to identify with only one

¹⁴⁰ Shelby 2005, at p. 24. The inner quotes here are in the original.

¹⁴¹ While Shelby's references to Du Bois are frequent, his deeply sympathetic yet critical discussion at pp. 60-67 and 78-95 is both thorough and revealing.

¹⁴² Shelby has a detailed discussion about the problems of race and identity in developing an account of solidarity at p. 39ff. See also Sen 2005 and K. Anthony Appiah, *The Ethics of Identity*, (Princeton, NJ: Princeton UP, 2005).

trait is a problem, even when one's oppression is due to that one particular trait. Amartya Sen points out clearly why this kind of biographical monism is difficult. We are, he claims, all subject to a fact of pluralism in that we all have multiple identities.¹⁴³ Someone who tries to cling to one of these identities is under what Sen calls the illusion of 'singular affiliation.'¹⁴⁴ One can, if one wishes, cling exclusively to one identity and deny the others, or one can claim that one identity has overriding normative force. Nonetheless, Sen claims, in either event one is choosing among identities. However, choosing one identity over others involves both epistemic error and moral danger. It is false as a matter of history and anthropology. The concepts of nations, races and tribes is an old one, but the notion that these were somehow pure or that one's nationality, race, religion or any single trait is the only trait that matters defies our historical and anthropological record. Humans migrate, cultures move with them and to single out any trait as essential would be ridiculously arbitrary. History and anthropology also demonstrate the ethical dangers involved in monism: the 20th century alone provides a series of horrifically grandiose examples. Nonetheless, this sort of monism is conceptually pernicious because it is both tempting in its simplicity and generous in its applicability. It claims to provide a simple either/or test for inclusion and exclusion while simultaneously simplifying one's inner diversity into a small number of traits that matter and a great number that do not. Race and identity accounts of solidarity depend on this false and troubling monism, and should be abandoned accordingly.

Identity can play a role in generating the interests involved in solidarity. Indeed, when the interest involved is racial injustice, it would be difficult for the trait not to generate an interest, albeit indirectly. What is important, however, is that the interest-

¹⁴³ Sen 2005.

¹⁴⁴ *Ibid.*, pp. 23-28.

based solidarity not depend solely on the trait such that people who don't have the trait can't share the interest and therefore enter into solidarity with those who do. Blacks in the United States are not just people who are not treated equally: they are people who are not treated equally *because they are black*. They have a common characteristic against which the dominant political culture continues to act unjustly. While they can recognize the dubious nature of delineating along that trait, they can also recognize that it is in their interest to work so that all who have the trait are no longer subject to the same injustices because of that trait. The solidarity will arise because of the interest, while the interest is incidentally due to the trait once associated with race. Nothing in this formulation precludes non-blacks from also having the interest. Take, for example, a white family in an otherwise black neighbourhood. If the school the white children attend is underfunded due to racial injustice, they have an interest in alleviating racial injustice despite not having the problematic trait. On an interest-based account they can enter into solidarity with their black neighbours even though they are not themselves black, which would be more problematic if not impossible on an identity-based version of solidarity. While traits can play a role in establishing entry and union obligations – as the feature leading to injustice – this cannot exclude those who do not share the trait from entering into solidaristic relations with those who do, nor can it provide identity-based obligations for those in the solidaristic relationship. Both of these features and the importance of traits to some solidaristic relationships are better explained by an interest-based account of solidarity.

An analogous form of discrimination might clarify matters here. While there are blind and deaf communities, there are many other traits that while disadvantageous in our society do not seem to give rise to the same kind of identity as others. An interest-

based approach can deal with new injustices as well as the old ones. Individuals who cannot walk all share a common trait, but given the plethora of circumstances under which they came to share this trait and the varying ways of coping with it in a society organized around its ambulatory majority, it does not seem to make sense to claim that there is a disambulatory community. Nonetheless, people who cannot walk have an interest in ensuring that their needs are met by society, which arises from a trait they share. They do not have to identify with their trait in order to enter into solidarity with one another, to take pride in one another's accomplishments, and to benefit from the new accommodations made by some with the ambulatory majority. An interest-based account can explain this type of solidarity and black solidarity equally well, while an essentialist approach would attempt to distinguish between those who have been disambulatory since birth (when everyone is fairly disambulatory) and those who have become disambulatory, just as there is some friction in the deaf and blind communities between those who have become deaf or blind and those who were never otherwise. An interest-based account recognizes that insofar as these individuals have common interests solidarity can exist among them, but insofar as their interests differ due to the different origin of their traits, their solidarities should also differ.

B. Solidarity, Normativity and Motivation

The above discussion leaves unclear the normative character of entry and union obligations. One has an entry obligation when one recognizes that one has a reason to enter into solidarity, while union obligations are those obligations that arise from a relationship of solidarity one has already entered into. Specifically, I have yet to explain whether entry and union obligations are *pro tanto* reasons for action that can be overridden or whether they are *ultima facie* obligations. I must also explain the

motivational impact that recognition of each kind of normativity would have. I examine the consequences involved in construing entry and union obligations as either *pro tanto* reasons or *ultima facie* obligations. Specifically, I will show why characterizing both entry and union obligations as *pro tanto* reasons for action better fits our basic intuitions about solidarity than *ultima facie* obligations can. I also explain how I envision the connection between the normative character of entry and union obligations and their motivational aspect.

There are several spectra along which one can distinguish types of *pro tanto* reasons. A key spectrum for my purposes is between weaker and stronger reasons. At one end of the normative spectrum are weak *pro tanto* reasons. While these are still, in some sense, obligatory – they have enough normative strength that one does wrong in adopting maxims and policies pursuant to them, and in other circumstances without stronger obligations one would adopt such maxims and policies – they are nonetheless easily overridden by other reasons that present themselves in a set of circumstances. This is distinct from *prima facie* reasons, which are also weak but when overridden lose their normative force. If, however, entry and union obligations are to be genuine obligations they must at least be *pro tanto*, rather than *prima facie*.

I think that ultimately entry obligations are often weak *pro tanto* reasons, but subject to a caveat. Any obligation to enter into a relationship of solidarity with another – a relationship where solidarity amplifies the normative strength of obligations among you – will be difficult to reconcile with autonomy if it is an overriding or overly strong duty. Entry obligations generate other obligations, and accordingly ought not to be so strong as to overwhelm all other obligations, lest they become an unending source of trumping duties. This sort of unending spiral of obligations would seem to present

problems for a life led from within, which is the central feature of liberal autonomy. The caveat is that while entry obligations are a weak form of *pro tanto* reason, they are often difficult to override. I think this difficulty arises from the circumstances under which they form rather than from the nature of the obligation itself. The catch is that only a very narrow set of obligations directly contradicts entry obligations: I call these ‘enemy obligations.’ For example, presume I have a *pro tanto* entry obligation with Mr. X. If, however, Mr. X were the sworn enemy of someone with whom I already had a solidaristic union, and my duties to the prior union include an enemy obligation concerning Mr. X, then this pre-existing obligation would override my reasons for entering into solidarity with Mr. X. However, only if my prior obligations included the enemy obligation would this override. If entry into solidarity with Mr. X might lead me to have obligations to him that would conflict with other obligations I already have this is not direct enough to block the entry obligation. Accordingly, while entry obligations are themselves weak *pro tanto* reasons, they are difficult to override.

Union obligations might be *pro tanto*, but they might also be *ultima facie*. If they are *pro tanto*, then one can have a union obligation that is not what one ought to do, all things considered. If union obligations are *ultima facie* obligations, however, they would always be what one has most reason to do. I think union obligations cannot be *ultima facie* reasons. One cannot have more than one *ultima facie* obligation. If one appears to have two or more then there are two possibilities: either the other options are illusory and the original all things considered judgement stands; or the options are genuine but the original *ultima facie* obligations is not actually *ultima facie*. There are approaches to *ultima facie* reasons that allow more than or less than one valid *ultima facie* reason, but

these circumstances involve multiple individuals.¹⁴⁵ While one individual cannot have multiple all things considered obligations, it is quite easy to imagine two individuals having two conflicting all things considered obligations. The question ‘what should they do,’ is no less coherent than the clear one-person moral dilemma case where an individual has equally strong or incommensurable *pro tanto* reasons. However, it does not apply to the case of union obligations or entry obligations, where the decision is an individual one rather than a collective one. The effects of such a construction on individual autonomy are problematic, but more difficult seems to be the possibility for internal contradiction in a world with multiple relationships of solidarity.¹⁴⁶ If solidarity generates *ultima facie* obligations, multiple solidaristic relationships could generate multiple *ultima facie* obligations, opening up the possibility for conflicting *ultima facie* obligations. These would then not really be *ultima facie* obligations. Alternatively, if solidarity were to generate *ultima facie* obligations it would be acting as a trump, such that one’s solidaristic obligations took precedence over all one’s other obligations in a way that does not seem plausible.

This *reductio ad absurdum* of conceiving of union obligations as *ultima facie* obligations clearly speaks in favour of characterizing union obligations as *pro tanto* reasons for action. However, we still do not yet know what strength of *pro tanto* reason we are dealing with here. It seems to me that for solidarity to be a useful concept, the obligations arising from it must be stronger than the obligation to enter into it. There

¹⁴⁵ I think this is particularly problematic in the case of multi-person moral dilemmas. While it is difficult to imagine one individual having multiple all things considered obligations, it is quite easy to imagine two individuals having two conflicting all things considered obligations. The question ‘what should they do,’ is no less coherent than the clear one-person moral dilemma case where an individual has equally strong or incommensurable obligations. Given that solidarity seems to involve a reciprocal relationship between more than one individual, consideration of the multi-party dilemma is apt. After all, solidarity requires multiple individuals to hold a particular obligation simultaneously.

¹⁴⁶ This is akin to Rawls’ fact of pluralism. Rawls 1993, p. 4.

must be some sort of solidarity bonus that enhances the duties one has to members of a solidaristic relationship. The obligations of general, impartial morality are owed to members of both in- and out-groups without distinction. Nonetheless, there are special obligations owed to members of the in-group that are not owed to members of the out-group. The obligations that arise from solidarity are, therefore, moral in character but they are not owed to members of the out-group.¹⁴⁷ Imagine that I have two acquaintances that are looking for a copy of a particular book. One acquaintance is in a book club with me while the other is not. If I have a spare copy, the acquaintance with which I am in a book club would have an additional reason to think I did wrong were I to give the book to the other that is unavailable to the non-member acquaintance. Each acquaintance could hold it against me that I gave the book to the other, but only one acquaintance could hold my failure to live up to the duties of a fellow member against me.¹⁴⁸ The same could not be said of a decision to enter into one of two different book clubs I might have an interest in joining – the entry obligation version of this scenario. All else being equal, neither acquaintance would have reason to feel more aggrieved than the other in that situation. So while union obligations must be *pro tanto* reasons (because they cannot be *ultima facie* obligations), they must be stronger than entry obligations simply because they arise within the context of solidarity.

A second spectrum of importance for *pro tanto* reasons for action concerns their motivational impact. Motivational impact is different from normative strength. Normative strength relates to something's obligatory quality: how wrong it is for me not to act according to a given reason. Motivational impact deals with how committed I am to undertaking the obligation as a matter of psychology. Ideally, motivational strength

¹⁴⁷ For more on special v. general obligations see Scheffler 2002, pp. 49ff.

¹⁴⁸ This view clearly parallels Scheffler 2002, pp. 32-65.

would come from normative strength such that the more obligatory a duty the more one is motivated to act on it, resulting in a situation where motivation tracks normativity.¹⁴⁹ This is, however, an ideal that is not always realized in ordinary life. People are sometimes more moved by attachments to individuals and things that play a significant role in their lives than by duties to those people and principles that seem more removed. As such, while the normative strength of an obligation should serve to increase its motivational strength, resulting in a tracking relationship among them, this does not always happen. As such, we must recognize the distinction between normative and motivational strengths.

That said, I think there is some benefit in holding normative strength as primary such that whatever motivational strength a solidaristic obligation has should arise from its normative force. If we expect motivation to track normativity we can explain both why an individual fails to live up to their obligations and why they were wrong to do so. However, if we have a view of solidarity where we expect normativity to track motivation or where we are more concerned with motivation than with normativity, we will have a more difficult time demonstrating why someone who fails to live up to his duties is wrong. Ultimately, I think solidarity provides us with a set of obligations that ordinary people will be moved to follow in ordinary circumstances, and that in unusual or exceptional circumstances being able to explain why they are exceptional is of conceptual and practical value. By focussing on normativity we can explain why both the action and the motivation was wrong. A focus on motivation loses this distinction.

¹⁴⁹ Motivation could track normativity for other reasons: they might both be responding to a common cause, for instance. As such, when I discuss this ideal tracking relationship I am not bound exclusively to the 'normativity causes motivation' account.

Also important here is to note that it is recognition of reasons for solidarity that gives rise to obligations, rather than the mere existence of reasons. I am largely convinced by Scanlon's approach to external reasons, so I must acknowledge that there are reasons for entry into relationships of solidarity in a wide array of circumstances. However, these reasons will only actually come to have the normative weight of an entry obligation if one recognizes them as a reason. To argue otherwise, to claim that one had entry obligations whenever one had a reason for entering into a relationship of solidarity, would mean that one was acting irrationally in failing to enter into solidaristic relationships with others one has never met in situations one has never considered. To avoid this problem, I believe that recognition of reasons, rather than the mere existence of reasons, is required for entry into solidarity.¹⁵⁰

The two types of solidaristic obligation – entry and union obligations – each have different normative strengths. While entry obligations are relatively weak but difficult to overrule *pro tanto* reasons for action, union obligations are stronger but nonetheless *pro tanto* reasons. What can justify entry into a situation where strong obligations are generated is the focus of the next section, where I examine different approaches to entry obligations to determine if there is a way for solidarity to arise in a manner consistent with autonomy.

II. Types of Solidarity

In this section I examine three distinct conceptions of solidarity, based on three different ways that one can identify with (i.e. adopt as one's own) the interests of another. The first involves only an identity of pre-existing interests. While self-interest will play a critical role, it alone cannot generate the kind of alterity solidarity requires.

¹⁵⁰ This will take on additional importance in the version of solidarity I advocate at the end of this chapter and my explanation of how it works in Part III.

The second – strong solidarity – involves taking the interests of another as my own because of some relationship. Consequently, while it lives up to the needs of alterity, it is ill suited to explain entry obligations. Finally, I present a third option – moderate solidarity – that incorporates the alterity required of solidarity. In the next section I will explain how moderate ethical solidarity can provide the kind of normative strength that makes the appeal to solidarity an attractive candidate in articulating the demands of fraternity.

A. The Uses and Abuses of Self-Interest

Self-interest plays an important role in determining whether an entry obligation is possible, but common self-interests cannot be all that there is to solidarity. First, I must explain the kind of role it can have before I demonstrate why common interests alone cannot constitute solidarity. This involves understanding the kinds of impacts common interests can have on one another. If two individuals have an interest in the same state of affairs occurring, this can lead them to cooperation or conflict, depending on the circumstances surrounding the interest. Only a subset of common interests could possibly provide a foundation for solidarity. Second, once we understand what kinds of common interests can play this role, we must determine what exactly the role is that common self-interest is trying to play. Again, there are a number of different possibilities, but I ultimately favour a minimal approach, whereby having the right sort of mutual interest is a necessary but insufficient condition for entry into solidarity: without the interest, entry into solidarity is impossible, but the obligations do not necessarily depend wholly on the interest, and can persist when the interest disappears.

When more than one person has an interest in a given state of affairs occurring, they have what I will call a common interest. Whether this common interest is also a

mutually exclusive, mutual or shared interest is another question that must be answered prior to understanding which type (or types) of common interests are suitable candidates for solidarity's entry obligations. In the event that two people have a common interest but the satisfaction of one individual's interest precludes the satisfaction of the other's, their interest is a mutually exclusive interest. Take, for example, two sons who each have an interest in securing their mother's antique wedding ring for their spouses. Each of the brothers might, ordinarily, wish for the other to have such a ring as brothers can ordinarily be supposed to want one another's plans to succeed. However, in this situation there is only one such ring, and since only one son can have the ring if one has his interests satisfied the other cannot. These are mutually exclusive interests, and are not suitable candidates for entry into solidarity. Solidarity requires that the other person's interests become a part of my interest set. Entry into solidarity due to a mutually exclusive interest would lead to a contradiction in one's interest set that was not there before. At the very least, this would contradict the pre-existing interest, diminishing its normative and motivational strength. This would make solidarity a more difficult state than it ought to be.¹⁵¹

Fortunately, not all common interests are mutually exclusive. There are at least two more types of common interests that might ground entry obligations. Firstly, there are interests where the satisfaction of one person's interest has neither a positive nor a negative impact on the second person's interest. These are what I call shared interests, since they are an interest that each party can have at any given time without impacting on the other person's interest. Members of a book club, for instance, have a shared interest in reading a book as long as there are enough copies for everyone. If one person

¹⁵¹ This is not to say that mutually exclusive interests cannot exist or arise among friends, family members or other more advanced states of society than the bare sort of sociality we are assessing here.

reads the book that does not improve the standing of each person's interest in reading the book, nor does it preclude the satisfaction of this interest. As such, satisfaction of shared interests does not impact on the others who share the interest. In this way shared interests are distinct from both mutually exclusive and mutual interests. Mutual interests happen when the satisfaction of one individual's interest positively affects the second person's interest. The impact here can range from a simple increase in the probability of satisfaction to joint satisfaction. As an example of the first impact, if I win a case on a particular legal issue and your case also depends on the same issue, in a system based on precedent my success will increase the probability of yours. However, if we are members of a class action suit of which I am the representative plaintiff, my success will not just make the satisfaction of your interest (in winning your suit) more likely, my success means you have succeeded.

One might be tempted to restrict the kind of self-interest that leads to entry obligations to this final case, a joint-success condition mutual impact. I have no doubt that this kind of self-interest often leads to strong entry obligations, but I do not believe this is any reason to preclude the possibility of establishing solidarity based on shared or weaker mutual self-interests. It seems to me that one individual reading a new and exciting book can all incorporate their fellow readers' interests in enjoyment and success into their interest-set without contradiction. Indeed, it might heighten their enjoyment, or provide a new type of enjoyment, to feel that their apparently solitary reading is actually part of something larger. This is of course not a necessary feature of shared interests: actually sharing them might not improve the quality of the experience, but if it does or can then it seems that there might be some obligation to enter into solidarity arising from it. With these considerations in mind, I am inclined toward an open

approach to the connection between common self-interest and solidarity's entry obligations. So long as the interests are not mutually exclusive, they can ground solidarity. From here on, when I discuss common interests I refer to both common and mutual interests, excluding only mutually exclusive interests.

However, there is one caveat I must make before I proceed to examine the limits of self-interest in an account of solidarity. As I said at the outset, some form of common self-interest is a necessary component of solidarity. What that means is that without some shared or mutual interest, no solidarity is possible. This is the 'common plight' condition of solidarity. If union obligations are to differ in normative strength from our basic moral obligations, including particularly any obligations of general beneficence we might have, there must be something distinguishing the in-group from the out-group. On identity accounts this distinction appeared easier: if one had the relevant trait, one was a member of the in-group and those who did not have the relevant trait were excluded. However, the problems with the identity account demonstrate that this demarcation of in- and out-groups along trait lines is more difficult than it appears. The presence of a common plight, involving a common interest, is the interest-theorist's way of demarcating in- and out-groups. Insofar as solidarity involves in- and out-groups, such a condition is a necessary part of any plausible account.

But not all common interests can appropriately give rise to solidarity. Let us presume that you have an interest in giving a flawless performance of Beethoven's *Appassionata*, and I, as an audience member, have an interest in you giving a flawless performance too. That said, there is no entry into solidarity with you will make it more likely for our common interests to be met. It is only when entry into solidarity improves

the likelihood of the common interest being satisfied for either party that entry obligations can arise. Thus, while self-interest is an important component of solidarity not all interests are appropriate for grounding this kind of unity.

Common interests alone are not enough to ensure that solidarity will arise among individuals. The presence of such an interest is not a sufficient condition for solidarity. Firstly, the mere presence of such an interest does not guarantee the right sort of bond among individuals who have the interest. Simply because it is in my interest to end racial injustice does not guarantee that I will recognize that it is also in others' interest and that I will act on their behalf while acting on my own. Likewise, a plaintiff in a class action suit might not care about their fellow plaintiffs – they might only care about their own interest in getting compensated or in punishing the defendant. If someone joined a book club more as a way to push himself to read more different works, he might not care whether the other members had read the book at all. Neither shared nor mutual, not even joint-success mutual interests require solidarity without some additional feature making the interests of the other a part of one's own set.

Ultimately what this shows are the limits of self-interest. Common self-interests are not sufficiently alteristic to ground solidarity by themselves. In order for there to be genuine solidarity, my concern for another needs more than a concern for some goal I already have for myself prior to the entry into solidarity. Insofar as solidarity matters, it has to arise from something more alteristic than self-interest.¹⁵² The following two

¹⁵² Insofar as her account relies primarily on a self-interest in overcoming oppression or fighting injustice, these problems would also impact on Sally J. Scholz's account of Political Solidarity presented in 'Political Solidarity and Violent Resistance,' *Journal of Social Philosophy*, Vol. 38 No. 1, Spring 2007, pp. 38-52. However, whether the interest in justice is genuinely a 'self'-interest is more debatable, as is Scholz's focus on combating injustice as a necessary component of solidarity. See also her *Political Solidarity*, (University Park, PA: Penn. State UP, 2008).

alternatives are an attempt to remedy what is lacking in a self-interest exclusive account of solidarity.

B. Loyalty, Subservience and Letting Down

Concern for other individuals is the more obvious solution to what common interests lack. One individual's concern for another individual creates a group, which is why this kind of motivator is so often discussed in terms of membership in a group. This does seem to involve the kind of union Feinberg characterizes as 'the sort that exists when each member's integrated set of interests contains the integrated interest set of each of the others.'¹⁵³ Take, for example, two friends who have been invited to a couples-only dinner party. Friend A is married and as such has a date, but Friend B is single and has an interest (we presume) in securing a date for the party. Friend A wants Friend B to be able to go to the party, and so has an interest in Friend B securing a date. As such, for different reasons, the two friends have a common interest. This common interest satisfies the necessary condition presented by self-interest. The solidarity must, however, come from somewhere else since self-interest alone cannot provide it. In this case, their friendship is likely to explain why B's interests (and supporting reasons) can become incorporated into A's set of interests.

We have yet to understand how some sort of concern for an individual can generate the interest-incorporating move that solidarity requires. Again, an identity-based approach to solidarity has an easier time with this problem too. One can simply postulate a relevant trait and claim that a group forms around that trait. However, Shelby's work makes clear that the kinds of relationships that can give rise to solidarity depend on more than some trait in common. One must, rather, view oneself as a part of

¹⁵³ Joel Feinberg, 'Collective Responsibility' *The Journal of Philosophy*, v. 65, no. 21 (1968), pp. 674-688 at p. 678.

a group. Whether the group has to form around the interests in question or whether the group might form prior to recognition of the common interest is a potential source of conflict, but one I believe can easily be defused. There is no reason solidarity can only form in groups that already exist, so we need not presume that the group must precede the interests in common. The friends in my example above were friends before they had a common interest. Indeed, to whatever extent the friendship led Friend A to want Friend B at the party we can say that their friendship generated the common interest. As such, I feel comfortable claiming that the kind of inter-personal concern that, when combined with a common interest, can generate solidarity need not arise from the interest in question.

There are many ways to characterize inter-personal concern, but the one I think best to focus on first is membership in a group. In this case, what brings about the kind of inter-personal concern that can move individuals to enter into solidarity is membership in a group. The critical element here is loyalty, which plays a critical role in Shelby's approach to solidarity. Loyalty involves taking the other person's interests as your own simply because they are the other person's interests. In Shelby, loyalty serves to bind individuals to the goals of the group in such a way as they are more inclined to make an extra effort in the service of those goals and that group. Loyalty determines in- and out-group distinctions as well: those who are loyal to a set of individuals become the in-group while those who are not moved to make the extra effort in pursuit of the goals are, by default, in the out-group.

However, to predicate entry into solidarity on loyalty is to put the cart before the horse. Solidarity might cause loyalty among the members of the group. For loyalty to cause solidarity reverses this order. Loyalty is not a necessary ground for entry into

solidarity. While loyalty might be an important part of union obligations because preserving the union might be one of the common interests, to only have solidarity with those to whom one was already loyal would reverse the causal order among them. It would thereby limit solidarity to those with whom one had a pre-existing relationship, which strikes me as an arbitrary limit. Therefore, if there is a role for loyalty in solidarity it is not the role of incorporating the interests of another into my own set of interests. To whatever extent this happens, it cannot be simply due to a pre-existing relationship.

Further difficulties for solidarity arise if we base entry obligations on pre-existing relationships. Firstly, for solidarity to be the kind of concept that can play the role of fraternity and explain the basic ethical demands of sociality, it cannot depend on pre-existing relationships but must be able to emerge from new and unforeseen situations. It must be a potential consequence when there is no or minimal pre-existing relationship. However, there are serious methodological difficulties with relationship-based solidarity that overwhelm this conceptual problem. It is difficult to see how we can reconcile loyalty to another individual with autonomy. However, we are as yet unclear about what is central to loyalty. If loyalty is chiefly characterized by adherence to the wishes of another individual, then it seems autonomy might be in jeopardy. This is the kind of loyalty servants have toward good masters, or soldiers to their commanding officers. If this sort of adherence is what loyalty involves then the decisions of another might override any choices I have already made. If a servant or a soldier wants to pursue some course of action they must first confirm that that course of action will not conflict with the wishes of their master or commanding officer. Furthermore, if the servant or soldier is in progress toward some freely chosen end, and the master or commander changes course in a way that conflicts with the servant or soldier's desires, loyalty demands that

the latter must suborn their wishes to the former. Autonomy in such a relationship is highly contingent and deeply problematic. If this kind of loyalty is what solidarity involves, solidarity is not reliably compatible with autonomy.

Alternatively, loyalty could simply involve a common adherence to the other individuals in a group. However, even in this circumstance the 'letting down' problem with autonomy persists. Imagine a basketball team. While some teams form to win, and others just to play, each team is characterized by collective engagement in the activity. This goal of enjoyment or of winning is the principle around which the team forms. We are now in a position to see how the requirements of fealty to a principle differ from the requirements of loyalty to individuals. When we are loyal to a principle we must act in the service of that principle, but there are a whole host of actions that take place outside the sphere of the activity in question that do not impact on one's ability to serve that principle and about which fealty is silent. In the case of a basketball team, one's choices in an array of off-court situations do not matter. Provided one is still a reliable member of the team – capable of playing your role and aiding others in playing theirs – one has not been disloyal to the principle. However, if we have to be loyal to the individuals involved the demands of solidarity will begin to impact on our off-court behaviour. If the other members of my team believe some behaviour is wrong to engage in such behaviour can be seen as letting down the team. Unfortunately, examples of team mates imposing their sexual mores on their fellows abound, ranging from objections to one team-mate's involvement with another's spouse through to an institutionalized homophobia. While the actions involved here range from the prurient to perfectly harmless, for loyalty to make demands on them violates the autonomy of an individual in a way that fealty to a principle does not. The common goal of winning does not

declare major parts of one's sexuality as in violation of a collective ethos in a way that one's team mates can and often do. In this way fealty to a principle interferes less with one's ability to live life from within through making meaningful choices than does loyalty to individuals.

C. Moderate Ethical Solidarity

In my view, what we need is a conception of solidarity that allows for the interests of another to become a part of one's own set of interests but that does not violate the authentically meaningful choices at the heart of liberal individualism. There are other ways to show concern beyond loyalty that might provide such a mechanism. I believe the seeds of such an idea are found in Kant and have come to fruition in Stephen Darwall's *The Second-person Standpoint*. By now, we should not be surprised to find Kant at the bottom of a liberal approach to individuality. While Mill and Locke played the most significant role for classical liberals like Berlin, Rawls made grounding individual liberties in Kantian autonomy acceptable again. His views and those of his followers now occupy much of the mainstream of contemporary political philosophy. Central to Kantian individualism is the juxtaposition of autonomy and heteronomy. An autonomous being is free because it is guided by its own laws, unlike a heteronomous individual who is unfree because its actions are determined by laws that are not its own; usually those of tradition or other people or his own animalistic inclinations. In Darwall's view, this connects with concerns raised by Peter Strawson and Samuel Pufendorf. In order for a reason to be ethically legitimate it must address itself to our moral faculty – specifically our will. I think a version of this could be applied to

solidarity to allow for some kind of equilibrium between the demands of others and the requirements of autonomy.¹⁵⁴

Kant makes clear the close connection between freedom and autonomy at the core of liberal individualism. Freedom, for Kant, means not being determined by any thing other than by the practical reason that constitutes one's will. It is, therefore, tantamount to goodness, because reason provides the categorical imperative according to which we can determine right from wrong. However, we can accept some version of the Kantian approach to autonomy without necessarily accepting the rest of his structure, and particularly the connection between freedom and morality. Critically, his approach to freedom as self-determination fits nicely with both of Berlin's formulations of freedom.¹⁵⁵ Berlin's formulation of negative freedom is that it concerns an individual's capacity to do things unhindered by other individuals. This is not directly applicable to the Kantian approach, but when we look at solidarity as involving the demands of others it becomes clear that being guided from within, a key part of autonomy, involves incorporating the interests of others into one's own interest set in a way that leaves one free in the relevant sense. Berlin's formulation of positive freedom, as concerning the question of who is in control of an individual, seems more closely allied to the Kantian approach. While Berlin was concerned about the ability to skew positive freedom into something undeserving of the label, we can avoid most of his problems if we recognize some fact of pluralism discussed earlier. There is no general will to which an individual must submit himself to be truly free. Rather, one can remain

¹⁵⁴ I do not, however, equate autonomy with the moral law. Not all autonomous actions are moral, nor are all moral actions necessarily autonomous. While Raz's approach to autonomy draws from the self-governing tradition of Rawls and Kant, he and I omit the equation that finds such a prominent role in Korsgaard's approach to Kant. See 'Morality as Freedom,' in *Creating the Kingdom of Ends*, (Cambridge: Cambridge UP, 1996), pp. 159-187.

¹⁵⁵ Berlin's 'two questions' formulation is in 'Two Concepts of Liberty' in Isaiah Berlin, *Liberty*, Ed. Henry Hardy (Oxford: Oxford University Press, 2002) at 169.

free and yet submit the demands of others to one's own conscience, as will be mirrored in my approach to solidarity as explained in the next section. This approach is consistent with the Kantian approach to autonomy and should not have the totalitarian overtones that so legitimately trouble Berlin, particularly since everyone else should also be incorporating your interests into their consciences as well. Furthermore, this approach leaves us with a recognition that while freedom necessarily entails autonomy, autonomy does not necessarily entail recognition of the universal will. Heteronomy, in this formulation arises from failing to mediate the demands of others through one's conscience. It is still possible, and still serves as the opposite of autonomy, but becomes much more restricted than when it meant any deviation from universal reason and the moral law.

Darwall advances this discussion by clarifying how the interests of others should be mediated through one's conscience. His *The Second-person Standpoint* advocates a Kantian approach to morality whereby the fact that we are called upon to address others in and from a second person presupposes a number of ethical claims about oneself, the other, and the relations between self and other. For our present purposes the conclusion of his argument is not critical. What I wish to borrow is how what he calls Strawson's, Fichte's and Pufendorf's Points combine to show that some features of reason for action are required by our moral sense in order to be legitimate to our conscience. While Darwall combines these to different effect, I explain these features of his argument separately and then show how they combine with the approach to autonomy used here to allow a Kantian version of solidarity. Solidarity can coalesce around a basic moral duty of consideration that is informed by Darwall's approach to ordinary human interaction.

Strawson, in 'Freedom and Resentment' claims that social desirability is not the kind of thing that can justify punishment. In Darwall's terms, 'desirability is a reason of the wrong kind to warrant the attitudes and actions in which holding someone responsible consists in their own terms.'¹⁵⁶ If we wish to hold someone morally responsible, justification for that reactive attitude cannot simply rely on pragmatic reasons like "the world goes generally better." The most frequently offered example is epistemic, but the principle extends throughout our conceptual universe. That someone has offered you a large sum of money to believe in a proposition for which you have no affirmative and significant negative evidence is not something you can ordinarily do. More importantly, it is not something you should do. There is some normative structure to our basic rationality such that reasons of different kinds should not come to bear on one another. In the moral sphere, this entails what Darwall, paraphrasing Williams, calls the 'morality in, morality out' principle. In Darwall's schema this is a limiting principle. It serves to exclude quite a variety of potential reasons for moral obligation. In the case of solidarity through consideration, it is important because self-interest and is a wrong kinds of reason for generating solidarity without some other binding force.

In Darwall's view, the second-personal nature of addressing other people necessarily involves making claims on their will. This is what he refers to as Fichte's point. 'Only in this way,' Darwall, following Fichte, claims, 'can [an address] simultaneously address and direct her as a free agent.'¹⁵⁷ Some kinds of reasons fall afoul of this provision, and are the wrong kinds of reason for moral action accordingly. Self-interest, for instance, does not address itself to the will in the right way because it is insufficiently concerned with the interests of the other for it to imply solidarity.

¹⁵⁶ Stephen Darwall, *The Second-person Standpoint* (Cambridge, MA: Belknap, 2006), p. 15.

¹⁵⁷ Darwall 2006, p. 21.

However, what is especially important is that the demands of others in solidarity, as a kind of address, must appeal to our conscience rather than to our self-interest or to our purely calculative faculties. They must provide us with reasons why some course of action or some set of obligations are right or wrong, rather than that they are in our best interests or a logical consequence of our commitment to a particular group.

This becomes clearer in light of “Pufendorf’s point.” Pufendorf claimed that divine moral law’s legitimacy lies not in the possibility of damnation as punishment for sins, nor in its divine source, but because we can know and recognize evil. As Darwall puts it, ‘this is the difference between a kind of coercion, on the one hand, and free self-determination by an internal acceptance of an authoritative demand, on the other.’¹⁵⁸ If God wants to make something wrong, Pufendorf claims, he would have to do so by making it immoral rather than by providing us with damnation to scare us into compliance. Darwall connects this to Fichte’s point with Strawson’s ‘wrong kind of reason’ argument. Pufendorf’s point entails that all legitimate moral addresses have to be framed in terms that are ultimately second-personal and therefore address our conscience. In the context of solidarity, it entails that demands from others that appeal to our self-interest or other features are inconsistent with the kinds of reasons that are appropriate for moral action because they address themselves to our conscience rather than our interests or our purely calculative faculty.

Following Darwall’s use of these three principles, we can see the possibility for a moderate account of solidarity. Solidarity with someone requires that we use to recognize the interests of others as reasons for adopting particular maxims or policies, but if we are to be autonomous these demands must be mediated by something internal to the

¹⁵⁸ Ibid., p. 23.

subject. Self-interest alone is not up to the task at hand, nor can we rely on relationships to generate demands that, in the right context, can reconcile with autonomy. I believe our basic morality, as explained by Darwall's approach to the second-personal perspective, can play the necessary mediating role. The basic thesis can be put as follows: attempts to coerce rather than to counsel are, because of their failure to address our conscience (or will), the wrong kinds of reasons for moral action.. I think this is a legitimate account of how interpersonal morality must work, and will build on it in the next chapter, when I explain how a basic ethical duty of consideration will provide for this kind of solidarity.

III. Conclusion - Solidarity and Sociality

I believe a conception of moderate ethical solidarity [MES] can meet the needs of fraternity and can serve as a central value reflecting our inherent sociality. While I will deal fully with the mechanics of how this works – including explaining consideration and the key role it plays – in the next chapter, at the end of this one I will explain how my preferred account of solidarity fits the basic conditions set out at the end of chapter two. The MES conception incorporates the alterity we find lacking in impartiality and other forms of solidarity. Furthermore, since it is compatible with autonomy it need not result in the kind of philosophical quagmire dualist approaches so often end in. It can ground an ethical obligation that will in turn explain how we can have legitimate moral and political obligations that do not arise from autonomy, unlike the kind of impartiality that, in its ideal formulation, reduces to a requirement for autonomy. Furthermore, with the appropriate ethical obligation as its core, it can be universalizable in the way tradition is not.

Since fraternity is meant to provide a political value that arises from our sociality, alterity is critically important. Society involves, at a basic level, our relations with other people: the simple fact that we encounter others on whose interests we impact gives rise to a particular obligation. While MES does not fully explain how this can work, the consideration approach I will explain in the next chapter works with MES to explain how the interests of other can come to influence me. Given that I have shown why respect for autonomy is a necessary condition of the legitimacy of moral and political obligations, I cannot advocate a second principle that would violate the first. MES accommodates autonomy because of the important role of self-interests in establishing obligations and because of the benign nature of the basic ethical obligation of consideration. I have shown, using Darwall's formulation, how an approach to solidarity that puts the interests of others in terms of a basic ethical obligation is reconcilable with autonomy. This approach internalizes the interests of others without necessarily overriding or undermining our own interests. We still have the ability to live our lives from within through making meaningful choices while also recognizing the impact the interests of others ought to have on our judgements about what to do.

This chapter has shown how one particular conception of solidarity can serve as the value at the core of a principle of fraternity that will allow for the legitimacy of moral and political obligations in a manner consistent with the demands of autonomy and of our basic sociality. It grounds a principle according to which we can understand the impact of the interests of others on our moral and political obligations. It seems able to explain the requirements of sociality. Whether and how it works, however, is the focus of the next chapter.

Part III: Consideration and Reconciliation

Abstract:

In this part I examine moderate ethical solidarity via consideration to determine what it requires and whether it is compatible with the requirements of the sociality. In chapter six I make clear what consideration involves and how it can play the role of the mediating ethical obligation solidarity requires, while in chapter seven I demonstrate a way in which this approach it can be reconciled with autonomy. This leads to the view that moderate ethical solidarity via consideration is what fraternity involves and explains the normative demands of our common sociality.

Chapter 6 – Solidarity and Consideration

Abstract

In chapters three, four, and five we saw why tradition, impartiality and most kinds of solidarity cannot adequately explain the basic conditions of sociality. We also saw that the right kind of solidarity can account for the demands of sociality in a way that is compatible with autonomy. What remained was to fully explain the ethical obligation involved in Moderate Ethical Solidarity [MES] and how this can work to serve as a principle of fraternity. In this chapter I explain how a basic ethical obligation of consideration can play that role. I set out what consideration involves, how this approach works with MES to mediate the interests of others through one's conscience, and how this legitimates the kind of moral and political obligations with which our sociality is most concerned.

Introduction

As we saw in chapter five, the demands of our sociality can be met by a particular kind of solidarity I call 'Moderate Ethical Solidarity' [MES]. The demands of others can be incorporated into one's own set of interests through one's conscience in a way that should be compatible with autonomy. I then claimed that a basic ethical obligation of consideration can play the mediating role. In this chapter I explain how consideration makes individuals as agents aware of reasons for action they have based on their ability to impact on the interests of others. In the appropriate circumstances – i.e. when the other's interest corresponds with one of one's own interests and when solidarity improves the probability of satisfying the interest – these reasons for action can generate obligations of solidarity.

I begin by offering an explanation of what consideration involves. I explain it as a three-part process through which one becomes aware of reasons for action. The first stage requires an openness to one's ability to impact on the interests of others. This is a practical account of a normative requirement – one does ethically wrong by failing to be cognizant of one's impact on the interests of others in one's surroundings. Openness leads to the second stage's requirement to interpret the interests and impacts involved from the perspective of the other. Openness involves a significant alterity, but it is not as impossible a standard as some critics claim. The products of these two stages combine at the third to make the individual involved aware of reasons for adopting maxims or policies that reflect a proper response to the datum from the first two stages. This awareness involves being properly disposed toward particular circumstances, where what is 'proper' is always acting as the other wishes. In this way we avoid the problems of generating problematic reactions from the outcomes of the first two stages.

Having explained how consideration works, I then must explain how it can be used in establishing obligations to enter into relationships of solidarity. Using two examples – one apparently trivial, the other deeply problematic – I will show how consideration leads an individual to recognize that she has an interest in common with another and that the common interest will be ameliorated by coordinated or collective action: a common interest of the right kind. While there can be multiple descriptions of the same set of circumstances, if one of those descriptions involves a common interest of the right kind then some form of solidarity can emerge in that encounter, however tenuous. I then shift my focus to clarifying exactly how MES via consideration fits with the methodological constraints established in chapter two and with the depiction of solidarity in chapter five. This will lead me to the conclusion that MES via consideration

can explain how we have *pro tanto* obligations that can play the role required of fraternity in a dualist theory of the legitimacy of moral and political obligations.

I. The Nature of Consideration

Consideration is a three-stage ethical demand. I label the three stages openness, imagination and recognition. Openness requires agents to be aware of their places in the world and of their ability to impact on the interests of others. Imagination requires the agent to assess the impacts and interests to which the first stage has alerted her according to their role in the other's "web of norms." Recognition requires that the agent respond appropriately to the content that they became aware of because of the first stage and that has been given clear content in the second stage. I characterize an appropriate response as one that acts as the other should wish. Together, these three stages lead an agent to be aware of reasons for adopting maxims or policies. Once we understand how consideration works we will be in a position, in the next section, to explain how consideration combines with moderate ethical solidarity to explain the obligations of our basic sociality.

A. Openness and Consideration

Openness to one's ability to impact on the interests of others is the first stage of the consideration. The first-order obligation of consideration is the ethical requirement to be aware of one's ability to impact on the interests of others. In this subsection I explain what this openness consists in and then argue that failure to be appropriately aware is ethically wrong. There are both instrumental and intrinsic explanations for this wrongness. Instrumentally, a failure of openness is wrong because it increases the likelihood of adopting wrongful maxims or policies, or acting wrongfully. Failure of openness is intrinsically wrong in that it is a morally inferior version of a morally

superior action. Alternatively, we could see a failure of openness as intrinsically wrong because it is itself inconsiderate. Finally, I explain how this openness leads to the third-stage obligations that will be discussed in more detail in following subsections.

Openness is a practical requirement that an individual agent should be aware of her place in the world, the situations of others around her, and how those situations are likely to change through what she does. When walking down the street, we have to be aware of the other individuals coming toward or passing us not simply to facilitate our own progress but in order to avoid impeding theirs. Stepping to the side in order to avoid walking in the same path as the handicapped woman walking towards you is an action, but that action arises because you were aware of the possible impact on her interests. That awareness is itself openness. Long-term examples also make the importance of openness clear. If I am deciding between job offers, I do wrong if I am not aware of the impact my choice will have on my immediate family. My children will have to attend school, my spouse to adjust or change her career; that my decision will impact on each of these interests should play a role in my decision, and they come to play this role because of my openness to my impact on their needs. I should note that I don't believe the long- and short-term versions of openness are fundamentally different: they're the application of the same basic disposition to different needs, but the practical requirement of openness remains the same in each. The impacts on autonomy will, naturally, be much greater in long-term planning than in most short-term situations, but this should be addressed at the appropriate stage and should not be built into the account of openness itself.

I have claimed throughout this discussion that openness is an ethical requirement – that we do morally wrong in failing to be aware of our ability to impact

on others. This claim stands in need of justification, and I can think of three, presented here in increasing order of strength. Firstly, a failure of openness is instrumentally wrong because it makes one more likely to perform negative consequences. Here, what is actually morally wrong are all the negative acts one will do because of the failure of openness, but this nonetheless makes the failure of openness part of the wrong. In the examples discussed above, failing to notice other people walking down the street – perhaps I am distractedly text-messaging a friend, confirming dinner plans – is wrong because it makes it more likely that I will have a negative impact on the interests of others walking down the street. If I choose a career without thought as to the well-being of my family members I will be more likely to harm them in my decision than if I am aware of the impact my decision will have on them. Openness could have prevented these wrongs and is, from the point of view of my fellow pedestrians or my family, is wrong because of its contribution to the intrinsically wrongful (because harmful) acts.

However, I believe there is something intrinsically ethically wrong about the failure of openness, something I think the above examples show. There is nothing wrong with text-messaging or taking a job per se, but in these circumstances these actions evidence a failure to be aware of the impact my actions can have on others and is, because of that, wrong. Even if, counterfactually, I choose the job that my family would wish – that provides the optimal opportunities for my wife to develop her career and that allows my children to preserve treasured friendships – I do wrong in not recognizing that this is a reason why I should take that job rather than some other. The text-messenger does wrong not simply in impeding the flow of traffic, but in doing so oblivious to the fact that he is having such an effect. In each case, though more directly

in the family scenario, the failure of openness is itself a legitimate grievance for the wronged parties.

The ideal test for a claim of intrinsic wrongness is to imagine two almost identical scenarios where openness is the only variable. Let us presume that in two otherwise identical worlds a child is afloat in the sea on a small raft that will capsize in minutes, drowning the child. They have strayed from a crowded beach on a busy day. In each world a swimmer, on his way from a nearby island to the crowded beach will save the child. In the first world, a considerate individual will notice that the child's raft has a rope attached to it, and he will clench the rope in his teeth and drag the child and raft to shallow waters. In another world an unaware swimmer will accidentally get the equivalent rope caught in his teeth and will inadvertently tug the child to shallow waters. It seems clear to me that the actions of the swimmer in the first world have a morally valorous quality that the actions of the swimmer in the second world lack. While both have done good in some sense by saving the child, only the swimmer in the first world has done all that he morally ought. There is, then, some morally positive quality lacking in the second swimmer's actions. What is lacking is the openness to the impact on the interests of another, which because of the difference it makes in determining the morally good from the morally lucky, should be seen as good in itself.¹⁵⁹

The consequences of a failure of openness become clear when we see the impact openness has on the other parts of consideration. Openness should make one aware of the considerations that, when clarified by the imagination, induce one to endorse particular maxims or policies in the third stage. Furthermore, it sparks the

¹⁵⁹ This is not to say that it would not also be wrong, indeed possibly morally worse, to be aware of one's impact on the interests of others and act in such a way as to fail to improve the situation (including making it worse). This is an example of failure at the third stage of consideration, which can, depending on the circumstances in question, be worse than failure at the first. This problem should become clearer in my discussion of the third stage, below.

second, imaginative stage and serves to reinforce an important point about the difference between a failure of imagination and failing to imagine. The content of these obligations is determined by the second stage of considerateness; the imaginative stage. This provides some direction for openness, which could otherwise succumb to what I call the problem of callousness. How this works is the focus of the next section.

B. Consideration and Imagination

The second stage of consideration involves a cognitive requirement. We must judge our impacts on the interests of others according to the other's own understanding of those impacts and interests: the role those impacts and interests play in another's "web of normativity." In explaining this term I will offer an account of what consideration requires of the imagination and before I defend it against two sorts of criticisms. Individual agents must, to be genuinely considerate of others, understand their impact on the interests of others from the point of view of the others in question. I believe that it is only through this perspective shift that genuine consideration is possible. There are two main lines of criticism of this approach, each of which is a version of an argument from implausibility. Once I have explained the basics of what consideration requires of imagination, I will clarify it by defending it against these attacks.

Each of us has a "web of normativity." I adopt this term by analogy with the term "web of beliefs," but the connections between a web of normativity and a web of beliefs are not merely analogical. An agent's web of normativity is the connections between the various norms that he recognizes, endorses and rejects. It is closely connected to our web of beliefs such that some of our beliefs will have normative implications, but it also includes desires and other interests, other things that make our

lives go better, that are not necessarily reducible to beliefs or desires. Just as some beliefs provide evidence for others, some norms provide justification for the endorsement or rejection of others. Take, for example, a norm of abstaining from eating bacon. In different individuals this norm will be connected to a different set of other norms, in a couple of different ways. For a vegetarian, not eating bacon will be one of a number of norms that follow from a deeper norm of abstaining from eating food that comes from animals. It will have sister norms of abstaining from steak and chicken. For an observant Jew, not eating bacon follows from a deeper norm of not eating 'unclean' foods, where unclean refers to a particular test of what is and is not kosher. For someone on a diet, not eating bacon could attach to a deeper norm of not eating unhealthy foods. What consideration requires of our imagination is to determine which of these possibilities may be the case and, given the various options, determine how the individual would wish to be treated given the role the interest in question plays in their web of normativity.

This becomes important for consideration because without this kind of alterity individual agents would not fully appreciate the impact of their interests on others. Let us return, for a moment, to the example of deciding among job offers discussed in the previous subsection. In acting considerately of my family members, I have to imagine the impact on their interests my decision will have from their perspective in order to be genuinely considerate. I have to ask myself questions like whether it is important for my children to go to good public schools, or whether my wife's current career is important to her or is she looking to change directions. If my wife is looking to change directions, then the career she currently holds will have less importance to her than will be obvious when taken from an outsider's point of view. Furthermore, while my career might be

important to be consideration requires that I not assume that the same holds for her and her career. To fail to assess the importance of an interest from the perspective of another makes it more likely that one will err in determining how to act. Indeed, such an error seems to underlie the problem of well-intentioned paternalism. If I act to impact another's interests such as I would like if I were in their position this can be paternalistic if their interests do not play the same role in their web of normativity as my interest does in mine.

This sort of imagination goes beyond Hannah Arendt's approach to alterity.¹⁶⁰ Her approach was best explained as analogous to spending some time in another's home. We look at their belongings and their arrangements and make judgements about their character from these bits of information. Ultimately, however, in her approach we are judging others according to our own standards, which seems at least capable of leading to the kind of well-intentioned paternalism I warned about and is not genuinely considerate even if benign. The point of my formulation here is to judge our impacts on others according to the others' own understandings. Simply being aware of the impact one has on the interests of others is a start, but it is insufficient if the impact and interests in question are assessed in light of one's own normative framework rather than as a part of the other's web of morality.

Some authors, notably Iris Marion Young, objected to the attempt to predicate ethical obligations on this level of alterity.¹⁶¹ Responding to the central role that taking the perspective of the other plays in Habermasian ethics, Young argues that such

¹⁶⁰ Hannah Arendt, *Lectures on Kant's Political Philosophy*, Ed. Ronald Beiner, (Chicago: U of Chicago P, 1992). See also Seyla Benhabib, *Situating the Self*, (New York: Routledge, 1992), pp. 89-146.

¹⁶¹ Iris Marion Young, 'Asymmetrical Reciprocity: On Moral Respect, Wonder, and Enlarged Thought,' *Constellations*, v. 3 no. 3 (1997), pp. 340-363.

symmetry of perspectives is neither prudent nor possible.¹⁶² Drawing on examples such as surveys indicating that many people would consider a disabled life ‘worse than death,’ the cross-examination of Anita Hill during the Clarence Thomas confirmation hearings, and non-Lakota Indians performing sacred Lakota rites, Young claims that taking the perspective of another often distorts the original perspective which is itself a form of mistreatment. However, this argument would have little purchase against the kind of approach here. In my outline, we are to use our imaginations to understand the meaning of an action for the other within their own context. The examples Young uses are simply failures to achieve this alterity. While the survey respondents and the non-native spiritualists simply fail to achieve the necessary imaginative leap, I wonder whether the members of the Senate Judiciary Committee made a genuine effort. On my view, the survey respondents and non-native spiritualists were cognitively wrong, while the members of the Senate Judiciary Committee might have been morally wrong for failing to be open to Hill’s perspective in the first place.

Young’s second claim, that such alterity is impossible, would be more difficult for my proposal, but I believe her arguments on this point fail to address the kind of imaginative act I envision. Young claims that symmetry between self and other, in the way Habermas and, Young’s primary target, Seyla Benhabib claim, is not possible.¹⁶³ Young’s argument for the impossibility of symmetry relies on the claim that there will always be something of oneself incorporated into the standpoint of the other or that there will always be something of the other omitted from the first person’s account. These two remainders indicate, for her, the impossibility of symmetry, leading to her advocacy of an ‘asymmetrical’ approach to alterity. However, Young is setting the bar

¹⁶² Benhabib 1992, pp. 23-67.

¹⁶³ Young 1997, pp. 348-9.

higher than Habermas, Benhabib and I need to reach in order to justify the role alterity plays in consideration. Consideration requires an understanding of the other's point of view on their own terms, but this does not mean it requires full submersion of the self in the thoughts of the other. It only requires enough alterity to tell us what matters to them and why. As Young recognizes with her own proposal, pure symmetry is not necessary for genuine alterity to arise. As such, while Young's metaphysical arguments might have some impact, they do not have enough impact to undermine the plausibility of the imaginative requirement offered here.

Another critique might not question only the plausibility of this kind of imagination, but whether it is really the kind of insight on which to ground a moral theory. Richard Holton and Rae Langton's article 'Empathy and Animal Ethics' provides an example of such an attack, only targeted at Peter Singer and R. M. Hare.¹⁶⁴ Their contend that 'the utilitarianism of Hare and Singer risks being not impartial enough. It is too parochial if it ties ethics to what we can in principle imagine.'¹⁶⁵ Because we are more able to imagine the experiences of those most like us, they claim, any ethics that depends on the imagination will be dangerously narrow. They claim that in justifying universalization both Hare and Singer are committed to the claim that 'whenever I believed that someone in certain circumstances desired to do a certain thing, I would desire that if I were to find myself in those circumstances.'¹⁶⁶ In their

¹⁶⁴ Richard Holton and Rae Langton, 'Empathy and Animal Ethics,' in Dale Jamieson, Ed., *Singer and his Critics*, (Oxford: Blackwell, 1999) pp. 209-232.

¹⁶⁵ Holton and Langdon 1999, p. 228.

¹⁶⁶ Holton and Langdon 1999, p. 215. This is actually an abridged form of Holton and Langton's reformulation of Hare's argument. The full principle includes an 'if I was fully rational' clause at the beginning and a 'I would do it' clause at the end, but these two clauses can be separated from the central implication. They add a rationality condition, such that belief that an action is desired by another rationally requires desiring that action. For my purposes, the connection between the desires (or beliefs, or normative attitudes) of another and one's own desires (or beliefs, or normative attitudes) is what matters.

view, this sort of imaginative requirement demands of individuals that they achieve a significant level of empathy: specifically, they must appreciate the “what-it-is-like-to-be-a-Xness” – i.e. the phenomenal character of being an X – in order to assess the desires of the X in question. Holton and Langton claim that such a deep phenomenal understanding is both impossible and an inadequate ground for ethics. Insofar as it is impossible, the utilitarian approaches of Singer and Hare fail, however, for my purposes it matters more that they claim that it is an inappropriate ground for ethics. ‘If,’ they contend, ‘we owe moral concern to the sentient, then we cannot restrict that concern to those whose shows we can, in imagination, borrow. Sentience transcends imaginability.’¹⁶⁷ Sentience in Singer is the ability to feel pleasure and pain, which would count as interests in my formulation. As such, I am also implicated in Holton and Langton’s critique of imagination.

My defence here is similar to my defence to the feminist critique. I believe Hare has overstated the demands of universalizability and that in targeting this standard Holton and Langton leave an opening beneath which my lesser imaginative requirements can pass through. Holton and Langton argue that Hare and Singer’s approach requires them to assess the desires of another from a “what it would be like to be them” standpoint, but I believe this interpretation of the proposition discussed above is unnecessarily strong, albeit possibly apt when applied to Hare and Singer. An alternate reading of this principle would not require us to appreciate the desires of another from the standpoint of their phenomenal character, but from a standpoint that recognizes the place of that desire in their web of normativity. My approach is one such standard. I do not require that we know everything about another: let alone that we appreciate the

¹⁶⁷ Holton and Langdon 1999, p. 229.

phenomenal character of their lived experience. What I require is an attempt to grasp what role a particular norm plays in another's web of normativity, which is a more limited form of alterity than empathy requires. This is a lower standard, requiring much less of the imagination than the kind of empathy Holton and Langton contend that Singer and Hare need. If someone has a norm, this norm is usually derived from some deeper norm that it reflects or it has some derivative norm(s) that reflect it. In either direction, the lower or higher norms will illustrate something about the content of the norm in question, just as knowing whether chicken is acceptable will distinguish the role of a bacon-abstention norm in vegetarians and observant Jews. This does not require the kind of symmetry that the 'what it is like to be the other' standard requires, and as such should not be an argument against my approach here.¹⁶⁸

On this approach to consideration, openness to one's impact on others generates recognition, while the imaginative leap provides a full content to that awareness. This is not enough, however, for consideration to exist. The recognition created by the first stage and defined by the second must be crystallized into reasons the strength of which can then be adjudicated. It is the task of the third stage to take the recognition and its content and leave us with a reason to act pursuant to the recognition. Explaining how this works, how and when our openness and its content turn to recognized reasons for action, is the focus of the next section.

C. Consideration and appropriate responses

The third stage of consideration, called 'recognition,' requires that the agent respond appropriately to the data that they became aware of because of the first stage

¹⁶⁸ While this construction of consideration leaves open the possibility of obligations towards children and non-human animals, it would be difficult for these obligations to arise to the level of solidarity for other reasons, most significantly the difficulty of engaging in collective action with children and non-human animals. The phrase, 'herding cats' comes to mind.

and that has been given clear content in the second stage. In this section I explain the importance of appropriate reactions to consideration using the basic example of recognizing the pain of another. In consideration, the appropriate response is to recognize that you have a reason to adopt such maxims and policies as you understand the other to wish.¹⁶⁹ This will lead to possible demandingness objections that I must address before explaining how consideration can play the role needed of an ethical obligation in establishing solidarity.

Imagine a scenario where someone is in pain that you are in a position to stop. Take, for example, someone who has been stung by a wasp and is having an allergic reaction that is painful but not fatal. Let us assume further that I am able to stop their allergic reaction at no cost to myself but the few seconds it takes to administer some medication, or by killing the individual. The first stage of consideration should provide the recognition that I can stop their pain, while the imagination condition provides me with knowledge that the person in pain wishes to have the reaction stopped rather than to die.¹⁷⁰ As such, I now have the recognition that they wish me to stop the pain by administering the medication. It is nonetheless an open question as to how one is to deal with the awareness that arises from the first and second stages. A sadist could take pleasure in the suffering of the other, while an amoral person might simply take note of the state of affairs while having no normative response. However, there is something ethically flawed in either of these approaches. They understand the situation but have failed to have the appropriate response.

¹⁶⁹ Recognition is key here. Without recognition a reason might apply but cannot rise to the level of an interest the individual has and on which solidarity can be built. Just as there are unrecognized reasons that apply to individuals, individuals also have unrecognized interests. However, without recognition an interest cannot serve as a common interest on which solidarity can be built. On this sort of 'external' approach to reasons, see Scanlon 1998, while a comparable approach to interests can be found in Raz 1986. See also the discussion of this point in Chapter 5 above.

¹⁷⁰ This may not be true in every case of an individual in pain.

A failure at the first stage of consideration is a failure to be aware of some state of affairs. A failure at the second stage is a failure to adequately appreciate the nature of the state of affairs. However, a failure at the third stage is a failure to adopt such maxims and policies as your appreciation of the state of affairs should dictate. However, I have yet to explain why the appreciation of a state of affairs should lead to any particular maxims or policies. I believe consideration requires that the appropriate response to a state of affairs is to recognize that you have a reason to adopt such maxims or policies, or to act, as you understand the other individual involved in the state of affairs would wish you to adopt, or to act: I call this the alterity maxim. Without such a maxim the potential failures of the prior sections could resurface and new problems would arise: any of which problem would undermine consideration.

Let us start with the trivial pedestrian example. If I am walking down the street I am under an obligation to be aware of my fellow pedestrians and how I can impact their interests. I become aware of an elderly man walking towards me with great difficulty, in a path that would lead us to bump into one another. Based on the available data, I can imagine that he wishes to continue walking down the street unimpeded. What reaction ought I have to this awareness? Furthermore, if we presume that we are each aware of the other, I can reasonably presume that he has recognized the eventual conflict, and wishes for us to avoid it. He might even think of his own frailty and my relative agility and believe that I ought to adjust my path. On this basis, I ought to endorse the maxim 'the elderly man has a more difficult time adjusting his path than I, so I should adjust my path.' I believe this maxim is the natural moral response to the scenario presented. More importantly, it fits with the requirements of the alterity maxim.

Consider next the family situation discussed earlier. I have two job offers, one of which, in Alpha City, will be better for my wife and children, than a competing offer in Betatown. I recognize that my decision will impact on their interests, and that I imagine that they wish that I would take the offer in Alpha City. I should then recognize that I have a *pro tanto* reason to take the job in Alpha City, even if the offer from Betatown is more appealing. If I do ultimately take the Betatown job this will be because I believed the reasons to pursue that course of action were stronger than the reasons to do what consideration required, but this is not a problem for this stage in the argument. What is important here is that I recognize that consideration gives me a reason to adopt a particular course of action that would not have existed if the decision did not impact on the interests of others. Furthermore, the content of that reason is that I do as the others wish.

To turn to the example of the wasp sting, our ordinary moral intuitions are that we have reason to do what the other wishes. In this case, we are aware of his suffering and we can imagine quite clearly that he wishes us to end his suffering by administering the medication. The ordinary result of such a situation is that we recognize that we have a reason to administer the medication, rather than to observe his suffering or to take joy in watching him die. I believe that the reason we have this intuition is because consideration's third stage requires us to recognize that we have a reason to adopt the maxims or policies an individual on whose interests we can impact wishes.

I think this maxim explains a great many of our intuitions, but it nonetheless presents potential problems. A key set of problems can be categorized as 'expensive taste problems.'¹⁷¹ These are problems that arise because someone else wishes

¹⁷¹ I follow Dworkin 2000 in this terminology, though not all of the examples will be his.

something that, for one reason or another, they ought not to wish. Sometimes this will be a morally reprehensible wish, while at other times they will simply be a wish that is unduly demanding given the circumstances. In either case, my answer will be the same: consideration nonetheless provides us with a *pro tanto* reason to act pursuant to the expensive taste in question. We have a *pro tanto* reason to help others perform immoral actions, and to give in to those individuals who have expensive tastes. Nonetheless, each of these problems needs a different defence.

Sometimes what we have most reason to do is something that is on some account immoral. In one sense, this is a key part of the phenomenology of moral dilemmas. A moral dilemma is usually framed as occurring when one agent is morally obliged to carry out two mutually exclusive actions. Antigone is required to care for her traitorous brother's corpse by burying it, but she is also required to obey the laws of Thebes by not burying it. Agamemnon is required by some of the gods to protect his daughter, and by others to sacrifice her. However, these dilemmas are usually framed in terms of ought and obligation. At this point we are talking about something much weaker – reasons for adopting a particular maxim or policy. For some reason we do not feel as torn about mutually exclusive reasons as we do about mutually exclusive obligations. In part, this is because we are used to talking about a plurality of reasons where conflicts are frequent, but obligations seem to end discussion about what one ought to do. This is more of an attempt to explain away the problem rather than to address it head on, but to whatever extent it softens' our concerns about the plausibility of moral dilemmas it might be of some use. However, if we can have most reason to do something immoral it should not seem so implausible to claim that we can have a *pro*

tanto reason to do something immoral, nor that the source of that reason can be our consideration for another.

If I am wrong about this, however, and a comprehensive and accurate theory of morality explained that there could not possibly be moral dilemmas, this would not really affect the third stage of consideration. What it would mean is that what I have been calling *pro tanto* reasons would really be *prima facie* reasons. The third stage would, on this account, lead to a *prima facie* rather than a *pro tanto* reason but it would appear to the individual involved to lead to a reason nonetheless. Since recognition of the existence of a reason is what is important here, I will remain officially open to the possibility that the reasons in question are *prima facie* reasons (and therefore may not really be reasons in some stronger sense), while nonetheless sceptical about the possibility of such a comprehensive and accurate theory of morality emerging and excluding the possibility of moral dilemmas.¹⁷²

This discussion also illustrates my approach to the more directly “expensive” version of the problem of expensive tastes. Such cases arise when, through consideration, I appear to have a reason to act in some way that is based on the idiosyncratically expensive tastes of another. I think that the result here is a *pro tanto* reason for action. Consider first the case of someone with a relatively benign expensive taste: someone who has a deep phobia of stepping on sidewalk cracks. If I am walking toward someone who I know from prior experience has this phobia (it is not the kind of thing one has reason to imagine, given most ordinary situations), consideration seems to give me a *pro tanto* reason to stay out of his way and allow him to continue to walk on solid concrete. Where is the harm in this? If I had countervailing reasons, if I was in a

¹⁷² I will have more to say about moral dilemmas in chapter seven.

rush to pick up my child, I might have more reason to ignore his phobia. However, if no stronger reason arises it seems clear to me that I do have reason to accommodate his harmless phobia. It seems clear to me that I do. Now consider someone with more harmful expensive tastes – someone who can only walk in new and very expensive socks. If I can provide this person with such socks, consideration will give me a reason to do so, but it is quite likely that I will also have countervailing reasons to do other things that conflict with the reason provided by consideration. If those reasons are relatively trivial, I might nonetheless have *ultima facie* reason to give in to the individual with expensive tastes.

Ultimately, my response to the problem of expensive taste is to claim that consideration only provides the individual agent with a reason for action, not with an *ultima facie* obligation. Given this limitation, we should be more comfortable with the alterity maxim and recognize it as a guiding rule for explaining what an appropriate response to the first two stages of consideration will be in any given situation. Together, these three stages lead to the view that we have a basic ethical obligation to be aware of our impact on the interests of others as they understand them and to recognize that we have reason to adopt maxims and policies as the other wishes. In the next section I will explain how this obligation can help an account of moderate ethical solidarity explain the demands of our sociality.

I believe there is one limitation to the scope of consideration I must note before moving on to explain how consideration can play the role an ethical account of solidarity requires. There is a limit to how far consideration can make one acknowledge some behaviour as a reason. This limit is reached when there is a mutually exclusive interest involved in one's consideration of others. If two people are applying for only

one job, each person is capable of impacting on the interests of the other by withdrawing or by deliberately botching the interview. They should be aware of this in the sense required by the first stage of consideration, and they can imagine clearly that the other might wish the first person to remove herself from competition in either way. However, the fact that the first person has an interest in obtaining the post that would directly conflict with any description of the situation, she is justified in refusing to endorse that she has a reason to withdraw from the competition. Most situations lends themselves to many descriptions, but in the case of a genuinely mutually exclusive interest no description of the situation can make it such that the consideration would not lead to an internal contradiction if the first person were required to recognize the impacts on the interests of the other as an reason *for her*.¹⁷³ While a similar approach might also resolve some ‘expensive taste’ style cases, I believe it should be restricted to genuinely mutually exclusive interests.

II. Consideration and Fraternity

While any ethical obligation can work with Moderate Ethical Solidarity, few are as suited to explain the demands of sociality or fit as well with the nature of solidarity as consideration. In this section I claim that consideration works within moderate ethical solidarity to generate entry obligations under the right conditions. Consideration can make us recognize that both we and another have a common interest in some object, and will also help explain whether coordinated action will make it more likely for us to achieve that object. After this I will attempt to explain why consideration is particularly important in incorporating a value of solidarity into a principle that can represent the demands of sociality. Any principle that claims to represent the normative requirements

¹⁷³ This would make the person irrational in the strictest sense, as explained by Scanlon 1998, pp. 22-30.

of our sociality should be capable of explaining the bonds at work in any relationship, however trivial or tenuous. While moderate ethical solidarity explains how and when non-voluntary obligations can be made legitimate, consideration offers one way of explaining how and when non-voluntary obligations arise. It is, then, how MES works to incorporate the interests of the other into one's own set of interests. I will conclude claim that a principle of MES via consideration meets with the methodological requirements set out at the end of the first part and should be recognized as a principle of fraternity.

A. Consideration and Moderate Ethical Solidarity

Moderate ethical solidarity allows for the incorporation of the interests of another into one's own interest set in a way consistent with one's autonomy. It is consistent with autonomy because rather than being bound to the will of another individual, someone entering into moderate ethical solidarity is only bound to his own conscience. Consideration is the ethical obligation that brings the interests of others to the conscience of the individual agent. Nonetheless, consideration has both internal limits and limits that arise from its combination with solidarity that differentiate it from impartial benevolence.

The examples discussed above illustrate how consideration can lead to awareness of ethical obligations on which solidarity can be built, given the right circumstances. The case of individuals walking down the street is a trivial example, but it shows that even in such trivial situations consideration and solidarity together can represent the normative demands of sociality. It also leaves us with an excellent example of one important feature of this approach. There are many different ways to describe the situations of two individuals walking down the same street. In most of them, the

two individuals do not have a genuinely common interest. One has an interest in walking in one direction down the street, while the other's interest is in walking the other way. One's interest is in himself walking without obstruction, while the other has an interest in his own walking unobstructed. Each of these descriptions of the situation do not involve a common interest that could give rise to an entry obligation. Consideration makes the interests of the other person something I also have a *pro tanto* reason to ameliorate, thereby incorporating their interests in my set of interests insofar as I have a defeasible interest in the things that I have reason to do. Without consideration, we each have a reason to achieve different states of affairs, but with consideration I have a reason to achieve the same state of affairs that forms the content of his reason. We thereby have a common reason that can, in this particular situation, be improved by collective action. It is in this way that consideration leads us to have *pro tanto* entry obligations.

The consideration example is even more effective in the 'book club solidarity' example discussed in the previous chapter. There is a description of the individuals in the 'walking down the street' scenario where they do have a common interest that might be more likely met through collective action: they each have an interest in the free flow of pedestrian traffic on a given sidewalk. The book club, I believe, does not have such a description. It does not matter to me either way whether I read a book as a member of a club or independently, but it matters to my acquaintance. Without consideration there would be no common interest. However, consideration makes it such that I am aware of a *pro tanto* reason to join the book club because I am aware that it is what my friend wishes. Consideration makes me aware of a reason I have to want her to read the book: it is what she wants and I am aware of this desire. This then gives me an obligation to

enter into solidarity by joining the book club because it is only through collective action that our common interest in her reading the book can be achieved. A similar set of circumstances would affect the often discussed case of aid for those who cannot contribute to a joint enterprise. The able-bodied have obligations of consideration to help those who cannot help themselves. In such an instance the less-able might not be able to contribute greatly to the collective enterprise, but in what way they can they are concomitantly obligated. Nothing in consideration implies that the *ultima facie* obligations will be equal: indeed, it implies that the most able will have the strongest obligations. What is important for our purposes here is that consideration incorporates the interests of others in my own set such that, under the appropriate circumstances (i.e. lack of valid mutually exclusive interest, increased likelihood of success) I ought to recognize that I have a reason to enter into solidarity with them.

The 'under the appropriate circumstances' clause of the prior sentence is important. Not every possible object of consideration leads us to recognize will be able to lead to solidarity. Mutually exclusive interests are one omission. For instance, in war one has an interest in staying alive and in killing one's enemy. One's enemy also has equivalent interests, but with the referents reversed. As mentioned earlier, consideration is not so strong as to require one to adopt a mutually exclusive set of interests, so there is no requirement to act pursuant to the interests of another when those interests are mutually exclusive with interests one already has. This is not to say that one cannot adopt mutually exclusive interests, but to say that consideration cannot obligate one to do so. Other ethical relationships – friendships, family, love – might lead to mutually exclusive obligations, but consideration is, as mentioned earlier, not as these demands. Despite this exemption, the occasions when one will have mutually exclusive interests is

limited. Even in war, once someone is a prisoner they are no longer a threat and consideration could require one to keep prisoners in good health including, if it were not implicit in a 'good health' clause, refraining from torturing them.

In addition to mutually exclusive interests, some interests will not be ameliorated by coordinated or collective action. However, examples are difficult to find. After all, most situations can be redescribed in some way that will lead to a common interest that collective action can ameliorate. In the last chapter, I discussed the case of the concert pianist and the audience member. I then described the common interest as a in a good performance which cannot be ameliorated by collective action, but other descriptions of the same situation could, via consideration, lead to a common interest that collective action can ameliorate. The audience member can impact on the pianist's interest in having a silent hall during her performance, and can imagine quite clearly what the pianist would wish him to do. He should then recognize that he has an interest in staying quiet and in silently urging his fellow audience members to remain quiet (ideally through easily understood gestures). This kind of coordination between the audience member and the pianist is a form of collective action, illustrating that it can appear in even apparently unlikely scenarios. Nonetheless, this cannot eliminate the possibility that there will be situations where consideration leads us to recognize a reason for action but there is nothing for solidarity to do to ameliorate the scenario.

The possibility of such limits differentiates the requirements of solidarity via consideration from the requirements an obligation of universal benevolence would offer. An obligation of benevolence does not observe any difference between mutually exclusive interests and other interests. In this way it requires sacrifices that consideration does not. Consideration is further tempered by its connection with solidarity. Solidarity

requires both common interests, which cannot be found in every circumstance, and that the common interests be ameliorable through collective action. Benevolence makes no such 'collective action' requirement. Charity, an example of benevolence, is not a collective action. Charity is a unilateral act of giving to another regardless of whether the other accepts the gift. Likewise, charity does not require that the interest in question be a common interest: that the other needs it suffices for benevolence in a way that is precluded by the self-interest condition of solidarity. While there might be some moral role for benevolence, it is not the same a consideration, let alone moderate ethical solidarity via consideration.

B. Consideration, Sociality and Solidarity

Consideration leads us to recognize reasons for action based on the interests of others. In the appropriate circumstances – i.e. when they correspond with one of one's own interests and when solidarity improves the probability of satisfying the interest – these reasons for action can generate obligations of solidarity. However, given my formulation of solidarity here, it seems plausible that any ethical obligation could provide me with a reason for entry into a relationship of moderate ethical solidarity. While this is true, it is only MES via consideration that can explain the kind of bare sociality needed to represent the demands of sociality. Moderate Ethical Solidarity needs consideration if it is to explain these demands.

Firstly, consideration is broader than most ethical duties in the sense that it applies to a wider array of circumstances than most others. An ethical obligation not to murder only applies when I am capable of killing other people, which I often am not and which some people almost never are. Such an obligation is more live to someone who is strong or armed than it does to the diminutive or ill-equipped. The obligation

not to lie is fairly basic, but allows withholding the truth in a way that may be inconsiderate. These sorts of basic obligations are universal in scope – they apply to anyone who happens to find themselves in a situation, but they do not permeate our dealings with one another in the way that consideration does.

Other core moral obligations – like the obligation to act pursuant to the categorical imperative or to do no harm or to maximize the good – have the same sort of permeability as the obligation of consideration, but they do not seem to have the same kind of connection to sociality that consideration does. Obligations to maximize the good do not depend on the presence of other people, in the way that consideration does.¹⁷⁴ Likewise, the categorical imperative applies to any maxim regardless of whether it will impact on the interests of others. Consideration, however, is only an ethical duty because individuals can impact on the interests of others. If there is no one on whose interests one can impact, one's obligation to be considerate is silent.

It seems, then, that consideration has both a connection with sociality that no other ethical obligation both in how very often it matters (what I referred to as its ability to permeate our dealings with others above) and in when it does not matter. Therefore, while solidarity explains the importance non-voluntary obligations of the kind we recognized as important in the second chapter, consideration connects solidarity with the normative requirements of sociality. When consideration leads one to recognize that there is a reason to adopt a maxim or policy, and that maxim or policy will be more likely served by collective action than not, solidarity arises. If there is no possibility for

¹⁷⁴ Questions of whether one can be considerate to oneself, whether present past or future, are beyond the scope in inquiry here. We are concerned with the standpoint of the collective, which implies that we are only concerned with situations where there is more than one person involved.

ameliorating the interests involved through coordinated action, there seems to me to be no relevant sociality involved, or it would make no genuinely normative demands.

C. Consideration and the Methodological Requirements of Fraternity

Having argued for an account of solidarity based on consideration, I must now turn to whether it fits with the methodological conditions established earlier. There were three major methodological criteria that an account of fraternity must meet. The first is that it must be universalizable. The second is that it must explain the kind of alterity involved in non-voluntary obligations, while the third is that it must be compatible with autonomy. First, I explain how MES via consideration can explain the legitimacy of non-voluntary obligations, including obligations to one's family and the obligation to obey the law. Then I will discuss how it is nonetheless universalizable in a more substantive way than the tradition, as detailed in chapter three. Lastly, I will claim that it is compatible with autonomy. MES via consideration is a suitable candidate for fraternity.

The importance of universalizability is closely connected with the ultimate goal of demonstrating the legitimacy of non-voluntary aspects of ethics and political morality. If a principle is to explain why a maxim or policy is or is not legitimate, it must be capable of explaining that for everyone, rather than merely for some subset of the population. It must, so to speak, cover the field. This does not mean that it must deem a given maxim or policy legitimate for everyone, or illegitimate for everyone, just that it is capable of deciding the question in all circumstances. A given principle can generate the conclusion that a given maxim could be legitimate for one segment of the population and illegitimate for another, depending on the individuals involved and their respective circumstances. What universality requires is that there must not be some

individuals for whom the proposed principle neither legitimates nor illegitimizes the given maxim.

As we saw in chapter three, a failure of universality is the problem with tradition's ability to serve as the value at the heart of a legitimating principle for ethics and political morality. While tradition could legitimate a maxim or policy for that segment of the population to whom the tradition applied, it neither legitimated nor illegitimated the same maxim or policy for those segments of the population who did not have that tradition. Imagine a situation where the government assumes control of a church to which half the population belong and to which that half regularly pay 10% of their income. The state takes over the properties, the employment contracts and assumes the functions of this church including education, welfare and medical care. The state then issues a law requiring everyone to pay 10% of their income to the church. Half the population has such a tradition, while the other half does not. As such, tradition leads half the population to recognize that they have a reason for why they ought or ought not continue (it may or may not be legitimate for them – the tradition may or may not be broken by state involvement) but provides no such recognition to the half of the population who have no such tradition. This does not make it necessarily an illegitimate policy, merely one the legitimacy of which cannot be decided by tradition.

For MES via consideration to do better, it must explain why a given policy or maxim would be legitimate or illegitimate for everyone. I believe MES via consideration is particularly well placed to address the universality requirement. Ethical obligations like consideration do not only apply to part of the population, part of the time. Everyone is under a general obligation to be considerate. Furthermore, consideration does have something to say to everyone on whether the state enforced tithe of the previous

example is a legitimate or illegitimate insofar as it is either consistent or inconsistent with the demands of MES via consideration.¹⁷⁵ Consideration covers the field in a way tradition does not.

The second key methodological criterion with which I must deal is alterity. The key problem with autonomy is its inability to explain the legitimacy of many obligations we ordinarily take to be legitimate. As such, for a second principle to do the kind of work we would like it to do, it must be able to explain why non-voluntary obligations of various sorts can be legitimate or offer a good account of why they are illegitimate that does not depend purely on their voluntary nature. This is not to say that MES via consideration will legitimate all non-voluntary obligations. Sometimes an obligation will be unjustified by consideration, while others maxims or policies will be illegitimate because they will involve a genuine infringement of autonomy. What the alterity condition requires here is simply a reason that speaks in favour of why non-voluntary obligations might be legitimate. A *pro tanto* reason will suffice.

MES via consideration offers such a reason. In the case of the example above, consideration provides one with some reason why paying the tithe is legitimate. This is because it is inconsiderate to break the law. If there is a law, any individual who absents himself from the requirements of that law is impacting on the interests of others; by acting as a free rider, he makes those who follow the law dupes. Furthermore, the failure of some part of the population to participate in a collective enterprise either reduces the

¹⁷⁵ I will not, at this point, get into the question of whether the policy in this particular example is legitimate. While it is adequately described to illustrate the non-universality of tradition, it is underdescribed when it comes to determining what the maxims involved would be, in particular whether this is state support for a religious institution or state destruction of a religious institution. This would matter in determining whether a maxim was a violation of autonomy or in how it could be supported by consideration. It will play another role shortly, but not a role that involves the particulars of whether the policy in question could by itself be justified by consideration or reconciled with autonomy.

level of service possible or increases the costs to the participants. This is an impact on an interest, as viewed from the perspective of the others involved, which gives one a reason to obey the law. In this way, MES via consideration generates *pro tanto* reasons to legitimate non-voluntary obligations: failure to do so would be inconsiderate while sharing in the common interest in the services provided and the increased difficulty of achieving the services without the collective obligations raises the value of coordination that makes solidarity helpful in achieving a common interest. While this reason is *pro tanto*, and might be outweighed by other considerations, specifically those from autonomy, it suffices to establish that MES via consideration can explain why non-voluntary obligations might be legitimate in a way autonomy cannot.

One question remains. Are the obligations of MES that arise from consideration consistent with the kind of autonomy under discussion? I believe they are. First, not all duties arising from consideration will necessarily generate solidarity with another. Only those that are consistent with a common interest and those for which solidarity will improve the likelihood of success will lead to entry obligations. Ultimately, I believe this will be a large number of interests, but it will not be all of them. Not every action for which consideration provides me a reason will be an action in which I have an interest, nor will all common interests be improved by solidarity. Consideration leads one to have interests in other people's interests, but through one's own conscience rather than through some attachment to the other.

Second, the obligation of consideration itself has little impact on an individual's ability to lead a life from within through making meaningful choices. It has some cognitive demands, but imagining the life of another does not in itself interfere with one's own life. Even in circumstances where it seems to interfere, where the vivid

realization of the impact of one's actions on another leads to a reluctant change in one's lifestyle, this is a change brought about by oneself. Ebenezer Scrooge's autonomy was not undermined when he changed from a miser to a saint (though whether the ghosts might have violated his autonomy in a way consideration does not seem to me a fair if frivolous question). One could, ultimately, continue to act as one had prior to the vivid realization. Consideration might be the cause of the change but since consideration is a part of one's conscience the change is not heteronymous.

Conclusion

In this chapter I have examined what is involved in an account of Moderate Ethical Solidarity via consideration and explained how this account can meet the methodological criteria required by the overall project. Consideration requires us to be open to our ability to impact on the interests of others, to see these interests and impacts from the other's point of view and leads us to recognize that we have a reason to act for the amelioration of the other's interest. This can, when the interest in question is shared and solidarity itself will improve the likelihood of success, lead to obligations of solidarity. However, these obligations are *pro tanto* and must still be reconciled with the demands of autonomy. Explaining how this reconciliation can work is the task of the next chapter.

Chapter 7 – Reconciling Fraternity and Autonomy

Abstract

In this chapter I explain how to reconcile the two central values of my dualist approach. First, I discuss how there are two types of legitimacy before explaining how each of fraternity and autonomy corresponds well to one of the types. Then I explain how to reconcile these two demands, favouring an approach that gives each principle a veto over the legitimacy of the obligation. Finally, I defend the strident view of legitimacy this account leaves us with as consistent with the methodology of the two basic facts.

Introduction

In this chapter I explain how we should approach accommodating the two basic ethical principles: respect for fraternity (as set out in chapter six) and respect for autonomy (as set out in chapter one). Since the goal here is to explain how the principles function to determine whether a maxim or policy is legitimate or illegitimate, we must first understand what legitimacy involves. I will explain at the outset that there are two different types of legitimacy: process legitimacy and threshold legitimacy. I offer an account of process legitimacy that requires that a maxim or policy issue from an appropriate process for it to be legitimate, but it also determines how strong the reasons supporting a maxim or policy are. My version of threshold legitimacy, on the other hand, requires only that a maxim or policy not allow the individuals involved to fall beneath a certain standard. I believe that fraternity is best understood as a form of process legitimacy, while autonomy provides a source of threshold legitimacy. The complication with this is that our ordinary intuitions seem to view autonomy as I defined it in Chapter 1 as generative of both process and threshold legitimacy. I think

this intuition reflects an ambiguity between a principle of respect for the value of autonomy and a principle of advancing autonomy as an interest. I explain this ambiguity and show that the right use of autonomy here is as a value we respect rather than as a value we advance. As such it generates reasons for action that reflect a sort of threshold legitimacy, rather than providing a substantive goal toward which our moral and political lives must necessarily be structured. While there is a second possible point of distinction – between whether the standards in each case are absolute or flexible – in explaining this distinction I show that a flexible approach to the two principles is inconsistent with the dualism I am examining here.

Once we have this account of legitimacy and its relationship with the two principles, I will set out my preferred method of accommodating their different concerns. This involves determining whether the principles should be exclusive or non-exclusive and the order in which they should be assessed. I favour a non-exclusive approach because it fits better with the inflexibility of the principles and the values they reflect. I believe a straightforward serial approach where one principle comes first not because of any normative priority but because it has an explanatory impact on the second principle, is the best way to resolve their competing, and sometimes conflicting, demands. Since fraternity provides reasons for particular maxims or policies, we should examine the reasons it provides first. If something cannot be justified by consideration it will not matter whether the maxim or policy would be supported by autonomy, since each principle has a veto over legitimacy. Nonetheless, fraternity should go first because it gives us a fuller characterization of what a maxim or policy involves that we can then use to determine whether it would violate autonomy. This generates two countervailing standards, each of which must be satisfied to call a maxim or policy legitimate. This

approach leads to a stringent test. Only those maxims and policies that are adopted in a manner consistent with the process required by the principle of respect for fraternity and that do not interfere with an individual's ability to live their life from within through making meaningful choices (i.e. that respects autonomy) can be legitimate. Sometimes, this will leave decision makers choosing from among illegitimate options, but I believe this accurately reflects the phenomenology of choosing the lesser of two evils, and will defend this consequence of my account in the final section of this chapter.

I. How Legitimacy Works

As I mentioned but set aside in Chapter 1, I must explain what it means to say that a principle legitimates a maxim or policy. Legitimacy involves determining whether a maxim or policy is consistent with the content of a principle, such that a legitimate maxim or policy is one that is consistent with the content of the principle while an illegitimate maxim or policy is one that is inconsistent with the content of the principle. Ultimately, there are two different ways for the consistency involved here to work out. A maxim can be consistent with the content of a principle because it derives from that principle. This is what I refer to as process legitimacy. It is akin to what H. L. A. Hart, in discussing the legitimacy of laws, called pedigree legitimacy.¹⁷⁶ In the legal case, a law is legitimate when it has the proper pedigree: when it is generated by the right procedure, or approved by the proper officials in the correct order. In the case of a more general maxim or policy, process legitimacy requires the maxim or policy in question arise from the concerns established in the principle. However, not all principles require process legitimacy. Other principles are satisfied with non-contradiction, and will consider all maxims legitimate so long as they do not interfere with the content under protection.

¹⁷⁶ H. L. A. Hart, *The Concept of Law (2nd Ed)*, (Oxford: Clarendon, 1994).

Speed limits are an example of thresholds. One can legitimately drive only so fast; beyond the threshold one's speed becomes an illegitimate action.

In my view fraternity and autonomy are best understood as corresponding to one of these types of legitimacy each. Fraternity fits well with process legitimacy, while autonomy as a value functions best as a form of threshold legitimacy. I think this becomes clear when we look at the content of each of the two principles. For a maxim or policy to be consistent with MES via consideration it must either arise from an actual process of consideration or be consistent with an equivalent hypothetical process. For such a maxim to be legitimate, then, seems to involve either a particular process or compatibility with such a process. This resonates more clearly with the kind of legitimation involved in process legitimacy. The case of autonomy is more difficult because there is a sense in which autonomy can serve as a source for legitimate obligations or as a threshold beneath which obligations are illegitimate. I will claim that this confusion, however, involves two different senses of autonomy. Insofar as individuals have an interest in being treated autonomously it can serve to ground the kind of maxims and policies legitimated by fraternity. However, as a value rather than an interest, autonomy has the normative requirement that individuals not be treated in such a way as to violate their ability to live their lives from within through making meaningful choices. The content of autonomy as an interest can, through fraternity, lead to particular maxims, while the content of autonomy as a value provides a threshold beneath which policies are no longer legitimate. Once we appreciate the different kinds of legitimacy each principle grounds we can better appreciate how to reconcile them.

A. The Two Types of Legitimation

When we try and determine what makes a maxim or policy legitimate, we are really asking how a maxim or policy fits with principles we already take to be good, just or legitimate. There are, however, two different ways for this 'fit' to work. First, a maxim can reflect the content of a given principle. If I have a principle that individuals are to be treated equally, a policy that involved splitting resources between individuals evenly would reflect the content of that principle while a policy dividing resources according to size would not. The first policy would be legitimate, while the second would be illegitimate and their legitimacy would arise from their failure to reflect the content of the principle. Second, a policy can fit with a principle when it does not offend that principle's content. If we have a principle requiring people not to be harmed, some maxims would offend this principle, some would reflect it but a great many maxims would neither offend nor reflect the principle. However, in this case all those actions that did not offend the principle would be legitimate. These two types of fit correspond to the two types of legitimation.

Process legitimacy can exist either directly or indirectly. It exists directly when a maxim or policy is formulated in accord with a specific procedure that means to reflect the principle in question. This is what Hart means by pedigree legitimacy. A law is legitimate, he claims, when it is formulated in accordance with secondary rules of recognition. For example, in a constitutional monarchy, a law is legitimate when it is approved by a majority vote in the legislative chamber (or chambers) and ratified and promulgated by the duly appointed monarch. In the case of the more abstract connection between a principle and various maxims or policies, direct process legitimacy exists when the maxims or policies in question are formulated following a procedure established by the principle. If we take the Universal Law Formulation of the categorical

imperative as an example of a principle, we can see how it establishes a procedure that can be followed in developing legitimate maxims. The universal law formulation requires that individuals act pursuant only to such maxims as they can will to be a universal law. This could be seen as giving rise to a procedure according to which maxims can be made legitimate. One starts with a proposed maxim, and then examines it to determine whether it can be willed universally. Such a process might involve two stages: first, one could examine whether one can also will others to pursue the maxim – does it impinge on one’s own interests to will a maxim universally; second, one can then ask others whether they can will the maxim – is it in conflict with their interests for it to be willed universally.¹⁷⁷ A maxim that passed each of these two stages would be legitimate, while a maxim that failed either stage would be illegitimate.

While direct process legitimacy involves following the procedure established by the principle, such close adherence is not entirely necessary for a maxim or policy to be process-legitimated. A maxim or policy can be legitimated through indirect process legitimacy. Not all principles, the categorical imperative included, lend themselves to neat and tidy tests for legitimacy in the way Hart’s pedigree approach imagines. Nonetheless, maxims can be recognized as legitimate because they reflect the principle in question in much the same way they would were they developed by a principle-reflecting procedure. In part, this can be accomplished by an ‘as if’ test: would the maxim in question be adopted by a procedure derived from a given principle; if so, then it is legitimate in the same way as if it had been so derived. However, we need not be so literal with indirect process legitimacy. As long as a maxim furthers the principle in question, it should be understood as legitimated by that principle. To return to the

¹⁷⁷ I am not here suggesting that the universal law formulation actually be interpreted like this. I am merely using this as an example of what a direct legitimation process would look like.

equality example discussed above, a policy of dividing resources evenly among members of a community reflects equality in a way that dividing resources according to gender does not. On a process legitimacy account only the former is consistent with the principle, i.e. legitimate, while the latter policy, which does not flow from the principle, is illegitimate.

However not all principles lend themselves particularly well to process legitimacy of either kind. If a principle is such that maxims or policies either reflect their content or do not, then process legitimacy might be appropriate. However, if a principle intends to protect a particular class of interests it will not be offended when a maxim or policy ameliorates those interests or leaves them unharmed. Such a principle would generate a legitimacy threshold. Only those maxims or policies that expressly contradicted the principle or harmed those values protected by the principle would be illegitimate. This use is closely linked to the general ethical notions of permissibility and impermissibility. Presume, for example, that one has to punish a criminal. If one has a norm that declares some kinds of punishments impermissible – say, those that are cruel or unusual – that still leaves legitimate a wide array of possible courses of action, any one of which will be legitimate simply because it does not offend the principle. This is a weaker approach to legitimacy, but one that nonetheless explains one of the ways in which maxims and policies can fit with principles in addition to the serving as a source.

B. Fraternity and Process legitimacy

Having explained the two types of legitimacy, I now show why each of the two central principles of political legitimacy fits one type of legitimacy better than the other. Here I explain why fraternity is best understood as grounding a kind of indirect process

legitimacy, while in the next subsection I show why autonomy as a value most closely grounds a version of threshold legitimacy.

To understand what kind of legitimacy something like autonomy requires we must look to the content of the value. Fraternity requires individuals to recognize, through consideration, that they have obligations to enter into solidarity with others, or to preserve relationships of solidarity, insofar as such unity makes it more likely that some common interest is ameliorated. Consideration turns an interest another has, on which I can wilfully impact, into a reason for me to act accordingly. It generates obligations of solidarity by showing me when and why I have reason to act in the interests of another. This seems to point toward a process obligation rather than a threshold obligation because consideration already acts as a source for the obligations of solidarity. Without fraternity, some duties would not exist because the process of consideration that led to their existence would not have happened. While this is not a conclusive argument, it does indicate a certain resonance between the value at the root of the principle and the type of legitimacy that should be indicative of an appropriate relationship.

Second, while threshold legitimacy leaves a number of duties neither required by nor opposed to the principle involved, process legitimacy seems to more broadly cover the field. On a process legitimacy account, if an obligation exists, for it to be legitimate it must be derived from a valid legitimating principle. There would be no obligations about which it was silent. This seems to be the case with fraternity. This is not to say that fraternity requires direct process legitimacy – that all obligations arise from a process of consideration. Rather, fraternity requires indirect process legitimacy. All obligations can be treated as if they arose from a process like consideration. In this way

various habits we have because they are consistent with our obligations need not be thought-up anew every time we come across a circumstance that would require us to act upon them. The habits are justified if they would be the product of a process of MES via consideration, were one undertaken at that moment.

Take, for example, the general obligation to obey the law. I have an interest in ensuring that others obey the law: it provides for the smooth functioning of society. Consideration makes me realize that others also have an interest in my obeying the law: they also have an interest in the smooth functioning of society, or in not being made a dupe. Each of these interests is more likely to be satisfied if we take on the additional reasons for action provided by solidarity. As such, fraternity can be seen to ground a general obligation to obey the law. This obligation may be defeasible but explaining how will be the focus of the next section. The importance here is in showing that if some obligation like a general obligation to obey the law can be legitimized by a principle of respect for fraternity, then this would be a form of process legitimation rather than threshold legitimation. Ultimately, then, for a maxim or policy to be legitimate because it reflects the principle of respect for fraternity, that reflection must take the form of direct or indirect process legitimacy.

C. Autonomy and Threshold Legitimacy

There are two factors that increase the difficulty of explaining how autonomy legitimates maxims and policies. The first is that when dealing with autonomy I have to consider how it has been dealt with by other authors in the liberal tradition. Unlike fraternity, which has suffered from too little discussion since the Second World War, autonomy suffers from overexposure. Too many authors have too many views about what counts as autonomy and why it is important to our individuality. Despite this

problem, I will keep to the characterization of autonomy developed in chapter one, as this approach was partly intended to cover the mainstream of contemporary liberal thought. To this end, I define autonomy as the ability to live one's life from within through making meaningful choices for the reasons discussed in the first chapter. The second difficulty cannot be so easily dismissed. This is that there is an ambiguity with autonomy that makes it seem as though autonomy can be a source of legitimacy as well as a threshold of legitimacy. Here, I will argue that this ambiguity involves conflating autonomy as an interest with autonomy as a value. I will attempt to distinguish the two and will explain why autonomy as a value is what we are discussing here and why it is best understood as providing a threshold condition for legitimacy.

There is a clear sense in which autonomy can be used as a source of process legitimacy. Liberal writers do this all the time. Kymlicka's attempt to ground linguistic and economic protections for minority communities is an example.¹⁷⁸ Laws prohibiting the use of English on signs or requiring a long period of residency before allowing land ownership are all both violations of an individual's ability to live a life from within through making meaningful choices, but because autonomy requires a degree of self-respect which is only possible within some background culture, these anti-individualist measures are justified. Autonomy, then, plays the role of a source of process legitimacy for otherwise heteronymous measures. These measures are taken to be legitimate because they reflect the demands of autonomy, which is itself taken as a central good.

In my view, this mistakes autonomy as an interest for autonomy as a value. As an interest, autonomy can generate positive obligations, but as a value its scope is narrower. People have an interest in many of the components of autonomy, including

¹⁷⁸ Kymlicka 1989, esp. chapters 9 and 10.

respect and self-determination, but as an interest these will work through the principle of respect for fraternity to ground positive obligations. If an individual has an interest in a world in which individuals are respected, and others also have an interest in such a world, which that is more likely to occur through union, then fraternity will provide for such an obligation through MES via consideration. The same can be said of self-determination. However, these obligations arise through consideration and solidarity just as obligations based on the interest individuals have in adequate food and shelter.

If autonomy were to provide a source for legitimate obligations, this would mean that all and only obligations that promote an individual's interest in autonomy – that leave him or her more autonomous than they were at the outset – would be legitimate. Such a construction is, however, implausible in part for reasons addressed in Part I: there are important aspects of our ordinary moral and political lives that autonomy cannot adequately ground. It is also implausible on its face. This is the 'freedom for freedom's sake' view that Williams mocked and Kymlicka denied.¹⁷⁹ On this view simply having more choices, or having the choices one has made more meaningful, would be enough to ensure autonomy, but it should be clear that this is not what is really important to autonomy. What is important is not that everyone's choices be as meaningful as possible, but that everyone's choices be above a certain threshold of meaningfulness. Since seems important about autonomy is not its maximization but its preservation. Since autonomy as an interest speaks in favour of maximization rather than preservation it seems problematic in ways that autonomy as a value would not be, since it would be more concerned with maintaining a certain level of autonomy than with advancing autonomy endlessly.

¹⁷⁹ Kymlicka 1989, pp. 49-50.

Furthermore autonomy as an interest can give rise to conflicting demands, like the demands of self-respect and community and the demands of self-determination and individuality. As a value representing the normative requirements of individuality, Autonomy should be univocal. A maxim or policy is either consistent with the principle of respect for autonomy or it is not. It either permits an individual to live her life from within through making meaningful choices or it interferes with one or another aspect of this definition. This binary nature leads to the view that autonomy provides a threshold, beneath which a maxim or policy is illegitimate. While this threshold might not be at the same point for each individual – as each individual requires different things to ensure a life led from within and meaningful choices – autonomy as a value provides an ideal that cannot be violated. Some individuals have a harder time making choices than others for a variety of reasons connected to their particular psychological quirks. As such, what would not violate the autonomy of a relatively resilient individual might violate the autonomy of someone with a more fragile psyche. In either event, while the standard of autonomy will change for each individual along with the particulars of how to live a life from within, any maxim or policy that violates this the standard should be recognized as illegitimate.

II. Accommodating of the Two Principles

The previous section shows that each of the two principles involved in this approach have different relationships with the maxims and policies through which a moral or political philosophy functions. If a maxim or policy is not consistent with fraternity as a source – if it could not have arisen as if it were a product of consideration and solidarity – then it will be illegitimate. On the other hand, failure to respect autonomy as a value – failure to allow an individual to lead a life from within through

making meaningful choices – will also make a maxim or policy illegitimate. However, there are a couple of different ways these two principles can be accommodated. The first task of this section is to explain these different ways and defend my choice of an exclusive serial ordering. I begin by explaining the difference between exclusive and non-exclusive relationships among principles. Exclusivity claims that each of the principles is independent from one another, such that if a maxim or policy is strongly supported by fraternity, this is irrelevant to determining whether it is illegitimate due to a failure to adequately respect autonomy. The two legitimating principles are measured separately, and a failure to satisfy one principle or the other will render a maxim or policy illegitimate. Non-exclusivity claims that neither fraternity nor autonomy is absolute and, as a result, we must balance their various demands to achieve a solution. I defend the claim that only an exclusive approach can adequately satisfy the demands of my dualist methodology.

Having established the importance of exclusivity in accommodating the demands of autonomy and fraternity, I must then deal with how the relationship between the two principles is to function. I propose a simple serial ordering, rather than a normatively laden lexical ordering, with fraternity first and autonomy second. I believe examining the demands of fraternity has an important explanatory role that makes it important to understand what fraternity requires before we assess how a maxim or policy might violate autonomy. This way, we do not attempt to assess the impact a policy or maxim will have on one's autonomy until we understand why it is important in the first place. Nonetheless, placing autonomy last should not be seen as providing it with any more or less of a veto than it already had through exclusivity. Where the order matters is because we need to assess what fraternity requires before we can determine

how these demands will impact on the autonomy of the individual. Neither principle has a trump that the other does not; fraternity merely has an explanatory role that leads me to believe it should be assessed before autonomy. In the end, no matter how strongly fraternity advocates some maxim or policy, if it violates the autonomy of an individual such a maxim or policy cannot be legitimate. This leaves me with a stringent approach to the legitimacy of moral and political obligations. Ultimately, I will defend this as an explanation of the phenomena involved in the problem of choosing among evils.

A. Exclusivity and Dualism

The chief difficulty of a dualist theory is in understanding how the two principles work to produce answers to the basic questions involved. In this case, we have to understand how autonomy and fraternity work together to assess the legitimacy of various moral and political maxims or policies. The degree to which the principles are exclusive is one important dimension in developing such an understanding. If principles are exclusive, then failure to satisfy the demands of one principle will lead to a negative outcome: each principle has a veto on the legitimacy of a maxim or policy. But when principles are non-exclusive, the fact that one principle has some problem with the outcome is not necessarily determinative. While it seems like an exclusive account has a problem explaining the importance of the principles, ultimately I believe this apparent problem is exactly why an exclusive account is required.

In a non-exclusive account neither principle has a veto over the determination of whether a maxim or policy is legitimate. There are life-and-death situations that make this seem plausible. Imagine an entire community is threatened with elimination, perhaps due to some disease. Clearly everyone in the community has an interest (indeed, several different interests) in the continued existence of the community that is more

likely to succeed through collective action. The demands of fraternity are, therefore, satisfied. However, if the community can be saved by the death of one individual, the carrier, for that community to kill the carrier without his consent would violate his autonomy. On an exclusivity account, such an action is illegitimate because it violates one of the two central principles. This seems to make the non-exclusive account more plausible because it shows the difficulty in the absolute nature of the exclusive approach. If fraternity declares that an interest is of particular importance, we often think that the autonomy of the individual should be set aside. Alternatively, if an interest cuts to the heart of autonomy we think that no obligation could force one to act counter to that interest.

However, because each of the principles is so important, a non-exclusive account will not work. The two principles cannot be played off one another and still adequately protect or advance the basic values at their core. If one principle can be subordinated to the other then we no longer have two principles but one central principle and a secondary principle. In addition to making for a cleaner approach to reconciling fraternity and autonomy, exclusivity adequately captures our intuitions about the relationship between the two facts – the fact of individuality and the fact of sociality – at the core of this approach to moral and political philosophy. The point of this exercise was to examine what kind of moral and political structure can be built from taking seriously the claim that both individuality and sociality matter. A maxim that was critically important according to the principle of respect for fraternity is nonetheless illegitimate if it impairs the autonomy of the individual in question, and vice versa: to do otherwise would subordinate one of individuality or sociality to the other.

Furthermore, an exclusive account can explain the phenomena involved in the example presented above and leaves us with a possibility for a legitimate outcome. A legitimate outcome is reached if the carrier consents to being killed or kills him or herself. This would be consistent with fraternity since it would ensure the continued existence of the community, which is in the carrier's interest, but since the carrier would choose his or her death, autonomy would be satisfied. This seems like an unfortunate result, but even in these dire circumstances it is not the only possible outcome. There is a way for the two principles to be satisfied and to save the community, albeit at the cost of one of its members.

Ultimately, then, I believe an exclusive account is necessary. Given the importance of the two facts, neither of their respective principles can be satisfied by a non-exclusive account, where either principle can be sacrificed to meet the needs of the other. Each of autonomy and fraternity must be independently satisfied for a policy or maxim to be legitimate. Without this important characterization, this would not be a genuinely dualist theory.

B. The Order of Principles

While this discussion of exclusivity answers many of the questions about the relationship between the principles, it nonetheless leaves others open. I think the order of principles is also important to understanding how the principles function on their own and together. Given that there are two principles involved here there are at least two different ways in which to order them. However, before we decide which principle should be examined first, we must discuss the kind of ordering involved. There are, as I see it, two ways to order these principles. One option, a lexical order, involves giving normative priority to one principle by satisfying it fully and then satisfying the other

principle insofar as its satisfaction does not conflict with the demands of the first principle. A second option is a straightforward serial order, where we come to understand a maxim or policy involved more fully by examining its application to the first principle, and then apply this fuller understanding to the application of the second principle, but with no normative priority. Here I explain how each sort of ordering works to show why a serial order placing fraternity in the lead position is a more appropriate way of reconciling the demands of the two principles.

The key feature of a lexical order is that it implies a normative relation of dominance between the principles. The first principle of a lexical order dominates the second principle such that the second principle only makes normative claims when these do not conflict with the first principle. Some principles inherently involve lexical ordering. Isaac Asimov's 'laws of robotics' are such an example.¹⁸⁰ In these, the second law requires robots to follow orders except where such orders would contradict the first law of not harming or allowing harm. Likewise, the third law of self-preservation contains a clause rendering it void should it interfere with either the first or second laws. On a plain reading of these principles, then, they involve a lexical ordering where the demands of the third are sacrificed to the first and second, and the demands of the second are subordinate to the first. Other principles are not so perspicuous. Rawls makes clear that his two basic principles of justice are to be interpreted lexically,¹⁸¹ but he must since there is nothing internal to the principles that would necessitate such an interpretation. The first principle, requiring equal access to what Rawls terms 'primary

¹⁸⁰ While these laws make many appearances in Asimov's work, what scholarly work there is on them usually starts with his 1976 short story 'The Bi-centennial Man' in Isaac Asimov, *The bicentennial man and other stories*, (New York: Doubleday, 1984)

¹⁸¹ Rawls 1999, pp. 37-40.

goods' cannot be sacrificed in order to satisfy the second principle, requiring inequalities to benefit the worst off members of a society.

My formulation of the principles of fraternity and autonomy here do not contain explicit references to lexicality, so if this is a requirement it will have to be one done through interpretation rather than through implementation. However, I believe that a lexical ordering is not the appropriate way to reconcile these two principles. While a lexical ordering would provide certainty in how to reconcile the two principles, I believe such certainty is unnecessary at this stage and runs counter to the methodology involved. The desire for certainty here seems to involve a desire to have a ranking of just and unjust outcomes that tells us exactly which maxims and policies to favour over others and why, including the degree to which illegitimate maxims and policies are illegitimate so that we can favour one option even now. It seems to reflect what Berlin called the temptation to look for final solutions.¹⁸²

Furthermore, lexical ordering is inappropriate here for many of the same reasons that non-exclusivity was not an appropriate way for the two principles to interact. Lexical ordering makes one principle subordinate to the other in a way incompatible with the two facts the principles are meant to represent. Insofar as these are two basic principles representing the two basic facts of political morality – individuality and sociality – neither can validly be subordinated to the other. If fraternity were to trump autonomy this would fail to respect the demands of individuality, while if fraternity were subordinate to autonomy this would undermine the needs of sociality. A lexical ordering would give primacy to one position over the other in a way that would

¹⁸² Berlin 2002, pp. 212.

be incompatible with the two facts I took at the outset of this work as my investigatory premise. No theory can incorporate a lexical ordering and still be genuinely dualist.

This commitment to a dualist theory leads me to conclude that a serial order is more appropriate for accommodating the demands of autonomy and fraternity. In a serial order one principle is examined before the other principle because of some explanatory advantage the first principle has over the second, but neither principle has normative priority. Usually, the basis on which we examine the connections between a maxim or policy and a principle first is because understanding these connections is important to understanding the interaction of the maxim or policy with the second principle. There is, then, no normative priority to their placement in the order. This better respects the dualist approach because it allows each principle to more fully interact with the maxim or policy than a lexical approach would, which is necessary when each principle has a veto over the legitimacy of a given maxim or policy.

On this approach, any given maxim will be considered legitimate only if it accords with the principle of respect for fraternity and the principle of respect for autonomy. This leaves many possible maxims that might be strongly supported by one aspect of our nature illegitimate because they violate the principle required by the other aspect. This is a stringent approach to legitimacy, as the example of the community and the contagion above illustrates. There is a legitimate outcome in that situation, but the only legitimate way for the community to save itself is for the individual who carries the contagion to sacrifice him or herself for the benefit of the whole. In the next subsection I will defend this kind of stringency as a valuable illustration of what really happens when we have to choose from among evils.

C. In Defence of Stringency

The result of this dualism is a stringent result. By this I mean that many maxims and policies will be declared illegitimate because of their failure to adequately respect one or another of the principles involved. Nonetheless, I think this result is both justified and does a good job of explaining many of our basic intuitions about moral and political hard cases.

Earlier I discussed the example of the community and the contagion. In that scenario the only legitimate outcome is for the individual to sacrifice herself for the benefit of the community. Indeed, we can claim that the individual does wrong if she does not make such a sacrifice. However, for a community to adopt a maxim by which they can kill her to save their village nonetheless violates her autonomy because it interferes with her ability to continue living a life from within by making meaningful choices. It interferes in this way because she has made a choice, to refuse to sacrifice herself, that is meaningful and reflects the ability to live her life from within. The community might still end up killing the carrier, but because they are choosing from among illegitimate options. This would then be a situation where the relevant authorities are choosing from among evils.

Situations of direct conflict between principles should be rare, despite the inflexibility involved in their reconciliation. In large part this is because of the flexible approaches to autonomy and fraternity adopted earlier. Direct conflicts between the two principles should be possible only in extreme cases like the scenario discussed above. An examination of a slightly different case should make this clear. Imagine a different contagion case: one where someone is trying to enter an area in violation of a quarantine zone established to prevent spread of the contagion and to preserve order within the

zone. Whether an absolute quarantine is legitimate will depend on the circumstances of the individuals involved. For what reason are they trying to enter the zone. If she is trying to enter the zone to be reunited with family with no intention of leaving or of causing a disturbance, then this sort of forced separation prevents her from living her life from within and thereby violates her autonomy. In this case, however, consideration requires us to allow the woman to enter the contagion zone, since her introduction would not allow spread of the contagion outside the zone nor would it impede on the imposition of order in the zone. It requires an exemption in the circumstances of the original policy. Alternatively, if she is trying to enter the zone because it is the most efficient way to reach a destination on the other side of the zone, this would not violate her autonomy since she can still has an array of choices about whether and how to reach her ultimate destination. Provided one is always ready to temper maxims and policies to individual circumstances – which can usually be done even in the most bureaucratic of states – the demands of autonomy and fraternity can usually be satisfied. It will be occasions where the circumstances or policies cannot be so tailored – due to emergency or extreme cost – that conflict will arise. However, we should resist the temptation to treat ‘hard cases’ as something to which we simply have yet to find an easy solution. Hard cases are hard for a reason. It is to what we do in hard cases that I now turn.

Firstly, I think that the methodology of the two aspects still has some relevance here, even though it has declared both actions illegitimate. Fraternity and autonomy provide two standards by which illegitimate actions can nonetheless be measured for degrees of illegitimacy. In the scenario under examination the obligation to save the community seems like a very serious requirement, involving very strong union obligations among the individuals involved. Likewise, the choice of the individual in

question is meant to preserve her autonomy, but her autonomy will be of little value once she is wiped out along with her community. Her choice, then, can be seen to reflect autonomy in a way that is of little (but not no) value, since due to circumstances beyond her control she will not be able to live her life from within or make meaningful choices for very much longer. In other words, while one of the two values is screaming for a particular course of action, the other is holding out despite being trampled by circumstance. In any event, the two aspects and their respective principles are still useful as evaluative guides even among illegitimate maxims and policies.

Secondly, this account is faithful to the phenomenology of choosing among evils. Historically available scenarios often involve such a vast scale of interests and obligations that determining what to do is difficult even given a clear account of the principles involved. However, when we examine competing evils at a smaller level the value becomes clear. Assume we have to choose from among breaking a promise to meet a friend or lying to my neighbour. To further make clear the connection, let us assume my neighbour wishes for me to watch her child for an hour so she can go to an important job interview. However, my neighbour is very insistent and will only let me go if I tell her I have serious plans – a meeting with my lawyer, perhaps. If I am to meet my friend for coffee I will have to lie to my neighbour about the importance of my plans, but if I am to help my neighbour I will have to break my promise to my friend. Let us assume, reasonably, that each of these is an illegitimate option. We can claim with reason that promise-keeping and truth-telling are each required by fraternity and consistent with autonomy. Each of these options, then is an illegitimate act. When we choose among them we ordinarily feel that the other will be entitled to some resentment, for which we usually feel an apology or an explanation is in order.

Fraternity and autonomy can be of help here, likely telling us that our neighbour's need is more important at this time than our friend's feelings, but what is important for the moment is that our choice does not make an option legitimate. When choosing among evils we must be aware of the wrong we are doing to the other and act accordingly, to mitigate or compensate where possible and to always acknowledge the unfortunate character of the situation.

Conclusion

In this chapter I have explained how the two principles of my liberal dualism mean to interact to explain when and how a maxim or policy is legitimate. First, I explained what legitimation involves and characterized each of the central principles as requiring a different form of legitimacy. Fraternity requires a legitimation process, while autonomy provides a threshold for legitimacy. I then explained the interactions of these two principles and their differing approaches to legitimacy. I argued that trying to treat these principles as non-exclusive or as lexical is ultimately incompatible with the dualism at the root of this approach to moral and political questions. I then motivated an exclusive, serial approach to reconciliation. This approach leaves me with a stringent account of moral and political obligations, but I defended this as consistent with the basic phenomena of choosing among illegitimate options. Once we see how these two principles can work together to explain the legitimacy of various maxims and policies we should see the potential for a renewed communitarianism focussing not on what is wrong with liberal individualism, but on how to supplement it with a second principle. Autonomy is important because we are individuals, so communitarianism should claim instead that Fraternity – or moderate ethical solidarity through consideration – is important because we are necessarily in society with one another.

Bibliography

- Agamben, Giorgio. *The Coming Community*. Trans. Michael Hardt. Minneapolis, MN: U Minnesota P (1993).
- Anderson, Elizabeth. 'What is the Point of Equality?' *Ethics*, v. 109 (January 1999), pp. 287-337.
- Appiah, Kwame Anthony. *The Ethics of Identity*. Princeton: Princeton UP (2005).
- Arendt, Hannah. *Lectures on Kant's Political Philosophy*. Ed. Ronald Beiner. Chicago: U of Chicago P (1992).
- Aristotle. *Nicomachean Ethics*. Ed. Terrence Irwin. Indianapolis, IN: Hackett (1999).
- Arneson, Richard J. 'Luck Egalitarianism and Prioritarianism.' *Ethics*, v. 110, no. 1, 333-349
- Asimov, Isaac. *The Bicentennial Man and Other Stories*. New York: Doubleday (1984).
- Barrett, Helen. *Attachment and the Perils of Parenting: A Commentary and a Critique*. London: National Family and Parenting Institute (2006).
- Barry, Brian. *A Treatise on Social Justice, Volume II: Justice as Impartiality*. Oxford: Oxford UP (1995).
- Bell, Daniel. *Communitarianism and its Critics*. Oxford: Oxford UP (1993).
- Benhabib, Seyla. *Situating the Self*. New York: Routledge (1992).
- Berlin, Isaiah. *Liberty: Incorporating Four Essays on Liberty*. Ed. Henry Hardy. London : Oxford UP (2002).
- *The Crooked Timber of Humanity*. New York: Knopf (1991).
- Broome, John. *Weighing Lives*. Oxford: Oxford UP, (2004).
- Brunkhorst, Hauke. 'Globalizing Solidarity: The Destiny of Democratic Solidarity in the Times of Global Capitalism, Global Religion and the Global Public.' *Journal of Social Philosophy*, vol. 28, no. 1, pp. 93-111.
- *Solidarity: From Civic Friendship to Global Legal Community*. Trans. Jeffrey Flynn. London: MIT Press (2005).

- Burke, Edmund. *Reflections on the Revolution in France and on the Proceedings in Certain Societies in London Relative to that Event*. London: Penguin (1790, 1986).
- Butler, Joseph. *Human Nature and Other Sermons*. London: Cassell (1887).
- Cohen, Gerald Allen. *If you're an Egalitarian How Come You're so Rich?* London: Harvard UP (2000).
- *Rescuing Justice and Equality*. Cambridge MA: Harvard UP (2008).
- *Self-Ownership, Freedom, and Equality*. Cambridge: Cambridge UP (1995).
- Darwall, Stephen. *The Second-person Standpoint*. London: Harvard (2007).
- Dussel, Enrique. 'From Fraternity to Solidarity: Toward a *Politics of Liberation*.' *Journal of Social Philosophy*, vol. 28, no. 1, pp. 73-92.
- Dworkin, Ronald. 'Equality, Luck and Hierarchy.' *Philosophy and Public Affairs*, v.31, n.2, pp. 190-198.
- *Law's Empire*. London: Fontana (1986).
- *Sovereign Virtue*. London: Harvard UP (2000).
- *Taking Rights Seriously*. London: Duckworth (1978).
- Feinberg, Joel. 'Collective Responsibility.' *The Journal of Philosophy*, v. 65, no. 21 (1968), pp. 674-688 at p. 678.
- Frankel Paul, Ellen, Fred D. Miller Jr., and Jeffrey Paul, Eds. *The Communitarian Challenge to Liberalism*. New York: Cambridge UP (1996).
- Freeman, Samuel (Ed.). *The Cambridge Companion to Rawls*. Cambridge: Cambridge UP (2003).
- Goldman, Alvin I. *Simulating Minds: The Philosophy, Psychology and Neuroscience of Mindreading*. Oxford: Oxford UP (2006).
- Gould, Carol C. 'Transnational Solidarities.' *Journal of Social Philosophy*, vol. 28, no. 1, pp. 148-164.

- Harsanyi, John C. 'Can the Maximin Principle Serve as a Basis for Morality? A Critique of John Rawls's Theory.' *The American Political Science Review*, v. 69, no. 2 (1975), pp. 594-606.
- Hart, H. L. A. *The Concept of Law (2nd Ed)*, Oxford: Clarendon (1994).
- 'Rawls on Liberty and its Priority,' *U Chicago Law Rev.*; v. 40 n. 3; pp. 534-555.
- *Law, Liberty and Morality*. London: Oxford UP (1963).
- Harvey, Jean. 'Moral Solidarity and Empathic Understanding: The Moral Value and Scope of the Relationship.' *Journal of Social Philosophy*, vol. 28, no. 1, pp. 22-37.
- Herman, Barbara. 'Mutual Aid and Respect for Persons.' *Ethics*, v. 94 (July 1984), pp. 577-602.
- Heyd, David. 'Justice and Solidarity: The Contractarian Case against Global Justice.' *Journal of Social Philosophy*, vol. 28, no. 1, pp. 112-130.
- Holton, Richard and Rae Langton. 'Empathy and Animal Ethics.' In Dale Johnson Ed. *Singer and his Critics*. Oxford: Blackwell (1999).
- Holtung, Nils and Kaspar Lippert-Rasmussen. *Egalitarianism*. Oxford: Oxford UP (2005).
- Horton, John. 'In Defence of Associative Political Obligations: Part One.' *Political Studies*; v. 54 i. 4; pp. 427-443.
- 'In Defence of Associative Political Obligations: Part Two.' *Political Studies*; v. 55 i. 1; pp. 1-19.
- Hume, David. *A Treatise of Human Nature*. New York: Penguin (1739, 1969).
- Kagan, Shelly. *The Limits of Morality*. Oxford: Oxford UP (1986).
- Kolodny, Niko. 'Which Relationships Justify Partiality? The Case of Parents and Children.' *Philosophy and Public Affairs*, v. 38, no. 1, pp. 37-75.
- Korsgaard, Christine. *Creating the Kingdom of Ends*. New York: Cambridge UP (1996).
- *Self-constitution*. Oxford: Oxford UP (2009).

- Kymlicka, Will. *Contemporary Political Philosophy, 2nd Ed.* Oxford: Oxford UP (2002).
- *Liberty, Culture and Community.* Oxford: Oxford UP (1989).
- Levinas, Emmanuel. *Otherwise than Being; or Beyond Essence.* Trans. Alphonso Lingis. Pittsburgh, PA: Duquesne UP (1998).
- MacIntyre, Alasdair. *After Virtue,* London: Duckworth (1985).
- May, Larry. ‘The International Community, Solidarity and the Duty to Aid.’ *Journal of Social Philosophy*, vol. 28, no. 1, pp. 185-203.
- Miller, David. *On Nationality.* Oxford: Oxford UP (1995).
- Musschenga, Albert W. ‘The Debate on Impartiality: An Introduction,’ *Ethical Theory and Moral Practice*, v. 8 (2005), pp. 1-10.
- Nagel, Thomas. *Equality and Impartiality* Oxford: Oxford UP (1991).
- *The View from Nowhere* New York: Oxford (1986).
- Nancy, Jean-Luc. *The Inoperative Community.* Trans. Peter Connor et al. Oxford: U Minnesota P (1991).
- Nozick, *Anarchy, State and Utopia.* Oxford: Blackwell (1975).
- Nussbaum, Martha. *The Fragility of Goodness.* Cambridge: Cambridge UP (1986).
- *Frontiers of Justice.* Cambridge, MA: Harvard UP (2006).
- Oakeshott, Michael *On Human Conduct.* Oxford: Clarendon (1975).
- Okin, Susan Moller. *Justice, Gender and the Family.* New York: Basic (1989).
- Otsuka, Michael. *Libertarianism Without Inequality.* Oxford: Oxford UP (2003).
- Parfit, Derek. ‘Equality and Priority,’ in *Contemporary Political Philosophy: An Anthology (2nd Ed.)*. Robert E. Goodin and Philip Pettit, Eds., Oxford: Blackwell (2006), pp. 462-472.
- *Reasons and Persons.* Oxford: Oxford UP (1984).
- Pensky, Max. ‘Two Cheers for Cosmopolitanism: Cosmopolitan Solidarity as Second-Order

- Inclusion.' *Journal of Social Philosophy*, vol. 28, no. 1, pp. 165-184.
- Rawls, John. 'Justice as Fairness: Political not Metaphysical,' *Philosophy and Public Affairs*.
v.
14, no. 3, pp. 223-251.
- *Political Liberalism*. New York: Columbia UP (1993).
- *A Theory of Justice: Revised Edition*. Cambridge, MA: Belknap (1971, 1999).
- Raz, Joseph. *The Morality of Freedom*. Oxford: Oxford UP (1986).
- *The Practice of Value*. Oxford: Oxford UP (2003).
- Rehg, William. 'Solidarity and the Common Good: An Analytic Framework.' *Journal of Social Philosophy*, vol. 28, no. 1, pp. 7-21.
- Rorty, Richard. *Contingency, Irony, and Solidarity*. Cambridge: Cambridge UP (1989).
- Sandel, Michael. *Liberalism and the Limits of Justice*. Cambridge: Cambridge UP (1982).
- Scanlon, Thomas. *Moral Dimensions*. Cambridge, MA: Harvard (2008).
- *What We Owe To Each Other*. Cambridge, MA: Belknap (1998).
- Scheffler, Samuel. *Boundaries and Allegiances*. New York: Oxford (2001).
- 'Choice, Circumstance and the Value of Equality.' *Politics, Philosophy and Economics*,
vol. 4, no. 1, pp. 5-28.
- 'Equality as the Virtue of Sovereigns: A Reply to Ronald Dworkin.' *Philosophy and Public Affairs*, v. 31, no. 2, pp. 199-206.
- *Human Morality*. New York: Oxford UP (1992).
- 'What is Egalitarianism?' *Ethics* v. 31, no. 1 (2003), pp. 5-39.
- Scheler, Max. *The Nature of Sympathy*. Trans. Peter Heath. London: Routledge (1954).
- Scholz, Sally J. *Political Solidarity*. University Park, PA: Penn. State UP (2008).
- 'Political Solidarity and Violent Resistance.' *Journal of Social Philosophy*, vol. 28, no. 1,
pp. 38-52.
- Schwartz, Joseph M. 'From Domestic to Global Solidarity: The Dialectic of the Particular

and the Universal in the Building of Social Solidarity.’ *Journal of Social Philosophy*, vol. 28, no. 1, pp. 131-147.

Scruton, Roger. *Culture Counts: Faith and Feeling in a World Besieged*. New York: Encounter (2007).

– *The Meaning of Conservatism*. London: Penguin (1980).

Sen, Amartya. *Inequality Reexamined*. Oxford: Oxford (1992).

– *Identity and Violence*. London: Penguin (2006).

Shelby, Tommie. *We Who Are Dark*. London: Belknap (2005).

Simmons, A. J. ‘Associative Political Obligations.’ *Ethics*; v. 106 i. 2; pp. 247-273.

Smith, Adam. *The Theory of Moral Sentiments*. Oxford: Oxford UP (1976).

Tamir, Yael. *Liberal Nationalism*. Princeton, NJ: Princeton UP (1993).

Taylor, Charles. ‘Cross-purposes: The Liberal-Communitarian Debate,’ in Nancy Rosenblum, Ed. *Liberalism and the Moral Life*. Cambridge, MA: Harvard UP (1989).

– *The Ethics of Authenticity*. Cambridge, MA: Harvard UP (1991).

– *Hegel*. London: Cambridge UP (1975).

– *Sources of the Self*. Cambridge: Cambridge UP (1989).

Timmermann, Jens. ‘Value without Regress: Kant’s “Formula of Humanity” Revisited.’ *European Journal of Philosophy*, vol. 14, no. 1, pp. 69-93.

Velleman, J. David. *How We Get Along*. New York: Cambridge UP (2009).

Walzer, Michael. *Spheres of Justice*. Oxford: Blackwell (1984).

Wilson, Catherine. *Moral Animals*. Oxford: Clarendon (2007).

Wolff, Jonathan. ‘Fairness, Respect and the Egalitarian Ethos.’ *Philosophy and Public Affairs*, v. 27, no. 2, pp. 97-122.

Young, Iris Marion. ‘Asymmetrical Reciprocity: On Moral Respect, Wonder and Enlarged

Thought,’ *Constellations*, v. 3, no. 3 (1997), pp. 340-363.

– ‘Impartiality and the Civic Public: Some Implications of Feminist Critiques of Moral and

Political Theory,' in Selya Benhabib and Drucilla Cornell, eds. *Feminism as Critique*. London: Polity (1987, 1994).

– *Justice and the Politics of Difference*. Oxford: Princeton UP (1990).