

The Idea of Justice

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In memory of
John Rawls

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Preface

‘In the little world in which children have their existence’, says Pip in Charles Dickens’s *Great Expectations*, ‘there is nothing so finely perceived and finely felt, as injustice.’¹ I expect Pip is right: he vividly recollects after his humiliating encounter with Estella the ‘capricious and violent coercion’ he suffered as a child at the hands of his own sister. But the strong perception of manifest injustice applies to adult human beings as well. What moves us, reasonably enough, is not the realization that the world falls short of being completely just – which few of us expect – but that there are clearly remediable injustices around us which we want to eliminate.

This is evident enough in our day-to-day life, with inequities or subjugations from which we may suffer and which we have good reason to resent, but it also applies to more widespread diagnoses of injustice in the wider world in which we live. It is fair to assume that Parisians would not have stormed the Bastille, Gandhi would not have challenged the empire on which the sun used not to set, Martin Luther King would not have fought white supremacy in ‘the land of the free and the home of the brave’, without their sense of manifest injustices that could be overcome. They were not trying to achieve a perfectly just world (even if there were any agreement on what that would be like), but they did want to remove clear injustices to the extent they could.

The identification of redressable injustice is not only what animates us to think about justice and injustice, it is also central, I argue in this book, to the theory of justice. In the investigation presented here, diagnosis of injustice will figure often enough as the starting point for

critical discussion.² But, it may be asked, if this is a reasonable starting point, why can't it also be a good ending point? What is the need to go beyond our sense of justice and injustice? Why must we have a theory of justice?

To understand the world is never a matter of simply recording our immediate perceptions. Understanding inescapably involves reasoning. We have to 'read' what we feel and seem to see, and ask what those perceptions indicate and how we may take them into account without being overwhelmed by them. One issue relates to the reliability of our feelings and impressions. A sense of injustice could serve as a signal that moves us, but a signal does demand critical examination, and there has to be some scrutiny of the soundness of a conclusion based mainly on signals. Adam Smith's conviction of the importance of moral sentiments did not stop him from seeking a 'theory of moral sentiments', nor from insisting that a sense of wrongdoing be critically examined through reasoned scrutiny to see whether it can be the basis of a sustainable condemnation. A similar requirement of scrutiny applies to an inclination to praise someone or something.*

We also have to ask what kinds of reasoning should count in the assessment of ethical and political concepts such as justice and injustice. In what way can a diagnosis of injustice, or the identification of what would reduce or eliminate it, be objective? Does this demand impartiality in some particular sense, such as detachment from one's own vested interests? Does it also demand re-examination of some attitudes even if they are not related to vested interests, but reflect local preconceptions and prejudices, which may not survive reasoned confrontation with others not restricted by the same parochialism? What is the role of rationality and of reasonableness in understanding the demands of justice?

These concerns and some closely related general questions are addressed in the first ten chapters, before I move on to issues of

* Smith's classic book, *The Theory of Moral Sentiments*, was published exactly 250 years ago in 1759, and the last revised edition – the 6th – in 1790. In the new anniversary edition of *The Theory of Moral Sentiments* (New York: Penguin Books, 2009), I discuss, in the Introduction, the nature of Smith's moral and political engagement and its continuing relevance to the contemporary world.

application, involving critical assessment of the grounds on which judgements about justice are based (whether freedoms, capabilities, resources, happiness, well-being or something else), the special relevance of diverse considerations that figure under the general headings of equality and liberty, the evident connection between pursuing justice and seeking democracy seen as ‘government by discussion’, and the nature, viability and reach of claims of human rights.

WHAT KIND OF A THEORY?

What is presented here is a theory of justice in a very broad sense. Its aim is to clarify how we can proceed to address questions of enhancing justice and removing injustice, rather than to offer resolutions of questions about the nature of perfect justice. In this there are clear differences with the pre-eminent theories of justice in contemporary moral and political philosophy. As will be discussed more fully in the Introduction that follows, three differences in particular demand specific attention.

First, a theory of justice that can serve as the basis of practical reasoning must include ways of judging how to reduce injustice and advance justice, rather than aiming only at the characterization of perfectly just societies – an exercise that is such a dominant feature of many theories of justice in political philosophy today. The two exercises for identifying perfectly just arrangements, and for determining whether a particular social change would enhance justice, do have motivational links but they are nevertheless analytically disjoined. The latter question, on which this work concentrates, is central to making decisions about institutions, behaviour and other determinants of justice, and how these decisions are derived cannot but be crucial to a theory of justice that aims at guiding practical reasoning about what should be done. The assumption that this comparative exercise cannot be undertaken without identifying, first, the demands of perfect justice, can be shown to be entirely incorrect (as is discussed in Chapter 4, ‘Voice and Social Choice’).

Second, while many comparative questions of justice can be successfully resolved – and agreed upon in reasoned arguments – there could

well be other comparisons in which conflicting considerations are not fully resolved. It is argued here that there can exist several distinct reasons of justice, each of which survives critical scrutiny, but yields divergent conclusions.* Reasonable arguments in competing directions can emanate from people with diverse experiences and traditions, but they can also come from within a given society, or for that matter, even from the very same person.†

There is a need for reasoned argument, with oneself and with others, in dealing with conflicting claims, rather than for what can be called ‘disengaged toleration’, with the comfort of such a lazy resolution as: ‘you are right in your community and I am right in mine’. Reasoning and impartial scrutiny are essential. However, even the most vigorous of critical examination can still leave conflicting and competing arguments that are not eliminated by impartial scrutiny. I shall have more to say on this in what follows, but I emphasize here that the necessity of reasoning and scrutiny is not compromised in any way by the possibility that some competing priorities may survive despite the confrontation of reason. The plurality with which we will then end up will be the result of reasoning, not of abstention from it.

Third, the presence of remediable injustice may well be connected with behavioural transgressions rather than with institutional shortcomings (Pip’s recollection, in *Great Expectations*, of his coercive sister was just that, not an indictment of the family as an institution). Justice is ultimately connected with the way people’s lives go, and not merely with the nature of the institutions surrounding them. In contrast, many of the principal theories of justice concentrate over-

* The importance of valuational plurality has been extensively – and powerfully – explored by Isaiah Berlin and Bernard Williams. Pluralities can survive even within a given community, or even for a particular person, and they need not be reflections of values of ‘different communities’. However, variations of values between people in different communities can also be significant (as has been discussed, in different ways, in important contributions by Michael Walzer, Charles Taylor and Michael Sandel, among others).

† For example, Marx expounded the case both for eliminating the exploitation of labour (related to the justness of getting what can be seen as the product of one’s efforts) and for allocation according to needs (related to the demands of distributive justice). He went on to discuss the inescapable conflict between these two priorities in his last substantial writing: *The Critique of the Gotha Programme* (1875).

whelmingly on how to establish ‘just institutions’, and give some derivative and subsidiary role to behavioural features. For example, John Rawls’s rightly celebrated approach of ‘justice as fairness’ yields a unique set of ‘principles of justice’ that are exclusively concerned with setting up ‘just institutions’ (to constitute the basic structure of the society), while requiring that people’s behaviour complies entirely with the demands of proper functioning of these institutions.³ In the approach to justice presented in this work, it is argued that there are some crucial inadequacies in this overpowering concentration on institutions (where behaviour is assumed to be appropriately compliant), rather than on the lives that people are able to lead. The focus on actual lives in the assessment of justice has many far-reaching implications for the nature and reach of the idea of justice.*

The departure in the theory of justice that is explored in this work has a direct bearing, I argue, on political and moral philosophy. But I have also tried to discuss the relevance of the arguments presented here with some of the ongoing engagements in law, economics and politics, and it might, if one were ready to be optimistic, even have some pertinence to debates and decisions on practical policies and programmes.†

The use of a comparative perspective, going well beyond the limited – and limiting – framework of social contract, can make a useful contribution here. We are engaged in making comparisons in terms of the advancement of justice whether we fight oppression (like slavery, or the subjugation of women), or protest against systematic medical neglect (through the absence of medical facilities in parts of Africa or Asia, or a lack of universal health coverage in most countries in

* The recent investigation of what has come to be called the ‘capability perspective’ fits directly into the understanding of justice in terms of human lives and the freedoms that the persons can respectively exercise. See Martha Nussbaum and Amartya Sen (eds), *The Quality of Life* (Oxford: Clarendon Press, 1993). The reach and limits of that perspective will be examined in Chapters 11–14.

† For example, the case for what is called here ‘open impartiality’, which admits voices from far as well as near in interpreting the justice of laws (not only for the sake of fairness to others, but also for the avoidance of parochialism, as discussed by Adam Smith in *The Theory of Moral Sentiments* and in *Lectures on Jurisprudence*), has direct relevance to some of the contemporary debates in the Supreme Court of the United States, as is discussed in the concluding chapter of this book (Chapter 18).

the world, including the United States), or repudiate the permissibility of torture (which continues to be used with remarkable frequency in the contemporary world – sometimes by pillars of the global establishment), or reject the quiet tolerance of chronic hunger (for example in India, despite the successful abolition of famines).* We may often enough agree that some changes contemplated (like the abolition of apartheid, to give an example of a different kind) will reduce injustice, but even if all such agreed changes are successfully implemented, we will not have anything that we can call perfect justice. Practical concerns, no less than theoretical reasoning, seem to demand a fairly radical departure in the analysis of justice.

PUBLIC REASONING AND DEMOCRACY AND GLOBAL JUSTICE

Even though in the approach presented here principles of justice will not be defined in terms of institutions, but rather in terms of the lives and freedoms of the people involved, institutions cannot but play a significant instrumental role in the pursuit of justice. Together with the determinants of individual and social behaviour, an appropriate choice of institutions has a critically important place in the enterprise of enhancing justice. Institutions come into the reckoning in many different ways. They can contribute directly to the lives that people are able to lead in accordance with what they have reason to value. Institutions can also be important in facilitating our ability to scrutinize the values and priorities that we can consider, especially through opportunities for public discussion (this will include considerations of freedom of speech and right to information as well as actual facilities for informed discussion).

In this work, democracy is assessed in terms of public reasoning

* I was privileged to address the Indian Parliament on ‘The Demands of Justice’ on 11 August 2008 at the invitation of the Speaker, Somnath Chatterjee. This was the first Hiren Mukerjee Memorial Lecture, which is going to be an annual parliamentary event. The full version of the address is available in a brochure printed by the Indian Parliament, and a shortened version is published in *The Little Magazine*, vol. 8, issues 1 and 2 (2009), under the title ‘What Should Keep Us Awake at Night’.

(Chapters 15–17), which leads to an understanding of democracy as ‘government by discussion’ (an idea that John Stuart Mill did much to advance). But democracy must also be seen more generally in terms of the capacity to enrich reasoned engagement through enhancing informational availability and the feasibility of interactive discussions. Democracy has to be judged not just by the institutions that formally exist but by the extent to which different voices from diverse sections of the people can actually be heard.

Furthermore, this way of seeing democracy can have an impact on the pursuit of it at the global level – not just within a nation-state. If democracy is not seen simply in terms of the setting up of some specific institutions (like a democratic global government or global elections), but in terms of the possibility and reach of public reasoning, the task of *advancing* – rather than perfecting – both global democracy and global justice can be seen as eminently understandable ideas that can plausibly inspire and influence practical actions across borders.

THE EUROPEAN ENLIGHTENMENT AND OUR GLOBAL HERITAGE

What can I say about the antecedents of the approach I am trying to present here? I will discuss this question more fully in the Introduction that follows, but I should point out that the analysis of justice I present in this book draws on lines of reasoning that received particular exploration in the period of intellectual discontent during the European Enlightenment. Having said that, however, I must immediately make a couple of clarificatory points to prevent possible misunderstanding.

The first clarification is to explain that the connection of this work with the tradition of European Enlightenment does not make the intellectual background of this book particularly ‘European’. Indeed, one of the unusual – some will probably say eccentric – features of this book compared with other writings on the theory of justice is the extensive use that I have made of ideas from non-Western societies, particularly from Indian intellectual history, but also from elsewhere. There are powerful traditions of reasoned argument, rather than

reliance on faith and unreasoned convictions, in India's intellectual past, as there are in the thoughts flourishing in a number of other non-Western societies. In confining attention almost exclusively to Western literature, the contemporary – and largely Western – pursuit of political philosophy in general and of the demands of justice in particular has been, I would argue, limited and to some extent parochial.*

It is not, however, my claim that there is some radical dissonance between 'Western' and 'Eastern' (or generally, non-Western) thinking on these subjects. There are many differences in reasoning within the West, and within the East, but it would be altogether fanciful to think of a united West confronting 'quintessentially eastern' priorities.† Such views, which are not unknown in contemporary discussions, are quite distant from my understanding. It is my claim, rather, that similar – or closely linked – ideas of justice, fairness, responsibility, duty, goodness and rightness have been pursued in many different parts of the world, which can expand the reach of arguments that have been considered in Western literature and that the global presence of such reasoning is often overlooked or marginalized in the dominant traditions of contemporary Western discourse.

Some of the reasoning of, for example, Gautama Buddha (the agnostic champion of the 'path of knowledge'), or of the writers in the

* Kautilya, the ancient Indian writer on political strategy and political economy, has sometimes been described in the modern literature, when he has been noticed at all, as 'the Indian Machiavelli'. This is unsurprising in some respects, since there are some similarities in their ideas on strategies and tactics (despite profound differences in many other – often more important – areas), but it is amusing that an Indian political analyst from the fourth century BC has to be introduced as a local version of an European writer born in the fifteenth century. What this reflects is not, of course, any kind of crude assertion of a geographical pecking order, but simply the lack of familiarity with non-Western literature of Western intellectuals (and in fact intellectuals all across the modern world because of the global dominance of Western education today).

† Indeed, I have argued elsewhere that there are no quintessentially eastern priorities, not even quintessentially Indian ones, since arguments in many different directions can be seen in the intellectual history of these countries (see my *The Argumentative Indian* (London and Delhi: Penguin, and New York: FSG, 2005), and *Identity and Violence: The Illusion of Destiny* (New York: Norton, and London and Delhi: Penguin, 2006).

Lokayata school (committed to relentless scrutiny of every traditional belief) in India in sixth-century BC, may sound closely aligned, rather than adversarial, to many of the critical writings of the leading authors of the European Enlightenment. But we do not have to get all steamed up in trying to decide whether Gautama Buddha should be seen as an anticipating member of some European Enlightenment league (his acquired name does, after all, mean ‘enlightened’ in Sanskrit); nor do we have to consider the far-fetched thesis that the European Enlightenment may be traceable to long-distance influence of Asian thought. There is nothing particularly odd in the recognition that similar intellectual engagements have taken place in different parts of the globe in distinct stages of history. Since somewhat different arguments have often been advanced in dealing with similar questions, we may miss out on possible leads in reasoning about justice if we keep our explorations regionally confined.

One example of some interest and relevance is an important distinction between two different concepts of justice in early Indian jurisprudence – between *niti* and *nyaya*. The former idea, that of *niti*, relates to organizational propriety as well as behavioural correctness, whereas the latter, *nyaya*, is concerned with what emerges and how, and in particular the lives that people are actually able to lead. The distinction, the relevance of which will be discussed in the Introduction, helps us to see clearly that there are two rather different, though not unrelated, kinds of justness for which the idea of justice has to cater.*

My second explanatory remark relates to the fact that the Enlightenment authors did not speak in one voice. As I will discuss in the Introduction, there is a substantial dichotomy between two different lines of reasoning about justice that can be seen among two groups of leading philosophers associated with the radical thought of the

* The distinction between *nyaya* and *niti* has significance not only within a polity, but also across the borders of states, as is discussed in my essay ‘Global Justice’, presented at the World Justice Forum in Vienna, July 2008, sponsored by the American Bar Association, along with the International Bar Association, Inter-American Bar Association, Inter-Pacific Bar Association, and Union Internationale des Avocats. This is part of the American Bar Association’s ‘World Justice Program’, and published in *Global Perspectives on the Rule of Law*, eds. James Heckman, Robert Nelson and Lee Cabatingan (New York: Routledge, 2009).

Enlightenment period. One approach concentrated on identifying perfectly just social arrangements, and took the characterization of ‘just institutions’ to be the principal – and often the only identified – task of the theory of justice. Woven in different ways around the idea of a hypothetical ‘social contract’, major contributions were made in this line of thinking by Thomas Hobbes in the seventeenth century, and later by John Locke, Jean-Jacques Rousseau and Immanuel Kant, among others. The contractarian approach has been the dominant influence in contemporary political philosophy, particularly since a pioneering paper (‘Justice as Fairness’) in 1958 by John Rawls which preceded his definitive statement on that approach in his classic book, *A Theory of Justice*.⁴

In contrast, a number of other Enlightenment philosophers (Smith, Condorcet, Wollstonecraft, Bentham, Marx, John Stuart Mill, for example) took a variety of approaches that shared a common interest in making comparisons between different ways in which people’s lives may be led, influenced by institutions but also by people’s actual behaviour, social interactions and other significant determinants. This book draws to a great extent on that alternative tradition.* The analytical – and rather mathematical – discipline of ‘social choice theory’, which can be traced to the works of Condorcet in the eighteenth century, but which has been developed in the present form by the pioneering contributions of Kenneth Arrow in the mid-twentieth century, belongs to this second line of investigation. That approach, suitably adapted, can make a substantial contribution, as I will discuss, to addressing questions about the enhancement of justice and the removal of injustice in the world.

* This will not, however, prevent me from drawing on insights from the first approach, from the enlightenment we get from the writings, for example, of Hobbes and Kant, and in our time, from John Rawls.

THE PLACE OF REASON

Despite the differences between the two traditions of the Enlightenment – the contractarian and the comparative – there are many points of similarity as well. The common features include reliance on reasoning and the invoking of the demands of public discussion. Even though this book relates mainly to the second approach, rather than to contractarian reasoning developed by Immanuel Kant and others, much of the book is driven by the basic Kantian insight (as Christine Korsgaard puts it): ‘Bringing reason to the world becomes the enterprise of morality rather than metaphysics, and the work as well as the hope of humanity.’⁵

To what extent reasoning can provide a reliable basis for a theory of justice is, of course, itself an issue that has been subject to controversy. The first chapter of the book is concerned with the role and reach of reasoning. I argue against the plausibility of seeing emotions or psychology or instincts as independent sources of valuation, without reasoned appraisal. Impulses and mental attitudes remain important, however, since we have good reasons to take note of them in our assessment of justice and injustice in the world. There is no irreducible conflict here, I argue, between reason and emotion, and there are very good reasons for making room for the relevance of emotions.

There is, however, a different kind of critique of the reliance on reasoning that points to the prevalence of unreason in the world and to the unrealism involved in assuming that the world will go in the way reason dictates. In a kind but firm critique of my work in related fields, Kwame Anthony Appiah has argued, ‘however much you extend your understanding of reason in the sorts of ways Sen would like to do – and this is a project whose interest I celebrate – it isn’t going to take you the whole way. In adopting the perspective of the individual reasonable person, Sen has to turn his face from the pervasiveness of unreason.’⁶ As a description of the world, Appiah is clearly right, and his critique, which is not addressed to building a theory of justice, presents good grounds for scepticism about the practical effectiveness of reasoned discussion of confused social

subjects (such as the politics of identity). The prevalence and resilience of unreason may make reason-based answers to difficult questions far less effective.

This particular scepticism of the reach of reasoning does not yield – nor (as Appiah makes clear) is it intended to yield – any ground for not using reason to the extent one can, in pursuing the idea of justice or any other notion of social relevance, such as identity.* Nor does it undermine the case for our trying to persuade each other to scrutinize our respective conclusions. It is also important to note that what may appear to others as clear examples of ‘unreason’ may not always be exactly that.† Reasoned discussion can accommodate conflicting positions that may appear to others to be ‘unreasoned’ prejudice, without this being quite the case. There is no compulsion, as is sometimes assumed, to eliminate every reasoned alternative except exactly one.

However, the central point in dealing with this question is that prejudices typically ride on the back of some kind of reasoning – weak and arbitrary though it might be. Indeed, even very dogmatic persons tend to have some kinds of reasons, possibly very crude ones, in support of their dogmas (racist, sexist, classist and caste-based prejudices belong there, among varieties of other kinds of bigotry based on coarse reasoning). Unreason is mostly not the practice of doing without reasoning altogether, but of relying on very primitive and very defective reasoning. There is hope in this, since bad reasoning can be confronted by better reasoning. So the scope for reasoned engagement does exist, even though many people may refuse, at least initially, to enter that engagement, despite being challenged.

What is important for the arguments in this book is not anything

* There is, in fact, considerable evidence that interactive public discussions can help to weaken the refusal to reason. See the empirical material on this presented in *Development as Freedom* (New York: Knopf, and Oxford: Clarendon Press, 1999), and *Identity and Violence: The Illusion of Destiny* (New York: Norton, and London: Penguin, 2006).

† As James Thurber notes, while those who are superstitious may avoid walking under ladders, the scientific minds who ‘want to defy the superstition’ may choose to ‘look for ladders and delight in passing under them’. But ‘if you keep looking for and walking under the ladders long enough, something is going to happen to you’ (James Thurber, ‘Let Your Mind Alone!’ *New Yorker*, 1 May 1937).

PREFACE

like the omnipresence of reason in everyone's thinking right now. No such presumption can be made, and it is not needed. The claim that people would agree on a particular proposition if they were to reason in an open and impartial way does not, of course, assume that people are already so engaged, or even that they are eager to be so. What matters most is the examination of what reasoning would demand for the pursuit of justice – allowing for the possibility that there may exist several different reasonable positions. That exercise is quite compatible with the possibility, even the certainty, that at a particular time not everyone is willing to undertake such scrutiny. Reasoning is central to the understanding of justice even in a world which contains much 'unreason'; indeed, it may be particularly important in such a world.

Acknowledgements

In acknowledging the help I have received from others in the work presented here, I must begin by recording that my greatest debt is to John Rawls, who inspired me to work in this area. He was also a marvellous teacher over many decades and his ideas continue to influence me even when I disagree with some of his conclusions. This book is dedicated to his memory, not only for the education and affection I received from him, but also for his encouragement to pursue my doubts.

My first extensive contact with Rawls was in 1968–9, when I came from Delhi University to Harvard as a visiting professor and taught a joint graduate seminar with him and Kenneth Arrow. Arrow has been another powerful influence on this book, as on many of my past works. His influence has come not only through extensive discussions over many decades, but also through the use I make of the analytical framework of modern social choice theory that he initiated.

The work presented here was done at Harvard where I have been mostly based since 1987, and at Trinity College, Cambridge, particularly during the six years between 1998 and 2004 when I went back there to serve as the Master of the great college where, fifty years ago, I had started thinking about philosophical issues. I was influenced in particular by Piero Sraffa and C. D. Broad, and encouraged by Maurice Dobb and Dennis Robertson to pursue my inclinations.

This book has been slow in coming, since my doubts and constructive thoughts have developed over a long period of time. During these decades, I have been privileged to receive comments, suggestions, questions, dismissals and encouragement from a large number of

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people, all of which have been very useful for me and my acknowledgement list is not going to be short.

I must first note the help and advice I have received from my wife, Emma Rothschild, whose influence is reflected throughout the book. The influence of Bernard Williams on my thinking on philosophical issues will be apparent to readers familiar with his writings. This influence came over many years of ‘chatty friendship’ and also from a productive period of joint work in planning, editing and introducing a collection of essays on the utilitarian perspective and its limitations (*Utilitarianism and Beyond*, 1982).

I have been very fortunate in having colleagues with whom I have had instructive conversations on political and moral philosophy. I must acknowledge my extensive debt—in addition to Rawls—to Hilary Putnam and Thomas Scanlon for many illuminating conversations over the years. I also learned a great deal from talking with W. V. O. Quine and Robert Nozick, both of whom are now, alas, gone. Holding joint classes at Harvard has also been for me a steady source of dialectical education, both from my students and my co-teachers. Robert Nozick and I taught joint courses every year for nearly a decade, on a number of occasions with Eric Maskin, and they have both influenced my thinking. At various times I have also taught courses with Joshua Cohen (from the Massachusetts Institute of Technology), Christine Jolls, Philippe Van Parijs, Michael Sandel, John Rawls, Thomas Scanlon and Richard Tuck, and with Kaushik Basu and James Foster when they visited Harvard. Aside from my sheer enjoyment of these joint classes, they were also tremendously useful for me in developing my ideas, often in arguments with my co-teachers.

In all my writings I benefit a lot from the critiques of my students. Regarding the ideas in this book, I would like to acknowledge my interactions especially with Prasanta Pattanaik, Kaushik Basu, Siddiqur Osmani, Rajat Deb, Ben Fine, Ravi Kanbur, David Kelsey and Andreas Papandreou, over many decades, and later with Stephan Klasen, Anthony Laden, Sanjay Reddy, Jonathan Cohen, Felicia Knaul, Clemens Puppe, Bertil Tungodden, A. K. Shiva Kumar, Lawrence Hamilton, Douglas Hicks, Jennifer Prah Ruger, Sousan Abadian, among others. I would also like to record the impact of discussions on related subjects with other students, including Luigi Spaventa

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The joys and benefits of interactive teaching go back for me to the 1970s and 1980s when I taught joint classes—'riotous' ones, a student told me—at Oxford with Ronald Dworkin and Derek Parfit, later joined by G. A. Cohen. My warm memories of those argumentative discussions were recently revived by the kindness of Cohen who arranged a hugely engaging seminar at University College London in January 2009 on the main approach of this book. The gathering was agreeably full of dissenters, including Cohen (of course), but also Jonathan Wolff, Laura Valentis, Riz Mokal, George Letsas and Stephen Guest, whose different critiques have been very helpful for me (Laura Valentis kindly sent me further comments in communications after the seminar).

Even though a theory of justice must belong primarily to philosophy, the book uses ideas presented in a number of other disciplines as well. A major field of work on which this book draws heavily is social choice theory. Although my interactions with others working in this broad area are too numerous to capture in a short statement here, I would like particularly to acknowledge the benefit I have received from working with Kenneth Arrow and Kotaro Suzumura, with whom I have been editing the *Handbook of Social Choice Theory* (the first volume is out, the second overdue), and also to note my appreciation of the leadership role that has been played in this field by Jerry Kelly, Wulf Gaertner, Prasanta Pattanaik and Maurice Salles, particularly through their visionary and tireless work for the emergence and flourishing of the journal *Social Choice and Welfare*. I would also like to acknowledge the benefits I have had from my long association and extended discussions on social choice problems in one form or another with (in addition to the names already mentioned) Patrick Suppes, John Harsanyi, James Mirrlees, Anthony Atkinson, Peter Hammond, Charles Blackorby, Sudhir Anand, Tapas Majumdar, Robert Pollak, Kevin Roberts, John Roemer, Anthony Shorrocks, Robert Sugden, John Weymark and James Foster.

A long-standing influence on my work on justice, particularly related to freedom and capability, has come from Martha Nussbaum.

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Amartya Sen

Introduction

An Approach to Justice

About two and a half months before the storming of the Bastille in Paris, which was effectively the beginning of the French Revolution, the political philosopher and orator, Edmund Burke, said in Parliament in London: ‘An event has happened, upon which it is difficult to speak, and impossible to be silent.’ This was on 5 May 1789. Burke’s speech had nothing much to do with the developing storm in France. The occasion, rather, was the impeachment of Warren Hastings, who was then commanding the British East India Company, which was setting up British rule in India, beginning with the Company’s victory in the Battle of Plassey (on 23 June 1757).

In impeaching Warren Hastings, Burke invoked the ‘eternal laws of justice’ which, Burke claimed, Hastings had ‘violated’. The impossibility of remaining silent on a subject is an observation that can be made about many cases of patent injustice that move us to rage in a way that is hard for our language to capture. And yet any analysis of injustice would also demand clear articulation and reasoned scrutiny.

Burke did not, in fact, give much evidence of being lost for words: he spoke eloquently not on one misdeed of Hastings but on a great many, and proceeded from there to present simultaneously a number of separate and quite distinct reasons for the need to indict Warren Hastings and the nature of the emerging British rule in India:

I impeach Warren Hastings, Esquire, of high crimes and misdemeanours.
I impeach him in the name of the Commons of Great Britain in Parliament assembled, whose Parliamentary trust he has betrayed.
I impeach him in the name of all the Commons of Great Britain, whose national character he has dishonoured.

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I impeach him in the name of the people of India, whose laws, rights, and liberties he has subverted; whose properties he has destroyed, whose country he has laid waste and desolate.

I impeach him in the name and by virtue of those eternal laws of justice which he has violated.

I impeach him in the name of human nature itself, which he has cruelly outraged, injured, and oppressed, in both sexes, in every age, rank, situation, and condition of life.¹

No argument is separated out here as *the* reason for impeaching Warren Hastings – as an isolated knock-out punch. Instead, Burke presents a collection of distinct reasons for impeaching him.* Later on in this work, I will examine the procedure of what can be called ‘plural grounding’, that is, of using a number of different lines of condemnation, without seeking an agreement on their relative merits. The underlying issue is whether we have to agree on one specific line of censure for a reasoned consensus on the diagnosis of an injustice that calls for urgent rectification. What is important to note here, as central to the idea of justice, is that we can have a strong sense of injustice on many different grounds, and yet not agree on one particular ground as being *the* dominant reason for the diagnosis of injustice.

Perhaps a more immediate, and more contemporary, illustration of this general point about congruent implications can be given by considering a recent event, involving the decision of the US government to launch a military invasion of Iraq in 2003. There are diverse ways of judging decisions of this kind, but the point to be considered here is that it is possible that a number of distinct and divergent

* I am not commenting here on the factual veracity of Burke’s claims, but only on his general approach of presenting plural grounds for indictment. Burke’s particular thesis about Hastings’s personal perfidy was actually rather unfair to Hastings. Oddly enough, Burke had earlier defended the wily Robert Clive, who was a great deal more responsible for lawless plunder of India under the Company’s dominance – something that Hastings did try to stem through a greater emphasis on law and order (as well as through bringing in a measure of humanity in the Company’s administration which was badly missing earlier). I have discussed these historical events in a Commemorative Speech at the London City Hall, on the occasion of the 250th anniversary of the Battle of Plassey (‘The Significance of Plassey’), in June 2007. The lecture was published, in an extended version, as ‘Imperial Illusions: India, Britain and the wrong lessons’, *The New Republic*, December 2007.

arguments can still lead to the same conclusion – in this case, that the policy chosen by the US-led coalition in starting the war in Iraq in 2003 was mistaken.

Consider the different arguments that have been presented, each with considerable plausibility, as critiques of the decision to go to war in Iraq.* First, the conclusion that the invasion was a mistake can be based on the necessity for more global agreement, particularly through the United Nations, before one country could justifiably land its army on another country. A second argument can focus on the importance of being well informed, for example on the facts regarding the presence or absence of weapons of mass destruction in pre-invasion Iraq, before taking such military decisions, which would inevitably place a great many people in danger of being slaughtered or mutilated or displaced. A third argument may be concerned with democracy as ‘government by discussion’ (to use that old phrase often linked with John Stuart Mill, but which was used earlier by Walter Bagehot), and concentrate instead on the political significance of informational distortion in what is presented to the people of the country, including cultivated fiction (such as the imaginary links of Saddam Hussein with the events on 9/11 or with al-Qaeda), making it harder for the citizens of America to assess the executive proposal to go to war. A fourth argument could see the principal issue to be none of the above, but instead the actual *consequences* of the intervention: would it bring peace and order in the country invaded, or in the Middle East, or in the world, and could it have been expected to reduce the dangers of global violence and terrorism, rather than intensifying them?

These are all serious considerations and they involve very different evaluative concerns, none of which could be readily ruled out as being irrelevant or unimportant for an appraisal of actions of this kind. And in general, they may not yield the same conclusion. But if it is shown, as in this specific example, that all of the sustainable criteria lead to the same diagnosis of a huge mistake, then that specific conclusion

* Arguments were of course also presented in favour of intervention. One was the belief that Saddam Hussein was responsible for the terrorism on 9/11, and another that he was hand-in-glove with al-Qaeda. Neither accusation proved to be correct. It is true that Hussein was a brutal dictator, but then there were – and are – many others across the world with the same qualification.

need not await the determination of the relative priorities to be attached to these criteria. Arbitrary reduction of multiple and potentially conflicting principles to one solitary survivor, guillotining all the other evaluative criteria, is not, in fact, a prerequisite for getting useful and robust conclusions on what should be done. This applies as much to the theory of justice as it does to any other part of the discipline of practical reason.

REASONING AND JUSTICE

The need for a theory of justice relates to the discipline of engagement in reasoning about a subject on which it is, as Burke noted, very difficult to speak. It is sometimes claimed that justice is not a matter of reasoning at all; it is one of being appropriately sensitive and having the right nose for injustice. It is easy to be tempted to think along these lines. When we find, for example, a raging famine, it seems natural to protest rather than reason elaborately about justice and injustice. And yet a calamity would be a case of injustice only if it could have been prevented, and particularly if those who could have undertaken preventive action had failed to try. Reasoning in some form cannot but be involved in moving from the observation of a tragedy to the diagnosis of injustice. Furthermore, cases of injustice may be much more complex and subtle than the assessment of an observable calamity. There could be different arguments suggesting disparate conclusions, and evaluations of justice may be anything but straightforward.

The avoidance of reasoned justification often comes not from indignant protesters but from placid guardians of order and justice. Reticence has appealed throughout history to those with a governing role, endowed with public authority, who are unsure of the grounds for action, or unwilling to scrutinize the basis of their policies. Lord Mansfield, the powerful English judge in the eighteenth century, famously advised a newly appointed colonial governor: ‘consider what you think justice requires and decide accordingly. But never give your reasons; for your judgement will probably be right, but your reasons will certainly be wrong.’² This may well be a good advice for tactful

governance, but it is surely no way of guaranteeing that the right things are done. Nor does it help to ensure that the people affected can see that justice is being done (which is, as will be discussed later, part of the discipline of making sustainable decisions regarding justice).

The requirements of a theory of justice include bringing reason into play in the diagnosis of justice and injustice. Over hundreds of years, writers on justice in different parts of the world have attempted to provide the intellectual basis for moving from a general sense of injustice to particular reasoned diagnoses of injustice, and from there to the analyses of ways of advancing justice. Traditions of reasoning about justice and injustice have long – and striking – histories across the world, from which illuminating suggestions on reasons of justice can be considered (as will be examined presently).

THE ENLIGHTENMENT AND A BASIC DIVERGENCE

Even though the subject of social justice has been discussed over the ages, the discipline received an especially strong boost during the European Enlightenment in the eighteenth and nineteenth centuries, encouraged by the political climate of change and also by the social and economic transformation taking place then in Europe and America. There are two basic, and divergent, lines of reasoning about justice among leading philosophers associated with the radical thought of that period. The distinction between the two approaches has received far less attention than, I believe, it richly deserves. I will begin with this dichotomy since that will help to locate the particular understanding of the theory of justice that I am trying to present in this work.

One approach, led by the work of Thomas Hobbes in the seventeenth century, and followed in different ways by such outstanding thinkers as Jean-Jacques Rousseau, concentrated on identifying just institutional arrangements for a society. This approach, which can be called ‘transcendental institutionalism’, has two distinct features. First, it concentrates its attention on what it identifies as perfect justice,

rather than on relative comparisons of justice and injustice. It tries only to identify social characteristics that cannot be transcended in terms of justice, and its focus is thus not on comparing feasible societies, all of which may fall short of the ideals of perfection. The inquiry is aimed at identifying the nature of ‘the just’, rather than finding some criteria for an alternative being ‘less unjust’ than another.

Second, in searching for perfection, transcendental institutionalism concentrates primarily on getting the institutions right, and it is not directly focused on the actual societies that would ultimately emerge. The nature of the society that would result from any given set of institutions must, of course, depend also on non-institutional features, such as actual behaviours of people and their social interactions. In elaborating the likely consequences of the institutions, if and when a transcendental institutionalist theory goes into commenting on them, some specific behavioural assumptions are made that help the working of the chosen institutions.

Both these features relate to the ‘contractarian’ mode of thinking that Thomas Hobbes had initiated, and which was further pursued by John Locke, Jean-Jacques Rousseau and Immanuel Kant.³ A hypothetical ‘social contract’ that is assumed to be chosen is clearly concerned with an ideal alternative to the chaos that might otherwise characterize a society, and the contracts that were prominently discussed by the authors dealt primarily with the choice of institutions. The overall result was to develop theories of justice that focused on transcendental identification of the ideal institutions.*

It is important, however, to note here that transcendental institutionalists in search of perfectly just institutions have sometimes also presented deeply illuminating analyses of moral or political imperatives regarding socially appropriate behaviour. This applies particu-

* Even though the social contract approach to justice initiated by Hobbes combines transcendentalism with institutionalism, it is worth noting that the two features need not necessarily be combined. We can, for example, have a transcendental theory that focuses on social realizations rather than on institutions (the search for the perfect utilitarian world with people blissfully happy would be a simple example of pursuing ‘realization-based transcendence’). Or we can focus on institutional assessments in comparative perspectives rather than undertaking a transcendental search for the perfect package of social institutions (preferring a greater – or indeed lesser – role for the free market would be an illustration of comparative institutionalism).

larly to Immanuel Kant and John Rawls, both of whom have participated in transcendental institutional investigation, but have also provided far-reaching analyses of the requirements of behavioural norms. Even though they have focused on institutional choices, their analyses can be seen, more broadly, as ‘arrangement-focused’ approaches to justice, with the arrangements including right behaviour by all as well as right institutions.* There is, obviously, a radical contrast between an arrangement-focused conception of justice and a realization-focused understanding: the latter must, for example, concentrate on the actual behaviour of people, rather than presuming compliance by all with ideal behaviour.

In contrast with transcendental institutionalism, a number of other Enlightenment theorists took a variety of comparative approaches that were concerned with social realizations (resulting from actual institutions, actual behaviour and other influences). Different versions of such comparative thinking can be found, for example, in the works of Adam Smith, the Marquis de Condorcet, Jeremy Bentham, Mary Wollstonecraft, Karl Marx, John Stuart Mill, among a number of other leaders of innovative thought in the eighteenth and nineteenth centuries. Even though these authors, with their very different ideas of the demands of justice, proposed quite distinct ways of making social comparisons, it can be said, at the risk of only a slight exaggeration, that they were all involved in comparisons of societies that already existed or could feasibly emerge, rather than confining their analyses to transcendental searches for a perfectly just society. Those focusing on realization-focused comparisons were often interested primarily in the removal of manifest injustice from the world that they saw.

The distance between the two approaches, *transcendental institutionalism*, on the one hand, and *realization-focused comparison*, on the other, is quite momentous. As it happens, it is the first tradition – that of transcendental institutionalism – on which today’s mainstream political philosophy largely draws in its exploration of the theory of justice. The most powerful and momentous exposition of this

* As Rawls explains: ‘The other limitation on our discussion is that for the most part I examine the principles of justice that would regulate a well-ordered society. Everyone is presumed to act justly and to do his part in upholding just institutions.’ (*A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), pp. 7–8.)

approach to justice can be found in the work of the leading political philosopher of our time, John Rawls (whose ideas and far-reaching contributions will be examined in Chapter 2 ‘Rawls and Beyond’).^{*} Indeed, Rawls’s ‘principles of justice’ in his *A Theory of Justice* are defined entirely in relation to perfectly just institutions, though he also investigates – very illuminatingly – the norms of right behaviour in political and moral contexts.[†]

Also a number of the other pre-eminent contemporary theorists of justice have, broadly speaking, taken the transcendental institutional route – I think here of Ronald Dworkin, David Gauthier, Robert Nozick, among others. Their theories, which have provided different, but respectively important, insights into the demands of a ‘just society’, share the common aim of identifying just rules and institutions, even though their identifications of these arrangements come in very different forms. The characterization of perfectly just institutions has become the central exercise in the modern theories of justice.

THE POINT OF DEPARTURE

In contrast with most modern theories of justice, which concentrate on the ‘just society’, this book is an attempt to investigate realization-based comparisons that focus on the advancement or retreat of justice. It is, in this respect, not in line with the strong and more philosophically celebrated tradition of transcendental institutionalism that emerged in the Enlightenment period (led by Hobbes and developed by Locke, Rousseau and Kant, among others), but more in the ‘other’

^{*} He explained in *A Theory of Justice* (1971): ‘My aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant’ (p. 10). See also his *Political Liberalism* (New York: Columbia University Press, 1993). The ‘contractarian’ routes of Rawls’s theory of justice had already been emphasized by him in his early – pioneering – paper, ‘Justice as Fairness’, *Philosophical Review*, 67 (1958).

[†] In suggesting the need for what he calls a ‘reflective equilibrium’, Rawls builds into his social analysis the necessity to subject one’s values and priorities to critical scrutiny. Also, as was briefly mentioned earlier, the ‘just institutions’ are identified in Rawlsian analysis with the assumption of compliance of actual conduct with the right behavioural rules.

tradition that also took shape in about the same period or just after (pursued in various ways by Smith, Condorcet, Wollstonecraft, Bentham, Marx, Mill, among others). The fact that I share a point of departure with these diverse thinkers does not, of course, indicate that I agree with their substantive theories (that should be obvious enough, since they themselves differed so much from each other), and going beyond the shared point of departure, we have to look also at some points of eventual arrival.* The rest of the book will explore that journey.

Importance must be attached to the starting point, in particular the selection of some questions to be answered (for example, ‘how would justice be advanced?’), rather than others (for example, ‘what would be perfectly just institutions?’). This departure has the dual effect, first, of taking the comparative rather than the transcendental route, and second, of focusing on actual realizations in the societies involved, rather than only on institutions and rules. Given the present balance of emphases in contemporary political philosophy, this will require a radical change in the formulation of the theory of justice.

Why do we need such a dual departure? I begin with transcendentalism. I see two problems here. First, there may be no reasoned agreement at all, even under strict conditions of impartiality and open-minded scrutiny (for example, as identified by Rawls in his ‘original position’) on the nature of the ‘just society’: this is the issue of the *feasibility* of finding an agreed transcendental solution. Second, an exercise of practical reason that involves an actual choice demands a framework for comparison of justice for choosing among the feasible alternatives and not an identification of a possibly unavailable perfect situation that could not be transcended: this is the issue of the *redundancy* of the search for a transcendental solution. I shall presently discuss these problems with the transcendental focus (both feasibility and redundancy), but before that let me comment briefly on the institutional concentration involved in the approach of transcendental institutionalism.

* Also these authors use the word ‘justice’ in many different ways. As Adam Smith noted, the term ‘justice’ has ‘several different meanings’ (*The Theory of Moral Sentiments*, 6th edn (London: T. Cadell, 1790), VII. ii. 1. 10 in the Clarendon Press edition (1976), p. 269). I shall examine Smith’s ideas on justice in the broadest sense.

This second component of the departure concerns the need to focus on actual realizations and accomplishments, rather than only on the establishment of what are identified as the right institutions and rules. The contrast here relates, as was mentioned earlier, to a general – and much broader – dichotomy between an *arrangement-focused* view of justice, and a *realization-focused* understanding of justice. The former line of thought proposes that justice should be conceptualized in terms of certain organizational arrangements – some institutions, some regulations, some behavioural rules – the active presence of which would indicate that justice is being done. The question to ask in this context is whether the analysis of justice must be so confined to getting the basic institutions and general rules right? Should we not also have to examine what emerges in the society, including the kind of lives that people can actually lead, given the institutions and rules, but also other influences, including actual behaviour, that would inescapably affect human lives?

I shall consider the arguments for the two respective departures in turn. I start with the problems of transcendental identification, beginning with the question of feasibility, and shall take up the issue of redundancy later.

FEASIBILITY OF A UNIQUE TRANSCENDENTAL AGREEMENT

There can be serious differences between competing principles of justice that survive critical scrutiny and can have claims to impartiality. This problem is serious enough, for example, for John Rawls's assumption that there will be a unanimous choice of a unique set of 'two principles of justice' in a hypothetical situation of primordial equality (he calls it 'the original position'), where people's vested interests are not known to the people themselves. This presumes that there is basically only one kind of impartial argument, satisfying the demands of fairness, shorn of vested interests. This, I would argue, may be a mistake.

There can be differences, for example, in the exact comparative weights to be given to distributional equality, on the one hand, and

overall or aggregate enhancement, on the other. In his transcendental identification, John Rawls pinpoints one such formula (the lexicographic maximin rule, to be discussed in Chapter 2), among many that are available, without convincing arguments that would eliminate all other alternatives that might compete with Rawls's very special formula for impartial attention.* There can be many other reasoned differences involving the particular formulae on which Rawls concentrates in his two principles of justice, without showing us why other alternatives would not continue to command attention in the impartial atmosphere of his original position.

If a diagnosis of perfectly just social arrangements is incurably problematic, then the entire strategy of transcendental institutionalism is deeply impaired, even if every conceivable alternative in the world were available. For example, the two principles of justice in John Rawls's classic investigation of 'justice as fairness', which will be more fully discussed in Chapter 2, are precisely about perfectly just institutions in a world where all alternatives are available. However, what we do not know is whether the plurality of reasons for justice would allow one unique set of principles of justice to emerge in the original position. The elaborate exploration of Rawlsian social justice, which proceeds step by step from the identification and establishment of just institutions, would then get stuck at the very base.

In his later writings, Rawls makes some concessions to the recognition that 'citizens will of course differ as to which conceptions of political justice they think most reasonable'. Indeed, he goes on to say in *The Law of Peoples* (1999):

The content of public reason is given by a family of political conceptions of justice, and not by a single one. There are many liberalisms and related views, and therefore many forms of public reason specified by a family of reasonable political conceptions. Of these, justice as fairness, whatever its merits, is but one.⁴

* Different types of impartial rules of distribution are discussed in my *On Economic Inequality* (Oxford: Clarendon Press, 1973; extended edn, with a new Annexe, jointly with James Foster, 1997). See also Alan Ryan (ed.), *Justice* (Oxford: Clarendon Press, 1993), and David Miller, *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 1999).

It is not, however, clear how Rawls would deal with the far-reaching implications of this concession. The specific institutions, firmly chosen for the basic structure of society, would demand one specific resolution of the principles of justice, in the way Rawls had outlined in his early works, including *A Theory of Justice* (1971).^{*} Once the claim to uniqueness of the Rawlsian principles of justice is dropped (the case for which is outlined in Rawls's later works), the institutional programme would clearly have serious indeterminacy, and Rawls does not tell us much about how a particular set of institutions would be chosen on the basis of a set of competing principles of justice that would demand different institutional combinations for the basic structure of the society. Rawls could, of course, resolve that problem by abandoning the transcendental institutionalism of his earlier work (particularly of *A Theory of Justice*), and this would be the move that would appeal most to this particular author.[†] But I am afraid I am not able to claim that this was the direction in which Rawls himself was definitely heading, even though some of his later works raise that question forcefully.

THREE CHILDREN AND A FLUTE: AN ILLUSTRATION

At the heart of the particular problem of a unique impartial resolution of the perfectly just society is the possible sustainability of plural and competing reasons for justice, all of which have claims to impartiality and which nevertheless differ from – and rival – each other. Let me

^{*} Rawls discusses the difficulties in arriving at a unique set of principles to guide institutional choice in the original position in his later book *Justice as Fairness: A Restatement*, edited by Erin Kelly (Cambridge, MA: Harvard University Press, 2001), pp. 132–4. I am most grateful to Erin Kelly for discussing with me the relation between Rawls's later writings and his earlier formulations of the theory of justice as fairness.

[†] John Gray's scepticism about the Rawlsian theory of justice is much more radical than mine, but there is an agreement between us in the rejection of the belief that questions of value can have only one right answer. I also agree that the 'diversity of ways of life and regimes is a mark of human freedom, not of error' (*Two Faces of Liberalism* (Cambridge: Polity Press, 2000), p. 139). My inquiry concerns reasoned agreements that can nevertheless be reached on how injustice can be reduced, despite our different views on 'ideal' regimes.

illustrate the problem with an example in which you have to decide which of three children – Anne, Bob and Carla – should get a flute about which they are quarrelling. Anne claims the flute on the ground that she is the only one of the three who knows how to play it (the others do not deny this), and that it would be quite unjust to deny the flute to the only one who can actually play it. If that is all you knew, the case for giving the flute to the first child would be strong.

In an alternative scenario, it is Bob who speaks up, and defends his case for having the flute by pointing out that he is the only one among the three who is so poor that he has no toys of his own. The flute would give him something to play with (the other two concede that they are richer and well supplied with engaging amenities). If you had heard only Bob and none of the others, the case for giving it to him would be strong.

In another alternative scenario, it is Carla who speaks up and points out that she has been working diligently for many months to make the flute with her own labour (the others confirm this), and just when she had finished her work, ‘just then’, she complains, ‘these expropriators came along to try to grab the flute away from me’. If Carla’s statement is all you had heard, you might be inclined to give the flute to her in recognition of her understandable claim to something she has made herself.

Having heard all three and their different lines of reasoning, there is a difficult decision that you have to make. Theorists of different persuasions, such as utilitarians, or economic egalitarians, or nonsense libertarians, may each take the view that there is a straightforward just resolution staring at us here, and there is no difficulty in spotting it. But almost certainly they would respectively see totally different resolutions as being obviously right.

Bob, the poorest, would tend to get fairly straightforward support from the economic egalitarian if he is committed to reducing gaps in the economic means of people. On the other hand, Carla, the maker of the flute, would receive immediate sympathy from the libertarian. The utilitarian hedonist may face the hardest challenge, but he would certainly tend to give weight, more than the libertarian or the economic egalitarian, to the fact that Anne’s pleasure is likely to be stronger because she is the only one who can play the flute (there is also the general dictum of ‘waste not, want not’). Nevertheless, the utilitarian

should also recognize that Bob's relative deprivation could make his incremental gain in happiness from getting the flute that much larger. Carla's 'right' to get what she has made may not resonate immediately with the utilitarian, but deeper utilitarian reflection would nevertheless tend to take some note of the requirements of work incentives in creating a society in which utility-generation is sustained and encouraged through letting people keep what they have produced with their own efforts.*

The libertarian's support for giving the flute to Carla will not be conditional in the way it is bound to be for the utilitarian on the working of incentive effects, since a libertarian would take direct note of a person's right to have what people have produced themselves. The idea of the right to the fruits of one's labour can unite right-wing libertarians and left-wing Marxists (no matter how uncomfortable each might be in the company of the other).†

The general point here is that it is not easy to brush aside as foundationless any of the claims based respectively on the pursuit of human fulfilment, or removal of poverty, or entitlement to enjoy the products of one's own labour. The different resolutions all have serious arguments in support of them, and we may not be able to identify, without some arbitrariness, any of the alternative arguments as being the one that must invariably prevail.‡

I also want to draw attention here to the fairly obvious fact that the

* We are, of course, considering here a simple case in which who has produced what can be readily identified. This may well be easy enough with the single-handed making of a flute by Carla. That kind of diagnosis could, however, raise deep problems when various factors of production, including non-labour resources, are involved.

† As it happens, Karl Marx himself became rather sceptical of the 'right to one's labour', which he came to see as a 'bourgeois right', to be ultimately rejected in favour of 'distribution according to needs', a point of view he developed with some force in his last substantial work, *The Critique of the Gotha Program* (1875). The importance of this dichotomy is discussed in my book, *On Economic Inequality* (Oxford: Clarendon Press, 1973), Chapter 4. See also G. A. Cohen, *History, Labour and Freedom: Themes from Marx* (Oxford: Clarendon Press, 1988).

‡ As Bernard Williams has argued, 'Disagreement does not necessarily have to be overcome.' Indeed, it 'may remain an important and constitutive feature of our relations to others, and also be seen as something that is merely to be expected in the light of the best explanations we have of how such disagreement arises' (*Ethics and the Limits of Philosophy* (London: Fontana, 1985), p. 133).

differences between the three children's justificatory arguments do not represent divergences about what constitutes individual advantage (getting the flute is taken to be advantageous by each of the children and is accommodated by each of the respective arguments), but about the principles that should govern the allocation of resources in general. They are about how social arrangements should be made and what social institutions should be chosen, and through that, about what social realizations would come about. It is not simply that the vested interests of the three children differ (though of course they do), but that the three arguments each point to a different type of impartial and non-arbitrary reason.

This applies not only to the discipline of fairness in the Rawlsian original position, but also to other demands of impartiality, for example Thomas Scanlon's requirement that our principles satisfy 'what others could not reasonably reject'.⁵ As was mentioned earlier, theorists of different persuasions, such as utilitarians, or economic egalitarians, or labour right theorists, or no-nonsense libertarians, may each take the view that there is one straightforward just resolution that is easily detected, but they would each argue for totally different resolutions as being obviously right. There may not indeed exist any identifiable perfectly just social arrangement on which impartial agreement would emerge.

A COMPARATIVE OR A TRANSCENDENTAL FRAMEWORK?

The problem with the transcendental approach does not arise only from the possible plurality of competing principles that have claims to being relevant to the assessment of justice. Important as the problem of the non-existence of an identifiable perfectly just social arrangement is, a critically important argument in favour of the comparative approach to the practical reason of justice is not just the infeasibility of the transcendental theory, but its redundancy. If a theory of justice is to guide reasoned choice of policies, strategies or institutions, then the identification of fully just social arrangements is neither necessary nor sufficient.

To illustrate, if we are trying to choose between a Picasso and a Dali, it is of no help to invoke a diagnosis (even if such a transcendental diagnosis could be made) that the ideal picture in the world is the *Mona Lisa*. That may be interesting to hear, but it is neither here nor there in the choice between a Dali and a Picasso.⁶ Indeed, it is not at all necessary to talk about what may be the greatest or most perfect picture in the world, to choose between the two alternatives that we are facing. Nor is it sufficient, or indeed of any particular help, to know that the *Mona Lisa* is the most perfect picture in the world when the choice is actually between a Dali and a Picasso.

This point may look deceptively simple. Would not a theory that identifies a transcendental alternative also, through the same process, tell us what we want to know about comparative justice? The answer is no – it does not. We may, of course, be tempted by the idea that we can rank alternatives in terms of their respective closeness to the perfect choice, so that a transcendental identification may indirectly yield also a ranking of alternatives. But that approach does not get us very far, partly because there are different dimensions in which objects differ (so that there is the further issue of assessing the relative importance of distances in distinct dimensions), and also because descriptive closeness is not necessarily a guide to valuational proximity (a person who prefers red wine to white may prefer either to a mixture of the two, even though the mixture is, in an obvious descriptive sense, closer to the preferred red wine than pure white wine would be).

It is, of course, possible to have a theory that does both comparative assessments between pairs of alternatives, and a transcendental identification (when that is not made impossible through the surviving plurality of impartial reasons that have claims on our attention). That would be a ‘conglomerate’ theory, but neither of the two different types of judgements follows from each other. More immediately, the standard theories of justice that are associated with the approach of transcendental identification (for example, those of Hobbes, Rousseau, Kant or, in our time, Rawls or Nozick) are not, in fact, conglomerate theories. It is, however, true that in the process of developing their respective transcendental theories, some of these authors have presented particular arguments that happen to carry

over to the comparative exercise. But in general the identification of a transcendental alternative does not offer a solution to the problem of comparisons between any two non-transcendental alternatives.

Transcendental theory simply addresses a different question from that of comparative assessment – a question that may be of considerable intellectual interest, but which is of no direct relevance to the problem of choice that has to be faced. What is needed instead is an agreement, based on public reasoning, on rankings of alternatives that can be realized. The separation between the transcendental and the comparative is quite comprehensive, as will be more fully discussed in Chapter 4 ('Voice and Social Choice'). As it happens, the comparative approach is central to the analytical discipline of 'social choice theory', initiated by the Marquis de Condorcet and other French mathematicians in the eighteenth century, mainly working in Paris.⁷ The formal discipline of social choice was not much used for a long time, though work continued in the specific sub-area of voting theory. The discipline was revived and established in its present form by Kenneth Arrow in the middle of the twentieth century.⁸ This approach has become, in recent decades, quite an active field of analytical investigation, exploring ways and means of basing comparative assessments of social alternatives on the values and priorities of the people involved.* Since the literature of social choice theory is typically quite technical and largely mathematical, and since many of the results in the field cannot be established except through fairly extensive mathematical reasoning,† its basic approach has received relatively little attention,

* On the general characteristics of the social choice approach which motivates and supports the analytical results, see my Alfred Nobel Lecture in Stockholm in December 1998, later published as 'The Possibility of Social Choice', *American Economic Review*, vol. 89 (1999), and in *Les Prix Nobel 1998* (Stockholm: The Nobel Foundation, 1999).

† The mathematical formulations are, however, of some importance for the content of the arguments presented through axioms and theorems. For discussion of some of the linkages between formal and informal arguments, see my *Collective Choice and Social Welfare* (San Francisco, CA: Holden-Day; republished, Amsterdam: North-Holland, 1979), in which the mathematical and informal chapters alternate. See also my critical survey of the literature in 'Social Choice Theory', in Kenneth Arrow and Michael Intriligator (eds) *Handbook of Mathematical Economics* (Amsterdam: North-Holland, 1986).

especially from philosophers. And yet the approach and its underlying reasoning are quite close to the commonsense understanding of the nature of appropriate social decisions. In the constructive approach I try to present in this work, insights from social choice theory will have a substantial role to play.*

REALIZATIONS, LIVES AND CAPABILITIES

I turn now to the second part of the departure, to wit the need for a theory that is not confined to the choice of institutions, nor to the identification of ideal social arrangements. The need for an accomplishment-based understanding of justice is linked with the argument that justice cannot be indifferent to the lives that people can actually live. The importance of human lives, experiences and realizations cannot be supplanted by information about institutions that exist and the rules that operate. Institutions and rules are, of course, very important in influencing what happens, and they are part and parcel of the actual world as well, but the realized actuality goes well beyond the organizational picture, and includes the lives that people manage – or do not manage – to live.

In noting the nature of human lives, we have reason to be interested not only in the various things we succeed in doing, but also in the freedoms that we actually have to choose between different kinds of lives. The freedom to choose our lives can make a significant contribution to our well-being, but going beyond the perspective of well-being, the freedom itself may be seen as important. Being able to reason and choose is a significant aspect of human life. In fact, we are under no obligation to seek only our own well-being, and it is for us to decide what we have good reason to pursue (this question will be further discussed in Chapters 8 and 9). We do not have to be a Gandhi, or a Martin Luther King Jr., or a Nelson Mandela, or a Desmond Tutu, to recognize that we can have aims or priorities that differ from

* The connections between social choice theory and the theory of justice are particularly explored in Chapter 4, ‘Voice and Social Choice’.

the single-minded pursuit of our own well-being only.* The freedoms and capabilities we enjoy can also be valuable to us, and it is ultimately for us to decide how to use the freedom we have.

It is important to emphasize, even in this brief account (a fuller exploration is pursued later in the book, particularly in Chapters 11–13), that if social realizations are assessed in terms of capabilities that people actually have, rather than in terms of their utilities or happiness (as Jeremy Bentham and other utilitarians recommend), then some very significant departures are brought about. First, human lives are then seen inclusively, taking note of the substantive freedoms that people enjoy, rather than ignoring everything other than the pleasures or utilities they end up having. There is also a second significant aspect of freedom: it makes us accountable for what we do.

Freedom to choose gives us the opportunity to decide what we should do, but with that opportunity comes the responsibility for what we do – to the extent that they are chosen actions. Since a capability is the power to do something, the accountability that emanates from that ability – that power – is a part of the capability perspective, and this can make room for demands of duty – what can be broadly called deontological demands. There is an overlap here between agency-centred concerns and the implications of capability-based approach; but there is nothing immediately comparable in the utilitarian perspective (tying one’s responsibility to one’s own happiness).† The perspective of social realizations, including the actual capabilities that people can have, takes us inescapably to a large variety of further issues that turn out to be quite central to the analysis of justice in the world, and these will have to be examined and scrutinized.

* Adam Smith argued that even for selfish people, ‘there are evidently some principles in his nature, which interest him in the fortune of others’ and went on to suggest: ‘The greatest ruffian, the most hardened violator of the laws of society, is not altogether without it’ (*The Theory of Moral Sentiments*, I.i.i.i. in the 1976 edn, p. 9).

† This issue will be further discussed in Chapters 9, ‘Plurality of Impartial Reasons’, and 13, ‘Happiness, Well-being and Capabilities’.

A CLASSICAL DISTINCTION IN INDIAN JURISPRUDENCE

In understanding the contrast between an arrangement-focused and a realization-focused view of justice, it is useful to invoke an old distinction from the Sanskrit literature on ethics and jurisprudence. Consider two different words – *niti* and *nyaya* – both of which stand for justice in classical Sanskrit. Among the principal uses of the term *niti* are organizational propriety and behavioural correctness. In contrast with *niti*, the term *nyaya* stands for a comprehensive concept of realized justice. In that line of vision, the roles of institutions, rules and organization, important as they are, have to be assessed in the broader and more inclusive perspective of *nyaya*, which is inescapably linked with the world that actually emerges, not just the institutions or rules we happen to have.*

To consider a particular application, early Indian legal theorists talked disparagingly of what they called *matsyanyaya*, ‘justice in the world of fish’, where a big fish can freely devour a small fish. We are warned that avoiding *matsyanyaya* must be an essential part of justice, and it is crucial to make sure that the ‘justice of fish’ is not allowed to invade the world of human beings. The central recognition here is that the realization of justice in the sense of *nyaya* is not just a matter of judging institutions and rules, but of judging the societies themselves. No matter how proper the estab-

* The most famous of the ancient Indian legal theorists, viz. Manu, was extensively concerned, as it happens, with *nitis*; indeed, often of the most severe kind (I have heard Manu being described in contemporary Indian discussions, with some modicum of veracity, as ‘a fascist law-giver’). But Manu too could not escape being drawn into realizations and *nyaya*, in justifying the rightness of particular *nitis*; for example, we are told: it is better to be scorned than to scorn, ‘for the man who is scorned sleeps happily, awakes happily, and goes about happily in this world; but the man who scorns perishes’ (Chapter 2, instruction 163). Similarly, ‘where women are not revered all rites are fruitless’, since ‘where the women of the family are miserable, the family is soon destroyed, but it always thrives where women are not miserable’ (Chapter 3, instructions 56 and 57). The translations are taken from Wendy Doniger’s excellent translation, *The Laws of Manu* (London: Penguin, 1991).

lished organizations might be, if a big fish could still devour a small fish at will, then that must be a patent violation of human justice as *nyaya*.

Let me consider an example to make the distinction between *niti* and *nyaya* clearer. Ferdinand I, the Holy Roman emperor, famously claimed in the sixteenth century: ‘Fiat justitia, et pereat mundus’, which can be translated as ‘Let justice be done, though the world perish’. This severe maxim could figure as a *niti* – a very austere *niti* – that is advocated by some (indeed, Emperor Ferdinand did just that), but it would be hard to accommodate a total catastrophe as an example of a just world, when we understand justice in the broader form of *nyaya*. If indeed the world does perish, there would be nothing much to celebrate in that accomplishment, even though the stern and severe *niti* leading to this extreme result could conceivably be defended with very sophisticated arguments of different kinds.

A realization-focused perspective also makes it easier to understand the importance of the prevention of manifest injustice in the world, rather than seeking the perfectly just. As the example of *matsyanyaya* makes clear, the subject of justice is not merely about trying to achieve – or dreaming about achieving – some perfectly just society or social arrangements, but about preventing manifestly severe injustice (such as avoiding the dreadful state of *matsyanyaya*). For example, when people agitated for the abolition of slavery in the eighteenth and nineteenth centuries, they were not labouring under the illusion that the abolition of slavery would make the world perfectly just. It was their claim, rather, that a society with slavery was totally unjust (among the authors mentioned earlier, Adam Smith, Condorcet and Mary Wollstonecraft were quite involved in presenting this perspective). It was the diagnosis of an intolerable injustice in slavery that made abolition an overwhelming priority, and this did not require the search for a consensus on what a perfectly just society would look like. Those who think, reasonably enough, that the American Civil War, which led to the abolition of slavery, was a big strike for justice in America would have to be reconciled to the fact that not much can be said in the perspective of transcendental institutionalism (where the only contrast is that between the perfectly just

and the rest) about the enhancement of justice through the abolition of slavery.*

THE IMPORTANCE OF PROCESSES AND RESPONSIBILITIES

Those who tend to see justice in terms of *niti* rather than *nyaya*, no matter what they call that dichotomy, may be influenced by their fear that a concentration on actual realizations would tend to ignore the significance of social processes, including the exercise of individual duties and responsibilities. We may do the right thing and yet we may not succeed. Or, a good result may come about not because we aimed at it, but for some other, perhaps even an accidental, reason, and we may be deceived into thinking that justice has been done. It could hardly be adequate (so the argument would run) to concentrate only on what actually happens, ignoring altogether the processes and efforts and conducts. Philosophers who emphasize the role of duty and other features of what is called a deontological approach may be particularly suspicious of the fact that the distinction between arrangements and realizations could look quite like the old contrast between deontological and consequential approaches to justice.

This worry is important to consider, but it is, I would argue, ultimately misplaced. A full characterization of realizations should have room to include the exact processes through which the eventual states of affairs emerge. In a paper in *Econometrica* about a decade ago, I called this the 'comprehensive outcome' which includes the processes involved, and which has to be distinguished from only the 'culmination outcome',⁹ for example, an arbitrary arrest is more than the

* It is interesting that Karl Marx's diagnosis of 'the one great event of contemporary history' made him attribute that distinction to the American Civil War leading to the abolition of slavery (see *Capital*, vol. I (London: Sonnenschein, 1887), Chapter X, Section 3, p. 240). While Marx argued that capitalist labour arrangements are exploitative, he was keen on pointing out what a huge improvement wage labour was compared with a system of slave labour; on this subject, see also Marx's *Grundrisse* (Harmondsworth: Penguin Books, 1973). Marx's analysis of justice went well beyond his fascination, much discussed by his critics, with 'the ultimate stage of communism'.

capture and detention of someone – it is what it says, an arbitrary arrest. Similarly, the role of human agency cannot be obliterated by some exclusive focus on what happens only at the culmination; for example, there is a real difference between some people dying of starvation due to circumstances beyond anyone’s control and those people being starved to death through the design of those wanting to bring about that outcome (both are, of course, tragedies, but their connection with justice cannot be the same). Or, to take another type of case, if a presidential candidate in an election were to argue that what is really important for him or her is not just to win the forthcoming election, but ‘to win the election fairly’, then the outcome sought must be something of a comprehensive outcome.

Or consider a different kind of example. In the Indian epic *Mahabharata*, in the particular part of it called *Bhagavadgita* (or *Gita*, for short), on the eve of the battle that is the central episode of the epic, the invincible warrior, Arjuna, expresses his profound doubts about leading the fight which will result in so much killing. He is told by his adviser, Krishna, that he, Arjuna, must give priority to his duty, that is, to fight, irrespective of the consequences. That famous debate is often interpreted as one about deontology versus consequentialism, with Krishna, the deontologist, urging Arjuna to do his duty, while Arjuna, the alleged consequentialist, worries about the terrible consequences of the war.

Krishna’s hallowing of the demands of duty is meant to win the argument, at least as seen in the religious perspective. Indeed, the *Bhagavadgita* has become a treatise of great theological importance in Hindu philosophy, focusing particularly on the ‘removal’ of Arjuna’s doubts. Krishna’s moral position has also been eloquently endorsed by many philosophical and literary commentators across the world. In the *Four Quartets*, T. S. Eliot summarizes Krishna’s view in the form of an admonishment: ‘And do not think of the fruit of action./ Fare forward.’ Eliot explains, so that we do not miss the point: ‘Not fare well,/ But fare forward, voyagers’.¹⁰ I have argued elsewhere (in *The Argumentative Indian*) that if we leave the narrow confines of the end of the debate in the part of *Mahabharata* that is called *Bhagavadgita*, and look at the earlier sections of *Gita* in which Arjuna presents his argument, or look at *Mahabharata* as a whole, the

limitations of Krishna's perspective are also quite evident.¹¹ Indeed, after the total desolation of the land following the successful end of the 'just war', towards the end of the *Mahabharata*, with funeral pyres burning in unison and women weeping about the death of their loved ones, it is hard to be convinced that Arjuna's broader perspective was decisively vanquished by Krishna. There may remain a powerful case for faring 'well', and not just 'forward'.

While that contrast may well fit broadly into the differentiation between the consequentialist and the deontological perspectives, what is particularly relevant here is to go beyond that simple contrast to examine what the totality of Arjuna's concerns were about the prospect of his *not* faring well. Arjuna is not concerned only about the fact that, if the war were to occur, with him leading the charge on the side of justice and propriety, many people would get killed. That too, but Arjuna also expresses concern, in the early part of *Gita* itself, that he himself would inescapably be doing a lot of the killing, often of people for whom he has affection and with whom he has personal relations, in the battle between the two wings of the same family, in which others, well known to the two sides, had also joined. Indeed, the actual event that Arjuna worries about goes well beyond the process-independent view of consequences. An appropriate understanding of social realization – central to justice as *nyaya* – has to take the comprehensive form of a process-inclusive broad account.¹² It would be hard to dismiss the perspective of social realizations on the grounds that it is narrowly consequentialist and ignores the reasoning underlying deontological concerns.

TRANSCENDENTAL INSTITUTIONALISM AND GLOBAL NEGLECT

I end this introductory discussion with a final observation on a particularly restrictive aspect of the prevailing concentration in mainstream political philosophy on transcendental institutionalism. Consider any of the great many changes that can be proposed for reforming the institutional structure of the world today to make it less unfair and unjust (in terms of widely accepted criteria). Take, for example, the

reform of the patent laws to make well-established and cheaply producible drugs more easily available to needy but poor patients (for example, those who are suffering from AIDS) – an issue clearly of some importance for global justice. The question that we have to ask here is: what international reforms do we need to make the world a bit less unjust?

However, that kind of discussion about enhancement of justice in general, and enlargement of global justice in particular, would appear to be merely ‘loose talk’ to those who are persuaded by the Hobbesian – and Rawlsian – claim that we need a sovereign state to apply the principles of justice through the choice of a perfect set of institutions: this is a straightforward implication of taking questions of justice within the framework of transcendental institutionalism. Perfect global justice through an impeccably just set of institutions, even if such a thing could be identified, would certainly demand a sovereign global state, and in the absence of such a state, questions of global justice appear to the transcendentalists to be unaddressable.

Consider the strong dismissal of the relevance of ‘the idea of global justice’ by one of the most original, most powerful and most humane philosophers of our time, my friend Thomas Nagel, from whose work I have learned so much. In a hugely engaging article in *Philosophy and Public Affairs* in 2005, he draws exactly on his transcendental understanding of justice to conclude that global justice is not a viable subject for discussion, since the elaborate institutional demands needed for a just world cannot be met at the global level at this time. As he puts it, ‘It seems to me very difficult to resist Hobbes’s claim about the relation between justice and sovereignty’, and ‘if Hobbes is right, the idea of global justice without a world government is a chimera’.¹³

In the global context, Nagel concentrates, therefore, on clarifying other demands, distinguishable from the demands of justice, such as ‘minimal humanitarian morality’ (which ‘governs our relation to all other persons’), and also to long-term strategies for radical change in institutional arrangements (‘I believe the most likely path toward some version of global justice is through the creation of patently unjust and illegitimate global structures of power that are tolerable to the interests of the most powerful current nation-states’).¹⁴ The contrast that is

involved here is between seeing institutional reforms in terms of their role in taking us towards transcendental justice (as outlined by Nagel), and assessing them in terms of the improvement that such reforms actually bring about, particularly through the elimination of what are seen as cases of manifest injustice (which is an integral part of the approach presented in this book).

In the Rawlsian approach too, the application of a theory of justice requires an extensive cluster of institutions that determines the basic structure of a fully just society. Not surprisingly, Rawls actually abandons his own principles of justice when it comes to the assessment of how to think about global justice, and he does not go in the fanciful direction of wanting a global state. In a later contribution, *The Law of Peoples*, Rawls invokes a kind of ‘supplement’ to his national (or, within-one-country) pursuit of the demands of ‘justice as fairness’. But this supplement comes in a very emaciated form, through a kind of negotiation between the representatives of different countries on some very elementary matters of civility and humanity – what can be seen as very limited features of justice. In fact, Rawls does not try to derive ‘principles of justice’ that might emanate from these negotiations (indeed, none would emerge that can be given that name), and concentrates instead on certain general principles of humanitarian behaviour.¹⁵

Indeed, the theory of justice, as formulated under the currently dominant transcendental institutionalism, reduces many of the most relevant issues of justice into empty – even if acknowledged to be ‘well-meaning’ – rhetoric. When people across the world agitate to get *more* global justice – and I emphasize here the comparative word ‘more’ – they are not clamouring for some kind of ‘minimal humanitarianism’. Nor are they agitating for a ‘perfectly just’ world society, but merely for the elimination of some outrageously unjust arrangements to enhance global justice, as Adam Smith, or Condorcet or Mary Wollstonecraft did in their own time, and on which agreements can be generated through public discussion, despite a continuing divergence of views on other matters.

The aggrieved people might, instead, find their voice well reflected in an energizing poem by Seamus Heaney:

INTRODUCTION

History says, Don't hope
On this side of the grave,
But then, once in a lifetime
The longed-for tidal wave
Of justice can rise up,
And hope and history rhyme.¹⁶

Hugely engaging as this longing is for hope and history to rhyme together, the justice of transcendental institutionalism has little room for that engagement. This limitation provides one illustration of the need for a substantial departure in the prevailing theories of justice. That is the subject matter of this book.

PART I

The Demands of Justice

I

Reason and Objectivity

Ludwig Wittgenstein, one of the great philosophers of our time, wrote in the Preface to his first major book in philosophy, *Tractatus Logico-Philosophicus*, published in 1921: ‘What can be said at all can be said clearly; and whereof one cannot speak thereof one must be silent.’* Wittgenstein would re-examine his views on speech and clarity in his later work, but it is a relief that, even as he was writing the *Tractatus*, the great philosopher did not always follow his own exacting commandment. In a letter to Paul Engelmann, written in 1917, Wittgenstein made the wonderfully enigmatic remark: ‘I work quite diligently and wish that I were better and smarter. And these both are one and the same.’¹ Really? One and the same thing – being a *smarter* human being and a *better* person?

I am, of course, aware that modern transatlantic usage has drowned the distinction between ‘being good’ as a moral quality and ‘being well’ as a comment on a person’s health (no aches and pains, fine blood pressure, and so on), and I have long ceased worrying about the manifest immodesty of those of my friends who, when asked how they are, reply with apparent self-praise, ‘I am very good.’ But Wittgenstein was not an American, and 1917 was well before the conquest of the world by vibrant American usage. When Wittgenstein

* It is interesting to note that Edmund Burke also talked about the difficulty of speaking in some circumstances (see Introduction, where I cited Burke on this issue), but Burke proceeded to speak on the subject nevertheless, since it was, he argued, ‘impossible to be silent’ on a grave matter of the kind he was dealing with (the case for impeaching Warren Hastings). Wittgenstein’s counsel for silence when we cannot speak clearly enough would appear to be, in many ways, the opposite of Burke’s approach.

said that being ‘better’ and being ‘smarter’ were ‘one and the same thing’, he must have been making a substantial assertion.

Underlying the point may be the recognition, in some form, that many acts of nastiness are committed by people who are deluded, in one way or another, about the subject. Lack of smartness can certainly be one source of moral failing in good behaviour. Reflecting on what would really be a smart thing to do can sometimes help one act better towards others. That this can easily be the case has been brought out very clearly by modern game theory.² Among the prudential reasons for good behaviour may well be one’s own gain from such behaviour. Indeed, there could be great gain for all members of a group by following rules of good behaviour which can help everyone. It is not particularly smart for a group of people to act in a way that ruins them all.³

But maybe that is not what Wittgenstein meant. Being smarter can also give us the ability to think more clearly about our goals, objectives and values. If self-interest is, ultimately, a primitive thought (despite the complexities just mentioned), clarity about the more sophisticated priorities and obligations that we would want to cherish and pursue would tend to depend on our power of reasoning. A person may have well-thought-out reasons other than the promotion of personal gain for acting in a socially decent way.

Being smarter may help the understanding not only of one’s self-interest, but also how the lives of others can be strongly affected by one’s own actions. Proponents of so-called ‘Rational Choice Theory’ (first proposed in economics and then enthusiastically adopted by a number of political and legal thinkers) have tried hard to make us accept the peculiar understanding that rational choice consists only in clever promotion of self-interest (which is how, oddly enough, ‘rational choice’ is defined by the proponents of brand-named ‘rational choice theory’). Nevertheless, our heads have not all been colonized by that remarkably alienating belief. There is considerable resistance to the idea that it must be patently irrational – and stupid – to try to do anything for others except to the extent that doing good to others would enhance one’s own well-being.⁴

‘What we owe to each other’ is an important subject for intelligent reflection.⁵ That reflection can take us beyond the pursuit of a very

narrow view of self-interest, and we can even find that our own well-reflected goals demand that we cross the narrow boundaries of exclusive self-seeking altogether. There can also be cases in which we have reason to restrain the exclusive pursuit of our own goals (whether or not these goals are themselves exclusively self-interested), because of following rules of decent behaviour that allow room for the pursuit of goals (whether or not self-interested) by other people who share the world with us.*

Since there were precursors to brand-named ‘rational choice theory’ even in Wittgenstein’s days, perhaps his point was that being smarter helps us to think more clearly about our social concerns and responsibilities. It has been argued that some children carry out acts of brutality on other children, or animals, precisely because of their inability to appreciate adequately the nature and intensity of the pains of others, and that this appreciation generally accompanies the intellectual development of maturity.

We cannot, of course, really be sure about what Wittgenstein meant.† But there is certainly much evidence that he himself devoted a great deal of his time and intellect to thinking about his own responsibilities and commitments. The result was not invariably very intelligent or wise. Wittgenstein was absolutely determined to go to Vienna in 1938, just as Hitler was holding his triumphant procession through the city, despite his own Jewishness and his inability to be silent and diplomatic; he had to be restrained from going there by his colleagues in his Cambridge college.‡ There is, however, much

* Some commentators find it puzzling that we can reasonably allow the compromising of a single-minded pursuit of our own goals through making room for others to pursue their goals (some even see in this some kind of a ‘proof’ that what we took to be our goals were not in fact the actual goals we had), but there is no puzzle here when the reach of practical reasoning is adequately appreciated. These issues will be discussed in Chapters 8 ‘Rationality and Other People’ and 9, ‘Plurality of Impartial Reasons’.

† Tibor Machan has illuminatingly pursued this interpretational issue in ‘A Better and Smarter Person: A Wittgensteinian Idea of Human Excellence’, presented at the 5th International Wittgenstein Symposium, 1980.

‡ Piero Sraffa, the economist, who had a significant influence on Ludwig Wittgenstein in his re-examination of his earlier philosophical position in the *Tractatus Logico-Philosophicus* (thereby helping to pave the way towards Wittgenstein’s later works, including *Philosophical Investigations* (Oxford: Blackwell, 1953)), played a leading role in dissuading Wittgenstein from going to Vienna and delivering a severe lecture

evidence from what we know from Wittgenstein's conversations that he did think that his intellectual capacity should definitely be used to make the world a better place.*

CRITIQUE OF THE ENLIGHTENMENT TRADITION

If that is indeed what Wittgenstein meant, then he was, in an important sense, within the powerful tradition of European Enlightenment, which saw clear-headed reasoning as a major ally in the desire to make societies better. Social improvement through systematic reasoning was a prominent strand in the arguments that were integral to the intellectual animation of the European Enlightenment, especially in the eighteenth century.

It is, however, difficult to generalize about any overwhelming dominance of reason in the thinking prevalent in what is seen as the Enlightenment period. As Isaiah Berlin has shown, there were also different kinds of counter-rational strands during the 'Age of Enlightenment'.⁶ But certainly a strong – and somewhat self-conscious – reliance on reason was one of the major departures of Enlightenment thought from the traditions prevailing earlier. And it has become quite common in contemporary political discussions to argue that the Enlightenment oversold the reach of reason. Indeed, it has also been argued that the over-reliance on reason, which the Enlightenment tradition helped to instil in modern thinking, has contributed to the propensity towards atrocities in the post-Enlightenment world. Jonathan Glover, the distinguished philosopher, adds his voice, in his powerfully argued 'Moral History of the Twentieth Century', to this

to the triumphant Hitler. Their intellectual and personal relationships are reviewed in my essay, 'Sraffa, Wittgenstein and Gramsci', *Journal of Economic Literature*, 41 (December 2003). Sraffa and Wittgenstein were close friends and also colleagues, as Fellows of Trinity College, Cambridge. See Chapter 5, 'Impartiality and Objectivity', for a discussion of Sraffa's intellectual engagement with, first, Antonio Gramsci, and then, Wittgenstein, and the relevance of the contents of these tripartite exchanges for some of the themes of this work.

* This commitment relates to what his biographer Ray Monk calls 'the duty of genius' (*Ludwig Wittgenstein: The Duty of Genius*, London: Vintage, 1991).

line of reproach, arguing that ‘the Enlightenment view of human psychology’ has increasingly looked ‘thin and mechanical’, and ‘Enlightenment hopes of social progress through the spread of humanitarianism and the scientific outlook’ now appear rather ‘naive’.⁷ He goes on to link modern tyranny with that perspective (as have other critics of the Enlightenment), arguing that not only were ‘Stalin and his heirs’ altogether ‘in thrall to the Enlightenment’, but also that Pol Pot ‘was indirectly influenced by it’.⁸ But since Glover does not wish to seek his solution through the authority of religion or of tradition (he notes that, in this respect, ‘we cannot escape the Enlightenment’), he concentrates his fire on forcefully held beliefs, to which overconfident use of reasoning substantially contributes. ‘The crudity of Stalinism’, he argues, ‘had its origin in the beliefs.’⁹

It would be hard to dispute Glover’s pointer to the power of strong beliefs and terrible convictions, or indeed to challenge his thesis of ‘the role of ideology in Stalinism’. The question to be asked here does not relate to the nasty power of bad ideas, but rather to the diagnosis that this is somehow a criticism of the reach of reason in general and the Enlightenment perspective in particular.¹⁰ Is it really right to place the blame for the propensity towards premature certainties and the unquestioned beliefs of gruesome political leaders on the Enlightenment tradition, given the pre-eminent importance that so many Enlightenment authors attached to the role of reasoning in making choices, particularly against reliance on blind belief? Surely, ‘the crudity of Stalinism’ could be opposed, as indeed it was by dissidents through a reasoned demonstration of the huge gap between promise and practice, and by showing the brutality of the regime despite its pretensions – a brutality that the authorities had to conceal from scrutiny through censorship and expurgation.

Indeed, one of the main points in favour of reason is that it helps us to scrutinize ideology and blind belief.* Reason was not, in fact,

* It is, of course, true that many crude beliefs originate in some kinds of reason – possibly of rather primitive kinds (for example, racist and sexist prejudices survive often enough on the basis of the perceived ‘reason’ that non-whites or women are biologically or intellectually inferior). The case for reliance on reason does not involve any denial of the easily recognized fact that people do give reasons of some kind or other in defence of their beliefs (no matter how crude). The point of *reasoning* as a

Pol Pot's main ally. Frenzy and unreasoned conviction played that role, with no room for reasoned scrutiny. The interesting and important issues that Glover's critique of the Enlightenment tradition forcefully raises include the question: where is the remedy to bad reasoning to be found? There is also the related question: what is the relationship between reason and emotions, including compassion and sympathy? And beyond that, it must also be asked: what is the ultimate justification for reliance on reason? Is reason cherished as a good tool, and if so, a tool for pursuing what? Or is reason its own justification, and if so, how does it differ from blind and unquestioning belief? These issues have been discussed over the ages, but there is a special need to face them here, given the focus on reasoning in the exploration of the idea of justice in this work.

AKBAR AND THE NECESSITY OF REASON

W. B. Yeats wrote on the margin of his copy of Nietzsche's *The Genealogy of Morals*, 'But why does Nietzsche think the night has no stars, nothing but bats and owls and the insane moon?'¹¹ Nietzsche's scepticism about humanity and his chilling vision of the future were presented just before the beginning of the twentieth century (he died in 1900). The events of the century that followed, including world wars, holocausts, genocides and other atrocities, give us reason enough to worry whether Nietzsche's scepticism about humankind might not have been just right.* Indeed, in investigating Nietzsche's concerns at the end of the twentieth century, Jonathan Glover concludes that we 'need to look hard and clearly at some monsters inside us', and consider ways and means of 'caging and taming them'.¹²

discipline is to subject the prevailing beliefs and alleged reasons to critical examination. These issues will be further discussed in Chapters 8, 'Rationality and Other People', and 9, 'Plurality of Impartial Reasons'.

* As Javed Akhtar, the Urdu poet, puts it in a ghazal: 'Religion or war, caste or race, these things it does not know/ Before our savagery how do we judge the wild beast' (Javed Akhtar, *Quiver: Poems and Ghazals*, translated by David Matthews (New Delhi: HarperCollins, 2001), p. 47).

Occasions such as the turn of a century have appeared to many people to be appropriate moments to engage in critical examinations of what is happening and what needs to be done. The reflections are not always as pessimistic and sceptical of human nature and the possibility of reasoned change as those of Nietzsche (or of Glover). An interesting contrast can be seen in the much earlier deliberations of the Mughal emperor, Akbar, in India, at a point of even 'millennial', rather than merely centurial, interest. As the first millennium of the Muslim Hijri calendar came to an end in 1591-2 (it was a thousand lunar years after Muhammad's epic journey from Mecca to Medina in AD 622),* Akbar engaged in a far-reaching scrutiny of social and political values and legal and cultural practice. He paid particular attention to the challenges of inter-community relations and the abiding need for communal peace and fruitful collaboration in the already multicultural India of the sixteenth century. We have to recognize how unusual Akbar's policies were for the time. The Inquisitions were in full swing and Giordano Bruno was burnt at the stake for heresy in Rome in 1600 even as Akbar was making his pronouncements on religious tolerance in India. Not only did Akbar insist that the duty of the state included making sure that 'no man should be interfered with on account of his religion, and any one was to be allowed to go over to any religion he pleased',¹³ he also arranged systematic dialogues in his capital city of Agra between Hindus, Muslims, Christians, Jains, Parsees, Jews and others, even including agnostics and atheists.

Taking note of the religious diversity of his people, Akbar laid the foundations of secularism and religious neutrality of the state in a variety of ways; the secular constitution that India adopted in 1949, after independence from British rule, has many features already championed by Akbar in the 1590s. The shared elements include interpreting secularism as the requirement that the state be equidistant from different religions and must not treat any religion with special favour.

Underlying Akbar's general approach to the assessment of social

* A lunar year has a mean length of 354 days, 8 hours and 48 minutes, and thus moves ahead significantly faster than a solar year.

custom and public policy was his overarching thesis that ‘the pursuit of reason’ (rather than what he called ‘the marshy land of tradition’) is the way to address difficult problems of good behaviour and the challenges of constructing a just society.¹⁴ The question of secularism is only one of a great many cases in which Akbar insisted that we should be free to examine whether reason does or does not support any existing custom, or provides justification for ongoing policy; for example, he abolished all special taxes on non-Muslims on the ground that they were discriminatory since they did not treat all citizens as equal. In 1582 he resolved to release ‘all the Imperial slaves’, since ‘it is beyond the realm of justice and good conduct’ to benefit from ‘force’.¹⁵

Illustrations of Akbar’s criticisms of prevailing social practice are also easy to find in the arguments he presented. He was, for example, opposed to child marriage, which was then quite conventional (and alas, not even fully eradicated now in the subcontinent), since, he argued, ‘the object that is intended’ in marriage ‘is still remote, and there is immediate possibility of injury’. He also criticized the Hindu practice of not allowing the remarriage of widows (a practice that would be reformed only several centuries later) and added that ‘in a religion that forbids the remarriage of the widow’, the hardship of permitting child marriage ‘is much greater’. On the inheritance of property, Akbar noted that ‘in the Muslim religion, a smaller share of inheritance is allowed to the daughter, though owing to her weakness, she deserves to be given a larger share’. A very different kind of example of reasoning can be seen in his allowing religious rituals of which he himself took a very sceptical view. When his second son, Murad, who knew that Akbar was opposed to all religious rituals, asked him whether these rituals should be banned, Akbar immediately opposed that, on the ground that ‘preventing that insensitive simpleton, who considers body exercise to be divine worship, would amount to preventing him from remembering God [at all]’.

While Akbar himself remained a practising Muslim, he argued for the need for everyone to subject their inherited beliefs and priorities to critical scrutiny. Indeed, perhaps the most important point that Akbar made in his defence of a secular and a tolerant multicultural society concerned the role that he gave to reasoning in this entire

enterprise. Akbar took reason to be supreme, since even in disputing reason we would have to give reasons for that disputation. Attacked by strong traditionalists within his own religious affiliation, who argued in favour of unquestioning and instinctive faith in the Islamic tradition, Akbar told his friend and trusted lieutenant, Abul Fazl (a formidable scholar in Sanskrit as well as Arabic and Persian): ‘The pursuit of reason and rejection of traditionalism are so brilliantly patent as to be above the need of argument.’¹⁶ He concluded that the ‘path of reason’ or ‘the rule of the intellect’ (*rabi aql*) must be the basic determinant of good and just behaviour as well as of an acceptable framework of legal duties and entitlements.*

ETHICAL OBJECTIVITY AND REASONED SCRUTINY

Akbar was right to point to the indispensability of reason. As will be presently argued, even the importance of emotions can be appreciated within the reach of reason. Indeed, the significant place of emotions for our deliberations can be illustrated by the reasons for taking them seriously (though not uncritically). If we are strongly moved by some particular emotion, there is good reason to ask what that tells us. Reason and emotion play complementary roles in human reflection, and the complex relationship between them will be considered more fully later on in this chapter.

It is not hard to see that ethical judgements demand *rabi aql* – the use of reason. The question that remains, however, is this: why should we accept that reason has to be the ultimate arbitrator of ethical beliefs? Is there some special role for reasoning – perhaps reasoning of a particular kind – that must be seen as overarching and crucial for ethical judgements? Since reasoned support can hardly be in itself a value-giving quality, we have to ask: why, precisely, is reasoned

* Akbar would have endorsed Thomas Scanlon’s diagnosis (in his illuminating study of the role of reason in determining ‘what we owe to each other’) that we should not ‘regard the idea of reason as mysterious, or one that needs, or can be given, a philosophical explanation in terms of some other, more basic notion’ (*What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998), p. 3).

support so critical? Can it be claimed that reasoned scrutiny provides some kind of a guarantee of reaching the truth? This would be hard to maintain, not only because the nature of truth in moral and political beliefs is such a difficult subject, but mainly because the most rigorous of searches, in ethics or in any other discipline, could still fail.

Indeed, sometimes a very dubious procedure could end up, accidentally, yielding a more correct answer than extremely rigorous reasoning. This is obvious enough in epistemology: even though a scientific procedure may have a better probability of success among alternative procedures, even a crazy procedure could happen to produce the correct answer in a particular case (more correct, in such a case, than more reasoned procedures). For example, a person who relies on a stopped watch to check the time will get the time exactly right twice a day, and if he happened to be looking for the time precisely at one of those moments, his unmoving watch might beat all other moving clocks to which he had access. However, as a procedure to be chosen, relying on the motionless timepiece rather than on a clock that moves approximately close to the actual time does not have much to commend it, despite the fact that the moving clock would be beaten twice a day by the stationary timepiece.*

It is plausible to think that a similar argument exists for choosing the best reasoned procedure, even though there is no guarantee that it would be invariably right, and not even any guarantee that it would be always more right than some other, less reasoned, procedure (even if we could judge the correctness of judgements with any degree of confidence). The case for reasoned scrutiny lies not in any sure-fire way of getting things exactly right (no such way may exist), but on being as objective as we reasonably can.† What lies behind the case for relying on reasoning in making ethical judgements are, I would

* Leela Majumdar, the Bengali writer (and aunt of the great film director Satyajit Ray), recollected in a children's story, that when she was a feisty college student in Calcutta, she had stopped and asked a passing stranger – just to annoy and confuse him – ‘Oh, hello, when did you come from Chittagong?’ The man replied, in sheer amazement, ‘Yesterday, how did you know?’

† See Bernard Williams's powerful discussion about seeing reasoned belief as ‘aiming at’ truth (‘Deciding to believe’, in *Problems of the Self* (Cambridge: Cambridge University Press, 1973)). See also Peter Railton, *Facts, Values and Norms: Essays Toward a Morality of Consequence* (Cambridge: Cambridge University Press, 2003).

argue, also the demands of objectivity, and they call for a particular discipline of reasoning. The important role given to reasoning in this work relates to the need for objective reasoning in thinking about issues of justice and injustice.

Since objectivity is itself a rather difficult issue in moral and political philosophy, the subject demands some discussion here. Does the pursuit of ethical objectivity take the form of the search for some ethical *objects*? While a good deal of complex discussion on the objectivity of ethics has tended to proceed in terms of ontology (in particular, the metaphysics of ‘what ethical objects exist’), it is difficult to understand what these ethical objects might be like. Instead, I would go along with Hilary Putnam’s argument that this line of investigation is largely unhelpful and misguided.* When we debate the demands of ethical objectivity, we are not crossing swords on the nature and content of some alleged ethical ‘objects’.

There are, of course, ethical statements that presume the existence of some identifiable objects that can be observed (this would be a part of the exercise, for example, in looking for observable evidence to decide whether a person is courageous or compassionate), whereas the subject matter of other ethical statements may not have that association (for example, a judgement that a person is altogether immoral or unjust). But despite some overlap between description and evaluation, ethics cannot be simply a matter of truthful description of specific objects. Rather, as Putnam argues, ‘real ethical questions are a species of practical question, and practical questions don’t only involve valuings, they involve a complex mixture of philosophical beliefs, religious beliefs, and factual beliefs as well’.¹⁷ The actual procedures used in pursuit of objectivity may not be always clear, nor

* Hilary Putnam, *Ethics without Ontology* (Cambridge, MA: Harvard University Press, 2004). Putnam is concerned not only with the unhelpfulness of the ontological approach to the objectivity of ethics but also with the mistake it makes in looking for something that is far removed from the nature of the subject. ‘I see the attempt to provide an ontological explanation of the objectivity of mathematics as, in effect, an attempt to provide *reasons which are not part of mathematics for the truth of mathematical statements* and the attempt to provide an ontological explanation of the objectivity of ethics as a similar attempt to provide *reasons which are not part of ethics for the truth of ethical statements*, and I see both attempts as deeply misguided’ (p. 3).

spelt out, but as Putnam argues, this can be done with clarity if the underlying issues are adequately scrutinized.*

The reasoning that is sought in analysing the requirements of justice will incorporate some basic demands of impartiality, which are integral parts of the idea of justice and injustice. At this point there is some merit in summoning the ideas of John Rawls and his analysis of moral and political objectivity, which he presented in his defence of the objectivity of ‘justice as fairness’ (a subject to which the next chapter will be devoted). † Rawls argues: ‘The first essential is that a conception of objectivity must establish a public framework of thought sufficient for the concept of judgement to apply and for conclusions to be reached on the basis of reasons and evidence after discussion and due reflection.’ He goes on to argue: ‘To say that a political conviction is objective is to say that there are reasons, specified by a reasonable and mutually recognizable political conception (satisfying those essentials), sufficient to convince all reasonable persons that it is reasonable.’¹⁸

There can be an interesting discussion as to whether this criterion of objectivity, which has some clearly normative elements (particularly in the identification of ‘reasonable persons’), would tend to coincide

* In my book *Development as Freedom* (New York: Knopf, 1999), I abstained from any serious discussion of ethical methodology, and based the claim of acceptability of some general developmental priorities on rather commonsense grounds. Hilary Putnam has analysed, with clarity and definitiveness, the underlying methodology of that work in development economics, and has discussed how the particular methodology of that work fits, happily for me, into his general approach to objectivity; see his *The Collapse of the Fact/Value Dichotomy and Other Essays* (Cambridge, MA: Harvard University Press, 2002). See also Vivian Walsh, ‘Sen after Putnam’, *Review of Political Economy*, 15 (2003).

† I should emphasize here that there exist substantial differences between the way in which Putnam sees the problem of objectivity, which makes room for his scepticism about ‘universal principles’ (*Ethics without Ontology*, ‘few real problems can be solved by treating them as mere instances of a universal generalization’, p. 4), and the way Rawls gets at the problem, with his use of universal principles along with investigation of the specificities of particular ethical problems (*Political Liberalism*, pp. 110–18). Neither Rawls nor Putnam, however, is tempted to see objectivity of ethics in terms of ontology, or in terms of a search for some actual objects. In this work I draw on both Putnam’s and Rawls’s analyses, but do not explore further the specific issues on which their differences rest.

with what is likely to survive open and informed public discussion. In contrast with Rawls, Jürgen Habermas has focused on the latter, largely procedural, route, rather than relying on some procedure-independent identification of what would convince people who are ‘reasonable’ persons and who would find some political conviction to be ‘reasonable’ as well.¹⁹ I see the force of Habermas’s point and the correctness of the categorical distinction he makes, even though I am not fully persuaded that Rawls’s and Habermas’s approaches are, in fact, radically different in terms of the respective strategies of reasoning.

In order to get the kind of political society that he tends to concentrate on, Habermas also imposes many exacting demands on public deliberation. If people are capable of being reasonable in taking note of other people’s points of view and in welcoming information, which must be among the essential demands of open-minded public dialogue, then the gap between the two approaches would tend to be not necessarily momentous.*

I will not make a big distinction between those whom Rawls categorizes as ‘reasonable persons’ and other human beings, despite Rawls’s frequent reference to – and the evident use of – the category of ‘reasonable persons’. I have tried to argue elsewhere that, by and large, all of us are capable of being reasonable through being open-minded about welcoming information and through reflecting on arguments coming from different quarters, along with undertaking interactive deliberations and debates on how the underlying issues should be seen.²⁰ I do not see this presumption to be fundamentally different from Rawls’s own idea of ‘free and equal persons’ who all

* Habermas also argues that the kind of agreement that would emerge in the system he describes will be substantively different from Rawls’s more ‘liberal’ rules and priorities (‘Reconciliation through the Public Use of Reason: Remarks on John Rawls’s Political Liberalism’, *The Journal of Philosophy* (1995)). What has to be determined is whether those differences between Habermasian and Rawlsian conclusions in substantive outcomes are really the result of the two distinct procedures used respectively by Habermas and Rawls, rather than resulting from their respective beliefs about how open and interactive deliberations could be expected to proceed in free democratic exchanges. See also Jürgen Habermas, *Justification and Application: Remarks on Discourse Ethics*, translated by Ciaran Cronin (Cambridge, MA: MIT Press, 1993).

have ‘moral powers’.* Rawls’s analysis seems, in fact, to focus more on the *characterization* of deliberating human beings rather than on the *categorization* of some ‘reasonable persons’ while excluding others.† The role of unrestricted public reasoning is quite central to democratic politics in general and to the pursuit of social justice in particular.‡

ADAM SMITH AND THE IMPARTIAL SPECTATOR

Public reasoning is clearly an essential feature of objectivity in political and ethical beliefs. If Rawls presents one way of thinking about objectivity in the assessment of justice, Adam Smith’s invoking of the impartial spectator provides another. This ‘ancient’ approach (as I write these lines it is almost exactly 250 years since the first publication of Smith’s *Theory of Moral Sentiments* in 1759) has a very long reach. It also has both procedural and substantive contents. In seeking resolution by public reasoning, there is clearly a strong case for not leaving out the perspectives and reasonings presented by anyone whose assessments are relevant, either because their interests are involved, or because their ways of thinking about these issues throw light on particular judgements – a light that might be missed in the absence of giving those perspectives an opportunity to be aired.

While Rawls’s primary focus seems to be on variations of personal

* Rawls refers in particular to ‘two moral powers’, viz. ‘the capacity for a sense of justice’, and ‘a capacity for a conception of the good’ (*Justice as Fairness: A Restatement*, edited by Erin Kelly (Cambridge, MA: Harvard University Press, 2001), pp. 18–19).

† Indeed, we do not hear much from Rawls about how those who could be seen as ‘unreasonable persons’ come to terms with ideas of justice, and how they would be integrated into the social order.

‡ See Joshua Cohen, ‘Deliberation and Democratic Legitimacy’, in Alan Hamlin and Philip Pettit (eds), *The Good Polity: Normative Analysis of the State* (Oxford: Blackwell, 1989), and *Politics, Power and Public Relations*, Tanner Lectures at the University of California, Berkeley, 2007. See also Seyla Benhabib (ed.), *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton, NJ: Princeton University Press, 1996).

interests and personal priorities, Adam Smith was also concerned with the need to broaden the discussion to avoid local parochialism of values, which might have the effect of ignoring some pertinent arguments, unfamiliar in a particular culture. Since the invoking of public discussion can take a counter-factual form ('what would an impartial spectator from a distance say about that?'), one of Smith's major methodological concerns is the need to invoke a wide variety of viewpoints and outlooks based on diverse experiences from far and near, rather than remaining contented with encounters – actual or counterfactual – with others living in the same cultural and social milieu, and with the same kind of experiences, prejudices and convictions about what is reasonable and what is not, and even beliefs about what is feasible and what is not. Adam Smith's insistence that we must *inter alia* view our sentiments from 'a certain distance from us' is motivated by the object of scrutinizing not only the influence of vested interest, but also the impact of entrenched tradition and custom.*

Despite the differences between the distinct types of arguments presented by Smith, Habermas and Rawls, there is an essential similarity in their respective approaches to objectivity to the extent that objectivity is linked, directly or indirectly, by each of them to the ability to survive challenges from informed scrutiny coming from diverse quarters. In this work too, I will take reasoned scrutiny from different perspectives to be an essential part of the demands of objectivity for ethical and political convictions.

However, I must add here – indeed, assert here – that the principles that survive such scrutiny need not be a unique set (for reasons that were already presented in the Introduction). This is, in fact, a larger departure from John Rawls than from Hilary Putnam.† Indeed, any approach to justice, like Rawls's, that proposes to follow up the choice of principles of justice by the rigidity of a unique institutional structure

* See also Simon Blackburn's discussion of the role of 'the common point of view', and in particular the contributions of Adam Smith and David Hume in developing that perspective (*Ruling Passions: A Theory of Practical Reasoning* (Oxford: Clarendon Press, 1998), especially Chapter 7).

† It is not a departure at all from Bernard Williams, see *Ethics and the Limits of Philosophy* (London: Fontana, 1985) Chapter 8. See also John Gray, *Two Faces of Liberalism* (London: Polity Press, 2000).

(this is part of transcendental institutionalism discussed in the Introduction), and which proceeds to tell us, step by step, an *as if* history of the unfolding of justice, cannot easily accommodate the co-survival of competing principles that do not speak in one voice. As discussed in the Introduction, I am arguing for the possibility that there may remain contrary positions that simultaneously survive and which cannot be subjected to some radical surgery that reduces them all into one tidy box of complete and well-fitted demands, which, in Rawls's theory, take us to some unique institutional route to fulfil these requirements (to be implemented by a sovereign state).

While there are differences between the distinct approaches to objectivity considered here, the overarching similarity among them lies in the shared recognition of the need for reasoned encounter on an impartial basis (the approaches differ largely on the domain of the required impartiality, as will be discussed further in Chapter 6). Reason can, of course, take distinct forms which have many different uses.* But to the extent that we look for ethical objectivity, the reasoning that is necessary has to satisfy what can be seen as the requirements of impartiality. Reasons of justice may differ from, to use one of Smith's expressions, reasons of 'self-love', and also from reasons of prudence, but reasons of justice still constitute a large expanse. A lot of what follows in this work will be concerned with exploring that huge territory.

THE REACH OF REASON

Reasoning is a robust source of hope and confidence in a world darkened by murky deeds – past and present. It is not hard to see why this is so. Even when we find something immediately upsetting, we can question that response and ask whether it is an appropriate reaction and whether we should really be guided by it. Reasoning can be concerned with the right way of viewing and treating other people, other cultures, other claims, and with examining different grounds

* I shall consider some of these differences in Chapters 8, 'Rationality and Other People', and 9, 'Plurality of Impartial Reasons'.

for respect and tolerance. We can also reason about our own mistakes and try to learn not to repeat them, in the way Kenzaburo Oe, the great Japanese writer, hopes the Japanese nation will remain committed to ‘the idea of democracy and the determination never to wage a war again’, aided by an understanding of its own ‘history of territorial invasion’.*

No less importantly, intellectual probing is needed to identify deeds that are not intended to be injurious, but which have that effect; for example, horrors like terrible famines can remain unchecked on the mistaken presumption that they cannot be averted without increasing the total availability of food, which can be hard to organize rapidly enough. Hundreds of thousands, indeed, millions, can die from calamitous inaction resulting from unreasoned fatalism masquerading as composure based on realism and common sense.† As it happens, famines are easy to prevent, partly because they affect only a small proportion of the population (rarely more than 5 per cent and hardly ever more than 10 per cent), and redistribution of existing food can be arranged through immediate means such as emergency employment creation, thereby giving the indigent an immediate income for purchasing food. Obviously, having more food would make things easier (it can help the public distribution of food and also more food available in markets can help to keep prices lower than they would otherwise be), but having more food is not an absolute necessity for successful famine relief (as is often taken for granted and seen as a

* Kenzaburo Oe, *Japan, the Ambiguous, and Myself* (Tokyo and New York: Kodansha International, 1995), pp. 118–19. See also Onuma Yasuaki, ‘Japanese War Guilt and Postwar Responsibilities of Japan’, *Berkeley Journal of International Law*, 20 (2002). Similarly, in post-war Germany, learning from past mistakes, particularly from the Nazi period, has been an important issue in contemporary German priorities.

† I have discussed the causes of famines and the policy requirement for famine prevention in *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford: Clarendon Press, 1981), and jointly with Jean Drèze, in *Hunger and Public Action* (Oxford: Clarendon Press, 1989). This is one illustration of the general problem that a mistaken theory can have fatal consequences. On this, see my *Development as Freedom* (New York: Knopf and Oxford: Clarendon Press, 1999) and Sabina Alkire, ‘Development: A Misconceived Theory Can Kill’, in Christopher W. Morris (ed.), *Amartya Sen* (Cambridge: Cambridge University Press, 2010). See also Cormac Ó Gráda, *Famine: A Short History* (Princeton, NJ: Princeton University Press, 2009).

justification for inaction in arranging immediate relief). The relatively small redistribution of the food supply that is needed to avoid starvation can be brought about through the creation of purchasing power for those deprived of all incomes, through one calamity or another, which is typically the primary cause of starvation.*

Consider another subject, which is beginning, at long last, to receive the attention it deserves, that is, the neglect and deterioration of the natural environment. It is, as is increasingly clear, a hugely serious problem and one that is closely linked with the negative effects of human behaviour, but the problem does not arise from any desire of people today to hurt those yet to be born, or even to be deliberately callous about the future generations' interests. And yet, through lack of reasoned engagement and action, we do still fail to take adequate care of the environment around us and the sustainability of the requirements of good life. To prevent catastrophes caused by human negligence or callous obduracy, we need critical scrutiny, not just goodwill towards others.²¹

Reasoning is our ally in this, not a threat that endangers us. So why does it look so different to those who find reliance on reasoning to be deeply problematic? One of the issues to consider is the possibility that the critics of relying on reason are influenced by the fact that some people are easily *over*-convinced by their own reasoning, and ignore counter-arguments and other grounds that may yield the opposite conclusion. This is perhaps what Glover is really worried about, and it can indeed be a legitimate worry. But the difficulty here surely comes from precipitate and badly reasoned certitude, rather than from

* Further, since most famine victims suffer from and often die from standard diseases (helped by debilitation and the spread of infection caused by a growing famine), much can be done through healthcare and medical facilities. More than four-fifths of the death toll resulting from the Great Bengal famine of 1943 was directly connected with diseases common to the region, with pure starvation death accounting for no more than a fifth of the total (see Appendix D in my *Poverty and Famines* (Oxford: Clarendon Press, 1981)). A similar picture emerges from many other famines. See particularly Alex de Waal, *Famine that Kills: Darfur, Sudan, 1984–1985* (Oxford: Clarendon Press, 1989); also his *Famine Crimes: Politics and the Disaster Relief Industry in Africa* (London: African Rights and the International African Institute, 1997). This issue is assessed in my entry on 'Human Disasters' in *The Oxford Textbook of Medicine* (Oxford: Oxford University Press, 2008).

making use of reason. The remedy for bad reasoning lies in better reasoning, and it is indeed the job of reasoned scrutiny to move from the former to the latter. It is also possible that in some statements of ‘Enlightenment authors’ the need for reassessment and caution was not sufficiently emphasized, but it would be hard to derive from that any general indictment of the Enlightenment outlook, and even more, an arraignment of the general role of reason in just behaviour or good social policy.

REASON, SENTIMENTS AND THE ENLIGHTENMENT

There is, however, the further issue of the relative importance of instinctive sentiments and cool calculation, on which several Enlightenment authors themselves had much to say. Jonathan Glover’s arguments for the need for a ‘new human psychology’ draws on his recognition that politics and psychology are interwoven. It is hard to think that reasoning, based on the available evidence about human behaviour, would not lead to the acceptance of this interconnection. In avoiding atrocities, there is surely a huge preventive role that can be played by instinctive revulsion to cruelty and to insensitive behaviour, and Glover rightly emphasizes the importance, among other things, of ‘the tendency to respond to people with certain kinds of respect’ and ‘sympathy: caring about the miseries and the happiness of others’.

However, there need be no conflict here with reason, which can endorse precisely those priorities. Good reasoning has clearly played that role in Glover’s own investigation of the dangers of one-sided and overconfident belief (Akbar’s point that even to dispute reason one has to give a reason for that disputation is surely relevant here). Nor need reasoning withhold the understanding, if justified, that a total reliance only on cool calculation may not be a good – or reasonable – way of ensuring human security.

Indeed, in celebrating reason, there is no particular ground for denying the far-reaching role of instinctive psychology and spontaneous responses.²² They can supplement each other, and in many cases an understanding of the broadening and liberating role of our

feelings can constitute good subject matter for reasoning itself. Adam Smith, a central figure in the Scottish Enlightenment (and very influential in the French Enlightenment as well), discussed extensively the central role of emotions and psychological response in his *The Theory of Moral Sentiments*.^{*} Smith may not have gone as far as David Hume in asserting that ‘reason and sentiment concur in almost all moral determinations and conclusions’,²³ but both saw reasoning and feeling as deeply interrelated activities. Both Hume and Smith were, of course, quintessential ‘Enlightenment authors’, no less so than Diderot or Kant.

However, the need for reasoned scrutiny of psychological attitudes does not disappear even after the power of emotions is recognized and the positive role of many instinctive reactions (such as a sense of revulsion about cruelty) is celebrated. Smith in particular – perhaps even more than Hume – gave reason a huge role in assessing our sentiments and psychological concerns. In fact, Hume often seems to take passion to be more powerful than reason. As Thomas Nagel puts it in his strong defence of reason in his book *The Last Word*, ‘Hume famously believed that because a “passion” immune to rational assessment must underlie every motive, there can be no such thing as specifically practical reason, nor specifically moral reason either.’[†] Smith did not take that view, even though he, like Hume, took emotions to be both important and influential, and argued that our ‘first perceptions’ of right and wrong ‘cannot be the object of reason, but of immediate sense and feeling’. But Smith also argued that even these instinctive reactions to particular conduct cannot but rely – if only implicitly – on our reasoned understanding of causal connections between conduct and consequences in ‘a vast variety of instances’. Furthermore, first perceptions may also change in response to critical

^{*} See also Martha Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge: Cambridge University Press, 2001).

[†] Thomas Nagel, *The Last Word* (New York: Oxford University Press, 1997), p. 102. However, Hume seems to vary on the priority issue. While he does give passion an elevated standing that seems to be more dominant than the role of reason, Hume also argues: ‘The moment we perceive the falsehood of any supposition, or the insufficiency of any means our passions yield to our reason without any opposition’ (David Hume, *A Treatise of Human Nature*, edited by L. A. Selby-Bigge (Oxford: Clarendon Press, 1888; 2nd edn 1978) p. 416).

examination, for example on the basis of causal empirical investigation that may show, Smith notes, that a certain ‘object is the means of obtaining some other’.²⁴

Adam Smith’s argument for recognizing the abiding need for reasoned scrutiny is well illustrated by his discussion about how to assess our attitudes to prevailing practices. This is obviously important for Smith’s powerful advocacy of reform, for example the case for abolishing slavery, or for lessening the burden of arbitrary bureaucratic restrictions on the commerce between different countries, or for relaxing the punitive restrictions imposed on the indigent as a condition for the economic support provided through the Poor Laws.*

While it is certainly true that ideology and dogmatic belief can emerge from sources other than religion and custom, and have frequently done so, that does not deny the role of reason in assessing the rationale behind instinctive attitudes, any less than in the appraisal of arguments presented to justify deliberate policies. What Akbar called the ‘path of reason’ does not exclude taking note of the value of instinctive reactions, nor ignore the informative role that our mental reactions often play. And all this is quite consistent with not giving our unscrutinized instincts an unconditional final say.

* In his well-argued essay, ‘Why Economics Needs Ethical Theory’, John Broome argues: ‘Economists do not like to impose their ethical opinions on people, but there is no question of that. Very few economists are in a position to impose their opinion on anyone . . . The solution is for them to get themselves good arguments, and work out the theory. It is not to hide behind the preferences of other people, when those preferences may not be well founded, and when the people themselves may be looking for help from economists in forming better preferences.’ (*Arguments for a Better World: Essays in Honor of Amartya Sen*, edited by Kaushik Basu and Ravi Kanbur, Vol.1 (Oxford: Oxford University Press, 2009), p. 14). This is, of course, exactly what Smith tried to do.

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