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Editorial Note

The Journal of Applied Ethics and Philosophy is an interdisciplinary periodical covering diverse areas of applied ethics. It is the official journal of the Center for Applied Ethics and Philosophy (CAEP), Hokkaido University. The aim of *The Journal of Applied Ethics and Philosophy* is to contribute to a better understanding of ethical issues by promoting research into various areas of applied ethics and philosophy, and by providing researchers, scholars and students with a forum for dialogue and discussion on ethical issues raised in contemporary society.

The journal welcomes papers from scholars and disciplines traditionally and newly associated with the study of applied ethics and philosophy, as well as papers from those in related disciplines or fields of inquiry.

Earlier versions of the papers by Ruth Chadwick, Stan van Hooft, Simon Clarke and Nicole Vincent published in this present volume of *The Journal of Applied Ethics and Philosophy* were delivered at the Second and Third International Conferences on Applied Ethics held in November 2007 and 2008, organised by CAEP.

Takahiko Nitta
Editor-in-Chief

What is ‘Applied’ in Applied Ethics?

Ruth Chadwick

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Abstract

The use of the term ‘applied’ in ‘applied ethics’ suggests that there is something to apply. A model of applied ethics which depends on the application of theory, however, has attracted considerable criticism, including the issues around the notion of ethical expertise. The question arises as to whether other models of applied ethics can avoid such criticisms, such as contextualist and particularist approaches, or the development of ethical ‘tools’. It is argued that one of the primary tasks of applied ethics is to identify the ethical dimensions of a situation, but however an issue is ‘framed’, it is important to be sensitive not only to the frame but to what might be left outside of it. To achieve this collaboration between different disciplines is desirable.

Key words: applied ethics, theory and anti-theory ethical expertise, multidisciplinary

What is now known as applied ethics, however, came to prominence as a field of study in the last quarter of the twentieth century, after a period in which the prevailing view, among philosophers in the Anglo-American tradition at least, was that philosophy could not usefully be applied to practical problems. Instead, during the first half of the twentieth century ethics was often rejected as emotive and non-cognitive in character or, in an effort to contribute to progressive clarity in moral discussions, philosophy devoted itself to metaethics or the analysis of ethical language. The importance of applied ethics first came to the forefront in a medical context, where expanding commitments to human rights and developments in technology gave rise to challenging ethical issues related, for example, to the allocation of scarce resources such as kidney dialysis machines, the use of heart-lung devices, and organ transplantation protocols. Questions such as the extent to which health care professionals should intervene to extend life, along with the definitions of life and death themselves, became extensively debated in a new field called bioethics, defined as the study of the ethical, legal, social and philosophical issues arising from advances in medicine and the life sciences.

It is not clear, however, that this phenomenon should be described as a ‘turn’ to applied ethics, rather than a ‘return’. While applied ethics may appear to be a relatively recent development, serious philosophy has always had its applications. Since the time of Plato, philosophers have been concerned with problems of living in the real world. Plato’s *Republic*, for instance, concerned as it was with the nature of justice, discussed inescapable questions relevant to how one should live. David Armstrong has written that “It is only by *inventing* (my emphasis) a history going back to Hippocrates that bioethics can demonstrate its universal and timeless truths” (Armstrong 2006). This claim, I would suggest, conflates two different things – the longevity of certain issues is one thing; that of kinds of approach is another. Approaches do change, not only with time but also with place, and this should not be a matter of surprise or regret.

The Scope of Applied Ethics

Applied ethics, is, of course, by no means confined to bioethics. Indeed, in its many iterations since the mid-

1970s applied ethics has included the discussion of such diverse non-biomedical issues as capital punishment, economic development, free speech, human rights, pornography, poverty, social discrimination, and war. Applied ethical issues arise in any area of life where the interests of individuals or groups conflict, including not just national groups but even the interests of different species. Thus, to highlight areas especially relevant to science and technology, along with analyses of nuclear weapons and deterrence strategies, environmental ethics has acquired increasing importance as a reflection on the moral limits of industrial development and pollution. Agricultural ethics, computer ethics, and media ethics might be cited as still other examples. Food ethics is an expanding field concerned with obesity, personalised diet, and the production and distribution of food as well as its genetic modification (thus overlapping with agricultural and environmental ethics while at the same time opening up new areas and issues). Ethics in relation to computing and IT has raised the issue of whether there are new ethical questions to be answered, or just new versions of old questions. Arguably the creation of new entities such as websites, along with new forms of human interaction such as social network sites, give rise to a unique set of issues, including issues of scale relating for example to the power of IT to transform social institutions (see Johnson 2001). In addition, new techniques of surveillance are leading to the recognition of a need for rethinking in relation to concepts of privacy.

Developments in the life sciences and related technologies, in the wake of the Human Genome Project, for example, have also challenged the boundaries of our ethical thinking (Knoppers and Chadwick 2005). The relevant ethical questions include, however, not only external governance of science, but also ethics of scientists (and engineers) 'internal' to the professions. Issues include the responsibilities of scientists with regard to setting the research agenda, the conduct of research, the use of the results, and communication with different sections of the public and with potential users. The move from programmes of promoting public understanding towards public engagement in science and technology has led to debates about how upstream in the research and development process such engagement should be. Is there a role for public involvement in deciding what research is carried out, or should the role of the public be limited to discussing the impact of research on society? The increasing commercialisation of science and the changing social context in which scientists operate, overlap with business ethics, including questions about conflicts of interest; the pressures of commercialisation on the setting of research priorities; sharing of the benefits of the outcomes of research; and the question as to whether there are some things (e.g. living organisms) that should not be commercialised, and

which should therefore be outside the patenting system. Seen in this light, questions about the social value of science become particularly urgent (Chadwick 2005).

Professional engineers have developed explicit codes of ethics to guide their technical conduct. These now generally emphasise responsibilities to protect public safety, health, and welfare, as well as to promote the profession, protect confidentiality, and avoid conflicts of interest. Engineers may be confronted with situations of conflict, for example where one safety concern has to be traded against another, or where concern for public safety is in tension with protection of confidentiality or the interests of the organisation (see Davis 1991). There may also be difficult situations of different standards applicable in different countries, where international projects are concerned.

Models of Applied Ethics

It is clear, then, that there are issues to be addressed – but what, exactly, is to be *applied*? There are different models concerning what is involved in applied ethics. It is tempting to think that in order for ethics to be applied, there must be something such as a theory to apply, which is indeed one possible model of applied ethics. The fruits of theory approach depends on the view that in applied ethics *some* theory is applied, but admits a variety of possible theories (Brown 1987). Brown characterises the fruits of theory approach in the thesis that “Applied ethics is application of ethical theory”. This is to be distinguished from the ‘engineering’ approach (cf. Caplan 1983), which holds that there is one particular theory which can be drawn upon to apply to practical problems as and when they occur (Brown 1987) and which will produce answers as a result of this application. As agreement is lacking on any *one* theory, the engineering approach has relatively few adherents, but the fruits of theory approach – that applied ethics must involve application of *some* ethical theory – remains one popular conception of applied ethics.

Contemporary applied ethics, in so far as it *is* an application of theory, relies to a large extent on ethical theories which take their starting point in the eighteenth and nineteenth centuries: deontology and utilitarianism. Deontological ethics draws on the thought of Immanuel Kant in a tradition that stresses respect for persons and notions of human rights and dignity, without necessarily being a strict application of Kant’s own philosophy. Similarly, utilitarian ethics as it is employed today rarely attempts to reproduce the thought of Jeremy Bentham or John Stuart Mill as such.

An alternative to applying high-level theory is the deployment of mid-level principles as found in Beauchamp and Childress’ influential text, *Principles of*

Biomedical Ethics (2008). Mid-level principles are said both to be in accordance with the 'common morality' and to be reconcilable with different underlying theories. This in part explains their appeal. The notion of the common morality on which the approach depends has nevertheless been questioned: common to whom? The 'four principles' in Beauchamp and Childress include autonomy, beneficence, non-maleficence, and justice. Thus autonomy, for example, can be supported both from a Kantian and a utilitarian point of view, although the interpretation of autonomy will be different in each case. Utilitarian ethics portrays the agent as choosing to maximise his or her utility, while the Kantian moral agent's exercise of autonomy is in accordance with what is right, rather than a pursuit of the good.

The four principles have been regarded by some of their advocates as forming the basis of a 'global bioethics' in that they represent values that can be supported by anyone, although they may be so for different reasons. In an era of globalisation, the extent to which ethics can be harmonised has moved centre stage, at least as far as pragmatic guidelines are concerned, e.g., for research. People from very different cultures might support autonomy and justice, although they might mean very different things in different contexts. The transferability of the four principles to different cultural contexts has however been subject to challenge, as has the priority commonly accorded to the principle of autonomy (see Holm 1998). It is important to note that the application of the four principles does not represent the application of a theory as such: they represent a useful framework for highlighting the moral dimensions of a situation, but a great deal of work is required in thinking about prioritising, balancing, and specifying them.

Even within the fruits of theory model, including Kantianism, utilitarianism and principlism, there is criticism of the degree of abstraction which they exhibit. Other models thus attempt to take a more contextual and relational approach (e.g. Alderson 1991), leading to criticism also of the universalism as found in documents such as the Universal Declaration of Bioethics and Human Rights (Rawlinson and Donchin 2005). Feminist ethics, for example, critically examines issues of power, and assesses issues from the perspective of the more vulnerable party. In discussions of the abortion issue, for example, or of reproductive technology, feminist ethics will not in an abstract way discuss the status of the fetus or the right to life, nor does it operate with the ideal (which might be regarded as prominent in several other approaches) of the abstract autonomous individual; rather it will look at the position of the woman who has to carry the fetus or who has to undergo assisted reproductive techniques, and the ways in which power relations in society have an impact on options and decision-making.

It is thus not only the individual case that is at stake - the distribution of power in the wider social context is important.

Feminist ethics has some characteristics in common with virtue ethics, which, rather than trying to apply principles, asks what traits of character should be developed, and what a person who has the virtues would do in particular situations. The virtuous person is one who, because he or she has the virtues, can *see* what is appropriate in particular cases (cf. Statman 1997; Banks and Gallagher 2008).

A problem with the fruits of theory approach, over and above the fact that there is considerable and apparently irresolvable disagreement about the theories themselves, is that the model presupposes that there is a clear understanding, or agreed description, of what the theory in question should be applied *to*. Arguably a prior task of applied ethics is to elucidate what the ethical issues *are* and there is a concern, especially in ethics as applied to the professions, that those working in the field will uncritically accept problems defined in a particular way (see e.g. O'Neill 1986). Contemporary debates about ethical aspects of developments in science and technology frequently focus on issues such as informed consent, safety and risk, privacy and security, conflict of interest, and professional responsibility. It is important to ask if significant matters of ethical concern are overlooked, such as the factors that influence the choice of areas of research.

In the light of considerations such as this, and also disagreements between different theories, antitheorists argue the desirability of doing applied ethics without theory. One way in which this finds expression is in judgment about particular cases. Particularism objects to the search for universally applicable principles on the grounds that what counts as a reason in one case may not be so in another (Dancy 2004). The approach of casuistry starts from cases and principles (analogous to case law), and emerges from these, rather than being developed in the abstract and applied from above (Jonsen and Toulmin 1988). Specific developments and particular cases may affect the development of appropriate theory, and some argue that there is room for a bottom-up rather than a top-down approach.

One may thus distinguish a number of general models for doing applied ethics: theory application, mid-level principle application, feminist contextualism, virtue contextualism, and case-based casuistry. The first two apply some form of theory and may be described as top-down models; the middle two are more concerned to apply traditions of reflection that emphasise context; the last is a very bottom-up model that applies one case to another. In regard to issues related to science and technology, top-down models are perhaps more common, with much of the literature in biomedical or

computer ethics tending to illustrate this model. Context models exercise a stronger role in discussions of the responsibilities of professionals. Casuistry is no doubt the least common approach to doing ethics in science and technology, in part because many of the ethical problems associated with science and technology are so unprecedented that argument by case analogy is a stretch.

Challenges

Against all models of applied ethics certain challenges remain. One focus of concern is the notion of the ethical "expert". What might be meant by ethical expertise is problematic and this issue has become a high profile one as applied ethics has become increasingly involved or even institutionalised in public policy. There is scepticism regarding whether any one group of people have privileged access to the truth about what ought to be done – although insofar as applied ethics admits a plurality of legitimate approaches, this criticism can be moderated.

This issue is not, therefore, unconnected with that of the models of applied ethics being practiced. On the fruits of theory model, one concern is that principles developed in one field of expertise, such as Philosophy, are (mistakenly) applied to another area of activity, such as the health care professions (see e.g. MacIntyre 1984). There are questions here about whether it is possible or desirable for principles to be developed externally rather than internally to the profession in question.

Are there alternative notions of expertise that might be available (Parker 1994)? One possibility is that expertise in ethics involves familiarity with a range of views, skills in reasoning, and argumentation, and an ability to facilitate debate. Philosophical reasoning skill is prioritised. Insofar as this is the case, applied ethics expertise could be committed to a kind of ethical pluralism. In applying ethics to particular issues, discussions from more than one perspective are to be preferred to discussions from only one perspective. For some, however, this liberal approach constitutes a kind of relativism. There are still questions about the identification of the ethical problems about which such reasoning is required: about whether this is a matter for particular professional groups or whether they can be identified from outside by ethical experts. It may be the case that this is not a situation in which an either/or approach is desirable, but that it should be a collaborative venture. Thus policy making on science needs to include the perspectives of both science and ethics so that greater insight can be achieved through dialogue. It is essential that ethics in this area is scientifically informed but it is also the task of ethics to question assumptions about aspects of science that may raise issues of ethical

importance but which may have been overlooked.

A more radical objection to the notion of expertise comes from those who see applied ethics, and in particular bioethics, as an assertion of power on the part of a certain group. Bioethicists themselves, from this perspective, arguably form a powerful professional group who have been very successful in attracting large amounts of funding for their research and who have acquired seats at the policy table. Bioethics can then be seen, not as a field of study, but as a site of struggle between different groups, where philosophers, for example, claim to have a special role. In addition to these challenges to applied ethics in general, however, there are particular issues about the relationship between ethics, on the one hand, and developments in science and technology, on the other.

Science and Technology

The assessment of science and technologies is made more problematic by the ways they extend the reach of human power across ever wider spatial and temporal scales (Jonas 1982). The revolutionary power of IT, for example, has already been mentioned. Precisely because science and technology were traditionally limited in the extent to which they could know the world and transform it, issues of scientific and technological ethics seemed marginal in relation to ethical reflection on politics and economics, in which contexts human behaviour could have much larger impacts on other human beings. But in the contemporary world politics and economics have themselves been transformed by science and technology – and science and technology challenge ethics itself. These considerations lend weight to the view that over and above the assessment of individual technologies, there is a need for attention to technology's overall impact on the human condition. This is more apparent in continental philosophy than in Anglo-American applied ethics (Mitcham and Nissenbaum 1998).

Even within the Anglo-American tradition, however, there are special challenges: first there is rapid development not only in science and technology themselves but also in the opportunities and potential for use (and, increasingly, the potential for dual use). The speed of change requires a similarly swift response on the part of society in terms of ethics, policy and legislation. It is frequently argued that ethical deliberation comes too late, although in the case of the Human Genome Project ethical research was funded alongside the science. The difficulties posed by the speed of change are further complicated by the fact that the development of technologies arguably pose challenges for ethical frameworks themselves. In other words, we can no longer continue to think in ways that

were once comfortable. This is not just a point about how attitudes *do* change: certain ways of thinking turn out to be no longer *thinkable*. This is because new technologies push ethical frameworks to the limits so that their application is at best uncertain. So even for those who subscribe to a ‘fruits of theory’ approach, it is therefore not simply a matter of ‘applying’ ready-made theories to the possible implementation of technological advance – developments in the life sciences and other technologies can lead us to rethink theories and even concepts. Ethical theories emerge in particular social and historical contexts, so why should we assume that they can automatically apply in other contexts? Thus there has been much discussion about genetic exceptionalism and the extent to which genetics requires rethinking of ethical doctrines such as the importance of confidentiality, since blood relatives have an interest in genetic information about those to whom they are related. The thesis of genetic exceptionalism is, however, hotly contested by arguments that genetic information is not different in kind, only in degree, from other kinds of medical information.

Whatever model of applied ethics is preferred, there are questions that inevitably arise. Developments in science and technology give rise to different sorts of questions for applied ethics. The first concerns what should be done about the new possibilities with which we are presented, such as whether or not it is desirable to try to extend the normal human lifespan by, say, fifty years. There is a question here about where the burden of proof should lie: some argue, in relation to such possibilities of human ‘enhancement’, that the onus is on those who want to prevent such developments from occurring. Either way, these possibilities need to be considered in the light of the social and political context. For example, in so far as new technologies have the potential to offer benefits, what are the issues of equity of access and concerning the sharing of the benefits between different population groups? Analogous questions apply to consideration of the distribution of any attendant burdens or disadvantages.

When new developments occur, they not uncommonly give rise to anxieties about possible consequences, and these anxieties find expression in some commonly used arguments that are not always easily identifiable with any particular theory. In part, this may arise from previous experiences of things going badly wrong. However, anxiety may arise precisely because there is no experience on which to draw. In other words, what is feared is the unknown. Even then, however, there may be an appeal to experience of things going seriously wrong in other fields when human beings ‘go too far’. The response to certain developments, conceptualised as the crossing of limits or boundaries that should not be crossed, may be at least in part an expression of such a

view. The playing God objection to new developments is frequently voiced in arguments about science and technology. It is not always clear what the objection amounts to or how seriously it should be taken: it may rely on a sense of the ‘natural’ or ‘fitting’. In so far as it points to undesirable consequences of the exercise of new powers, however, it may suggest caution. Advocates of caution sometimes deploy the precautionary principle, which has been used by a number of policy-making bodies. Slippery slope arguments are also frequently used in arguments about taking new steps – and typically envisage something unpleasant at the bottom of the slope (for example, scenarios of mass reproductive cloning).

At a deeper level, new developments lead to challenges concerning our interpretation of the very concepts at stake. New technologies can lead to a new understanding of concepts such as life, death, health and disease. In the postgenomic era, one of the purported outcomes of pharmacogenomics, for example, is that it will lead to different disease classifications as we are able to rely less on symptoms and more on explanations of underlying mechanisms. The way we think about our identities as individuals and as members of groups may also be affected, as information is forthcoming about ways in which we are related, genetically speaking, to each other and to other species.

What is particularly challenging for applied ethics, however, is the way new technologies may lead to reconsideration of our *ethical* concepts. Autonomy, for example, is a concept that is the focus of considerable discussion. There are different aspects to the debate, including the issue of cultural specificity, the criticism of individualism, and the attempt to produce a relational interpretation, as in some feminist work in bioethics. Privacy is coming under threat from a variety of directions: surveillance technologies, interoperability of databases and data mining, and whole genome sequencing (Lunshof et al 2008).

Ethical Tools

In the light of the multiplicity of approaches in applied ethics (see Chadwick and Schroeder, 2001), some of those working in the field have tried to identify ethical ‘tools’ to assist in the identification of the ethical dimensions of a situation and which reflect the variety of the field. An example of this would be the ethical matrix developed by Ben Mepham in the context of food ethics (1996). The matrix does not apply a theory as such but borrows from the Beauchamp and Childress principles of biomedical ethics. It seeks to provide a structured way of identifying the interest groups affected by a given new development and assesses the ways in which they will be affected in a number of dimensions: autonomy

and rights; well-being; and justice or fairness. It does not purport to be a decision procedure that will produce answers (as in the engineering model) but a useful tool to assist deliberation.

So What is to Be Done?

Although the debates about the relative merits of theory and anti-theory continue, along with arguments about the nature of expertise, if such exists, what cannot be doubted is that there are questions to be addressed. To find a solution it is necessary to discuss the proper relationship between empirical social science and ethical theory: just as there are questions about the relationship between science and technology and ethical theory, there are analogous questions here, such as the ways in which the so-called 'common morality', on which principlism, for example, draws, is to be described. Applied ethics requires collaboration, not only between philosophers and professionals, but also between different academic disciplines. The question is, *how* are they to collaborate? (cf. Arnason 2005).

The repertoire of philosophical theoretical approaches is very diverse, and yet applied ethics may sometimes be regarded as privileging certain ways of framing the issues.

What has to be borne in mind is that these issues constitute lively debates *within the field*. As the following quotation, from the Bioethics literature, shows, there are voices in Bioethics who are pointing to two challenges that need to be addressed:

how to shift the locus of bioethical dialogue to bring to the foreground implicit assumptions that frame central issues and determine whose voices are to be heard and how to sharpen the vision of a global bioethics to include the perspectives of the marginalized as well as the privileged (Donchin and Diniz 2001, iv).

The point about 'framing' in the above quotation is important. Any theoretical approach 'frames' the issues in a particular way, drawing attention to what the 'framer' considers to be the salient points of a situation. Such approaches, however, can be blind to other concerns – for example those anxieties that members of the public may have, whether or not they are key stakeholders in some specific issue e.g. by virtue of being a member of a patient organisation.

Any purported resolution of an ethical issue depends on some theoretical presuppositions. The above analysis suggests that it is important to have regard to what frame is being imposed. Thus three things at least are necessary:

- (1) the identification of the ethical dimensions of situations
- (2) decisions about what to do
- (3) awareness of limitations of the frame and openness to revisiting it

Philosophers and social scientists have complementary roles to play. For example, in (1) there is a need for both empirical research and conceptual analysis. It is not simply a matter of empirical research providing data for philosophers to think about. Empirical research can map changes in concepts, and expose the limitations of certain forms of argument in particular contexts, as well as providing information about 'public attitudes'. There needs to be negotiation about the nature of the problem being addressed and identification of areas of possible conflict of interest.

Decisions about what to do depend upon reasons, whether these are regarded as particular or universal – they emerge in the light of the framing of the problem, even if it is not a straightforward application of a principle. Ethical tools also have their role – they offer systematic ways of looking at different possible frames, and may also help the process of ongoing interrogation of the adequacy of the framings.

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Fourteen Kinds of Social Contract

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Abstract

Anyone familiar with much of the social-contract literature will have noticed that the sense of “social contract” can differ a good deal from field to field, for example, from political theory to business or medical ethics, and even from writer to writer in a single field, say, from Locke to Rawls. For some of these senses, we have well-established distinctions, for example, that between hypothetical and actual contract. For other uses, we have no established distinction. But more significant than any lack of particular distinctions is, I think, the lack of a *general* classification of social contracts that brings out fundamental differences between them. That is what this article offers. My classification has two dimensions. One concerns “contract”. “Contract” can be used literally or in some (more or less) extended sense ranging from close analogy to distant metaphor. The literal sense supports one sort of obligation (“formal moral obligation”); the analogical or metaphorical sense (generally) supports another (if it supports any moral obligation at all). The other dimension concerns “social”. The “society” in “social contract” (whether the contract is literal, analogical, or metaphorical) may be either the result of the contract or a party to it and, whatever its relationship to the contract, the society may be one of several kinds of human association (moral, governmental, legislative, civil, or political). Arguments valid (or sound) for one sort of society may not be for another.

Key words : Hobbes, Hume, Locke, Rawls, political obligation

“The development of observational anthropology and empirical sociology in more recent times makes it entirely unlikely that contract in anything but a strictly hypothetical form will ever be adopted again by political theorists.” (Laslett 1967)

“I find its origin in two affiliated concepts: the actual contracts and grants that science policy scholar Don K. Price placed at the center of his understanding of the ‘new kind of federalism’ in the relationship between government and science; and a social contract for scientists, a relationship among professionals that the sociologist Harriet Zuckerman described as critical to the maintenance of norms of conduct among scientists. Either or both of these concepts could have evolved into the social contract for science.” (Guston 2000)

While political theory (in the narrow sense) remains the home of “social contract”, the term has spread well beyond. Zuckerman’s “social contract for scientists” is just one of many far-flung uses. “Social contract” has appeared in the title (and argument) of recent scholarly work ranging from moral theory to business ethics, sociobiology, and sustainable agriculture. (See, for example: Donaldson and Dunfee 1999; Binmore 1994; Skyrms 1996; and Francis, Bird and Poincelot 2006.) The term also appears surprisingly often in practical contexts. A recent web search (June 30, 2009) turned up (among others): a “Debian Social Contract” governing use of the free software developed for GNU/Linux; a British headline, “Banks face a new social contract”; and a “Social Contract Project” (a new community-based way to develop comprehensive plans for neighborhood improvement).

Anyone familiar with much of this literature will have

noticed that the sense of the term “social contract” can differ a good deal from field to field and even from writer to writer in a single field. For some of these senses, we have well-established distinctions, for example, that between hypothetical and actual contract (with many of the social contracts now currently under discussion *not*, as Laslett (1967) predicted, hypothetical but actual). So, for example, while the theory of integrative social contract that Donald and Dunfee (1999) offer begins with one universal hypothetical contract authorizing various local contracts, the local contracts themselves, the heart of their analysis, seem (generally) to be actual contracts. For other uses, we have no established distinction.

But more significant than any lack of particular distinctions is, I think, the lack of a *general* classification of social contracts that brings out fundamental differences between them. The only recent attempts to do anything like what I propose to do here seem to be Freeman (1990) and Buchanan (1990) but both of these focus almost entirely on (what I shall call) the moral contract; they offer distinctions different from those made here and designed to serve other purposes. The distinctions offered here make clear why anyone invoking the potent term “social contract” should be explicit both about the sense used and about how that sense is relevant to the question at hand. I hope what I say will be useful to political theorists in general, but the theorists I most hope to enlighten are those who work in applied ethics – which seems to belong to political theory (in the wide sense that includes social policy) even more than it belongs to ethical theory. It is on the wild frontiers of political theory that the term “social contract” seems most active today.

My classification has two dimensions. One concerns “contract”. “Contract” can be used literally or in some (more or less) extended sense ranging from close analogy to distant metaphor. The literal sense supports one sort of obligation (“formal moral obligation”); the analogical or metaphorical sense (generally) supports another (if it supports any moral obligation at all). The other dimension concerns “social”. The “society” in “social contract” (whether the contract is literal, analogical, or metaphorical) may be either the result of the contract or a party to it and, whatever its relationship to the contract, the society may be one of several kinds of human association (moral, governmental, legislative, civil, or political). Arguments valid (or sound) for one sort of society may not be for another. Even some famous arguments of first-rate theorists turn out to be fallacious (or, at least, misdirected) because they are, though appropriate for one sort of obligation or society, inappropriate for the sort of obligation or society actually in question. (I give some examples of this in Section III.)

I. Contract

By (literal) “contract” (“pact”, “compact”, “covenant”, or the like) I mean a *plan of action* (“*the agreement*”) *performance of which is undertaken by promise, exchange of promises, or any other morally permissible act, however complex, having the same effect morally as a promise, whether binding under positive law or not*. Among acts having the same effect morally are oaths, vows, and accepting payment for some future service (where custom treats acceptance of payment as a commitment to perform). What the appropriate “moral effect” is, I shall say soon, but first I must dispose of some potentially troubling questions related to contract so defined.

Most contracts, especially “social contracts”, arise from an *exchange* of promises or its equivalent rather than from a simple promise. But since the law recognizes “unilateral” contracts as well as “bilateral” and “multilateral”, I see no reason to exclude unilateral contracts by definition. (In a typical unilateral contract, I pay you now in return for your promise to do a certain act at some set time later.) Our use of “contract” should track legal usage as closely as possible. The first social-contract theorist (the pre-Hobbesians, such as Althusius, Brutus, Buchanan, Grotius, and Hooker) were lawyers (or at least legally trained); the lawyer’s understanding of contract is always implicit when they talk of social contract. It is this tracking that underwrites the distinction between “literal” contract and other sorts.

Tracking legal usage even this far may seem a serious mistake. The “social contract”, whatever it is, is a moral concept; ordinary contract, a legal concept. Morality and law, though related in complex ways, are separate ways to guide conduct. Some morally binding promises (such as the promise to pay a gambling debt) may not be legally binding; some legally binding contracts (say, a contract to evict an aged widow into a winter storm) may not be morally binding. Without the assumption of natural law (where “law” is understood literally), the very term “social contract” is (according to this objection) an oxymoron, a serious confusion that, if pursued, must lead the pursuer into worse.

I have two (related) responses to this objection. The first is that it seems to overstate the separation of law and morality. While law and morality do sometimes go their separate ways, they are generally in close communication. Legal categories are refinements of ordinary moral categories. The moral arguments reappear in the legal arguments, having force even when not decisive. (For example, even the judge who refuses to enforce a gambling debt will recognize that, absent a public policy against enforcement, the promise in question would provide a basis for enforcement.) Rather

than thinking of morality and law as (largely) separate domains, we are probably closer to the truth if we think of them as two closely related ways of seeking similar ends within the same domain (for example, as two ways to order the same human relations so that we can all benefit from living together).

My second response is that the objection proposes to *foreclose* a research program by predicting the outcome (too much confusion). Predicting the outcome of a research program, especially in philosophy, is generally risky. When the prediction rests on a controversial assumption (the separation of law and morality), it is even riskier. When it seeks to foreclose research where many already seem to have worked profitably, the foreclosure is almost certainly mistaken. We cannot tell whether tracking legal usage as a way to understand “social contract” will lead to too much confusion until we have tried it.

Though essential for a classification of social *contracts*, tracking legal usage is not without cost in complexity: I have already had to insert “morally permissible” before “act” to exclude obligations created by unilateral wrongdoing. The obligation of a tortfeasor to set things right is not a contractual obligation, even though it does arise from an act and does morally (and legally) obligate. I have also had to allow for contract-making acts “other than promising” (to allow for vows, oaths, and the like). I must now introduce another (related) complexity.

Lawyers commonly distinguish between contracts “implied in fact” and those “implied in law”. The first are literal contracts; the second (according to the common wisdom) are mere analogues (that is, states of affairs that, though not literal contracts, are sufficiently like them to support the use of some contract theory or remedy). A tacit promise – for example, a promise made by the nod of the head or failure to object to an offer where acceptance is ordinarily presumed – creates a contract implied in fact. The facts make it reasonable to infer that the silent act or deliberate inaction served the same purpose as the words “I promise” would have. That is why the act is a “tacit *promise*”, appealing (by the use of “promise”) to the principle of fidelity (“Keep your promises”) rather than some other moral principle.

By “cooperative practice”, I shall mean an activity in which (in large part at least) the participation of others generates the benefits making it reasonable for each to do an assigned part (as long as the others do the same). Voluntary participation in a (morally permissible) cooperative practice (whether the participation is silent enough to count as tacit or not) can also be understood as creating a contract implied in fact. The facts together with the principle of fairness (“Obey the rules of any morally-permissible cooperative practice in which you voluntarily participate”) imply a literal contract to

obey the rules of the practice, for example, the rules of football if one voluntarily plays in a “pick up” game. The chief difference between tacitly promising and entering a voluntary cooperative practice is the moral principle generating the obligation. This difference does not seem important here. Indeed, some moral theorists (e.g. Rawls 1971, 113) have understood the obligation of promise to rest on the principle of fairness (since voluntarily promising is voluntarily participating in a cooperative practice, the practice of promising).

I hope my reliance here on the principle of fairness will raise no red flags, even though the principle has been under a cloud since the seemingly devastating criticism it received in Nozick (1974). I have, it will be noted, limited my use of the principle to obligations generated by *voluntarily* participating in a (morally permissible) cooperative practice. Most attacks on the principle of fairness have been on the “involuntary benefits” version. See, for example, Simmons (1979, 118-36). And even those attacks are hardly devastating. One can either refine the involuntary-benefits version of the principle, as Arneson (1982), did, or show that Nozick’s original criticism and that of most of his successors depend on examples that, upon careful examination, fail to support the criticism, as in Davis (1987) or Klosko (1987).

Some lawyers would classify any contract resting on the principle of fairness as implied in law rather than in fact. Appeal to “equity” (substantive justice) or any other non-promissory principle is (they would say) what distinguishes contract implied in law from contract implied in fact. Though a fair point, this legal nicety is not relevant here. We can easily distinguish those contracts implied in law that otherwise seem literal contracts from those that seem to be something different, what we may call “contracts *merely* implied in law”. Here is a typical contract *merely* implied in law: You pay the taxes owed on *my* house without my knowledge, believing the house to be yours. You later discover your mistake and ask me to reimburse you. I refuse. You may now sue me for the amount in question under a theory that the law “implies” a contract between us to return benefits mistakenly bestowed (a right of restitution) (Corbin 1952, §19).

This “contract” merely implied in law lacks much that is characteristic both of promising and of voluntarily participating in a cooperative practice. First, and most important, I was entirely passive. I could have been out of town when I entered the “contract” or in the middle of a year-long coma. I am obliged not by what *I* did but by what *you* did (as if you accepted my offer to repay, an offer I never made). Second, any rationale for holding me to this “contract” will *not* sound much like the rationale supporting a (typical) contract. You cannot, for example, argue that if I did not want the obligation to repay you, I need only have prevented you from paying

my taxes. Had I known that you were about to pay my taxes, I would have prevented you. But it is precisely that opportunity to prevent, an opportunity that would bring this case much closer to ordinary contract, that is missing. Last, you and I do not seem to be part of any cooperative practice the rules of which require me to reimburse you for your mistake – except, of course, for the law itself and ordinary morality, if either does require it. The intermediate convention characteristic of promise implied in fact (that is, a particular promise or the rules of a particular cooperative practice) is missing. For these reasons (and perhaps others), lawyers often call a contract merely implied in law a “quasi-contract”, that is, something less than a literal contract (Corbin 1952, §19). And, for these same reasons, I shall classify all contracts *merely* implied in law as analogues or metaphors while classifying contracts resting on the (voluntary) principle of fairness (as well as those resting on the principle of promise) as literal.

By “consent” I shall mean any act by which one comes under a contractual obligation, whether “I promise....”, an oath, a nod in answer to a question about promising (“Do you agree...?”), or some other act creating literal contract (such as entering a voluntary cooperative practice). As used here, “consent” includes both what lawyers call “acceptance” (the act that converts an offer into a contract) and “offer” (once accepted). While many discussions of “social contract” combine this sense of “consent” with one or more of its non-contractual senses, we should avoid such combinations. Combining several senses of “consent” is the flimsy bridge by which even a careful writer can move, without quite noticing, from literal contract to “contract” in a merely analogical or even metaphorical sense. Since my subject is social *contract*, not consent generally, I shall treat “consent” as a mere technical term here. So, for example, it is no objection to my definition that if I “consent” to my son’s marriage, the consent is a mere permission, concurrence, or express approval, perhaps a sharing of responsibility, but not the contracting of a new obligation.

Ordinarily, the moral effect of a contract is *formal* moral obligation, that is, a moral obligation to do what the contract requires (more or less) independent of what it specifically requires. Any obligation that is not formal is *material*. Material obligations are wholly determined by their content, that is, by the particular helps and harms involved, including both the distribution and justification of the helps and harms. We cannot show that someone has a material obligation – for example, a certain obligation of gratitude, compensation, or restitution – without going into the details (“content”, “substance”, or “material elements”) of what she is supposed to do and why she is supposed to do it. When we have exhausted the content, we have exhausted the moral reasons

establishing the obligation. In contrast, we can establish a formal obligation (at least *prima facie*) without going into content in any way; we can point to the consent (the promise or what is enough like a promise). “You promised” is itself a good reason, all else equal, to do as you promised (whatever you promised).

Contracts obtained by force, trick, or some other improper means are, of course, void whatever their content. They are mere counterfeits of contract – because the consent is counterfeit. *Generally*, such contracts do not create even a *prima facie* moral obligation. On the rare occasions when they do, they create the obligation for extraneous reasons, for example, because some innocent third-party will suffer in this or that way if the contract is not carried out. Such contracts, whether creating a moral obligation or not, are, we might say, *formally* void. Any obligation they create must be material, because evaluating the extraneous reasons means going into all the details of the obligation. (There are other complexities about what makes a contract formally void that we may ignore here.)

Some contracts, though not formally void, still create no formal (moral) obligation. *Void on their face*, they are standard exceptions to the moral rule making contracts binding, for example, a commitment to do the impossible or to do what another moral rule explicitly forbids (as in a contract to murder). We need only understand such a contract to know that it can (as contract) have no moral claim on us. There is (we might say) a “surface flaw”.

All other contracts, *whatever their content*, generate a *prima facie* moral obligation to do as the contract says (a formal moral obligation, all else equal).

Contracts ordinarily turn acts otherwise morally indifferent – or, at least, not morally required – into moral obligations. Where a (morally permissible) contract conflicts with other moral obligations, there is a conflict of obligations. A conflict of obligations does not void any of the obligations. The conflict, being unfortunate but now inescapable, must be resolved by some combination of excuse, apology, compensation, and compromise. Some obligations may “override” others, but the others are not thereby extinguished, merely forced to claim other avenues of satisfaction. Conflict of *prima facie* obligations is a hazard of moral life. Since our subject is only *prima facie* moral obligation, we may ignore such hazards now.

We may now distinguish at least two ways in which a “contract” (in some sense) can be less than a literal contract. First, some states of affairs resemble contracts in being outcomes we can interpret as a result of calculation, negotiation, or other activity common to the making of contracts. We can fruitfully generalize or transfer certain parts of the theory of contract, ideas about *process*, to these conceptual neighbors. Rawls’ hypothetical contract belongs to this category. Rawls

uses certain theories relevant to contracting (such as the theory of games) to help us understand justice, something not actually the result of contract. We are made to see how the principles of justice might result if entering society were entering a voluntary cooperative practice under conditions acceptable to all. Though the principles of justice are not conventions, thinking about them as if they were helps us to see how reasonable the principles are. David Gauthier (1986) has attempted something similar for morality in general; Veatch (1981) for medical ethics in particular.

Second, other uses of “social contract” rest not so much on claims about process as on claims about *outcome*, a certain obligation or set of obligations. If the obligations in question are formal moral obligations, the use of “social contract” may well be justified by close analogy (supposing the contract not to be literal). For example, Kant (1999, 146) understands the “original contract” to be the “means by which the people constitute themselves a state”. While he considers such a contract to be a mere “Idea” which may, or may not, have been realized in practice as an “actual contract”, he nonetheless derives (something like) a formal obligation from it: “It is the people’s duty to endure even the most intolerable abuse of supreme authority [whatever origin that authority may have had]” (Kant, 1999, 116 and 125). For Kant, the (*prima facie*) moral obligation to obey the law seems to be formal, that is, *entirely* independent of its content (“even the most intolerable abuse”). Though not relying on fairness or (historical) promise, Kant’s “Idea” is a (relatively close) analogue of literal contract.

If, however, the obligations in question are neither moral nor formal, the analogy with literal social contract may be strained enough to become metaphor. So, for example, when politicians speak of “rewriting the social contract with science” but mean only unilaterally changing the regulations governing science, the term “social contract” is a mere metaphor (perhaps a reminder of mutual dependence). There is little, if any, contract theory at work.

In principle, the line between literal contract and analogue is sharp: the contract (that is, the formal moral obligations in question) must rest on the fact that the ordinary circumstances of contract, including consent, are realized. Where any of these circumstances is absent, the “contract” in question can (at most) be a close analogue of literal contract. In practice, though, we may have trouble deciding whether a certain contract is literal. For example, many scholars think Hobbes’ *Leviathan* presents a theory of hypothetical contract to obey government (an analogue of contract); others, that it presents a theory of literal (but tacit) contract.

The distinction between analogues of contract and mere metaphorical contracts is, in contrast, not sharp even in theory. Analogy as such is a matter of degree. If

metaphor is a striking likeness in the midst of difference, then metaphor is itself a distant analogy. Insofar as metaphor differs from analogy, metaphor allows little or none of the interesting transfer of theory from the domain of contract that analogy does. Mere metaphor, though not always theoretically sterile, is a device of exposition or imagination rather than theory.

II. Societies

We may distinguish at least five senses of “social” in “social contract”: moral, governmental, legislative, civil, and political. Since the social contract (whatever it is) always ends the “state of nature” (the condition before the contract), “state of nature” also has at least five senses, one corresponding to each of the senses of “social”. Let us consider these five senses in order.

The *moral* contract ends the pre-moral condition, creating (what we may call) a *civil society*, that is, a number of persons (rational agents) living together according to rules (more or less) acceptable to all. Civil society is where clubs, churches, charities, markets, professions, and other voluntary associations are possible. Civil society is the conceptual space between what is morally wrong and what (positive) law (justifiably) requires or forbids. How large a space civil society occupies depends not only on how much law, if any, there is in a particular locale, but also on how “demanding” our conception of morality is. So, for example, if we were act-utilitarians, we might think even the Debian Social Contract to be a mere restatement of what the principle of utility requires us to do with the software even without a contract (insofar as the contract is morally obligatory at all). If, instead, we believe morality to be much less demanding (consisting, say, only of a few side-constraints), we should have little trouble seeing how the Debian Social Contract could add to our moral obligations. We have whatever new (morally permissible) obligations the contract says we have. Act-utilitarianism would rule out of civil society much (perhaps all) that a less demanding moral theory would permit.

The moral contract is the (logical) pre-condition of all moral obligations. Without the moral contract, there can be no moral obligations, only prudence or impulse (and perhaps moral considerations less demanding than requirements, such as moral ideals). The foundation of all moral obligations, the moral contract itself cannot impose a formal moral obligation – and so, cannot be a literal contract. The “moral contract” is nonetheless analogous to literal contract in at least three ways (each enough to support an analogy): First, the “moral contract” turns acts morally indifferent (or perhaps morally good) into acts morally required or forbidden.

(How it does that is always an interesting question.) Second, the moral rules that constitute the terms of the “moral contract” can be understood as arising from contract-like negotiation (or, at least, calculation) in a pre-moral state. Third, insofar as the moral rules are understood as “conventions” (arrangements to some degree arbitrary), the terms of “moral contract” will resemble the terms of ordinary contracts (since ordinary contracts are, in part at least, conventions). The moral contract seems to be the focus of most sociobiological writing on “the social contract”.

Though Hume is generally considered the great enemy of social contract, he in fact recognizes social contract – *if* “contract” carries this first sense. Hume held that part of morality, including justice, is the result of (actual) conventions not deriving their moral force from other conventions. These conventions transform a civil society having certain disadvantages (no possibility of making promises, possessing much, suing for damages, and the like) into a civil society, civil state, or legal system in which such things are possible. Insofar as actual conventions are contracts in a sense (that is, are an analogue of literal contract), Hume explains the part of morality that is not “natural” as arising from one or more “social contracts” (though, of course, he wisely avoids the term) (Hume 1961, bk. III, pt. II, sec. 2).

The *governmental contract*, the second sort of *social* contract, ends a pre-governmental condition, providing those party to it with a civil *state* (a standing administrative, executive, or judicial framework, or some combination of these). There are at least three versions of the governmental contract. In one, would-be subjects contract with the government (or would-be government) directly. They individually end their own pre-governmental condition. In the second version of the governmental contract, the would-be subjects form a corporate body first, *a people*, and this people contracts with some person or persons to be the government. The third version mixes the other two. Some would-be subjects form a people and contract with a government; other subjects enter by individual contract with the government (rather than with the people). (Good examples of the governmental contract all seem to be pre-Hobbesian, for example, Brutus 1924, and Buchanan 1964.)

The governmental contract can be “social” in one of two ways. When the government contracts with the people (one sense of “society”), the contract is social insofar as it is a contract *with* society. When the governmental contract is among individuals, the contract is social insofar as choosing the government creates a society; it is a contract *for* society (the society organized under the civil state). Hobbes’ original covenant (“commonwealth by institution”) is a contract for a society (in this sense), though a contract for both

government and legislature (Hobbes 1958, Ch. 20).

A *legislative contract* is a contract among individuals creating a standing legislature (formal procedure for making laws or similar rules). The legislative contract ends the pre-legal condition, creating a *jurisdiction*, that is, a set of persons subject to the same law-making body. The legislative contract is distinct from the governmental contract only insofar as legislation (including subsidiary rule-making) is distinct from adjudicating, executing, and otherwise administering the laws. Even when distinct from the governmental contract, the legislative contract can take any one of the three forms the governmental can (individual, corporate, or mixed).

If the legislative or governmental contract occurs *after* the moral contract, it can be a literal contract. But it need not occur after; and if it does not, it cannot be a literal contract. Consider Rousseau’s “social compact”. It is a good example of a legislative contract which, though morally binding, is not literally a contract – because it comes too soon. For Rousseau, the pre-legislative condition is also a pre-moral condition. The legislative contract makes us moral agents even as it subjects us to law:

The passing from the state of nature to the civil state [rule of law] produces in man a very remarkable change, by substituting justice for instinct in his conduct, and giving to his actions a moral character which they before lacked. It is then only that the voice of duty succeeds to physical impulse, and a sense of what is right, to the incitement of appetite (Rousseau 1947, 18-9).

For Rousseau, the legislative contract binds because, and only because, the alternative, life in the pre-moral condition, would mean giving up justice for impulse and appetite. Moral agents cannot make that choice, that is, cannot morally choose to become indifferent to morality. For Rousseau, the transition from the state of nature to the “civil state” (legal jurisdiction) is not even necessarily chosen (in any important sense). Most children undergo the transition as they grow up. They are born slaves of impulse, learning to act morally much as they learn to speak grammatically. They become moral agents before they know it (and therefore “consent” before they realize it).

Since Rousseau explicitly rejects the governmental contract (and says nothing about political or civil contract), *The Social Contract* in fact has no literal contract whatever, only that relatively distant analogue of legislative contract just noted. What *The Social Contract* seems to have instead (whatever Rousseau’s intention) is a theory of how the Greeks understood political legitimacy – put in terms of the republican discourse common in the eighteenth century. For theorists of literal

social contract, in contrast, the social contract (whether governmental, legislative, civil, or political) is possible because, and only because, morality (“the law of nature”) already governs the corresponding “state of nature”.

A *civil contract* ends a domain of morally permissible action within civil society, turning acts previously optional into moral obligations. The civil contract is a relation either between the individual members of a civil association that the contract itself creates (such as a club or law firm) or between some members of civil society (scientists, say) and civil society as a whole (the civil society acting through government, legislature, or people). So, for example, some writers on professional ethics explain the special obligations of a profession (those in its code of ethics) as arising from a contract that the members of the profession make with each other or with society. When the terms of this “contract” do not play an important part in the proof of obligation (that is, when the obligations supposedly resulting from the contract are formal) and the consent is (more or less) voluntary (for example, given by claiming to be a member of the profession or otherwise participating in it), there may be a literal (morally binding) contract. When, however, the terms of the contract are not conventions (when, say, the terms are simply deduced by applying ordinary morality to the circumstances of the profession), or the “consent” is not voluntary but ideal, hypothetical, mere submission to what “society says”, or the like, there is only an analogue of contract or just a metaphor.

Any contract between a civil association and a non-member, for example, a contract of sale or employment, is a private (rather than social) contract; that is, unlike social contracts, this sort of contract is generally regulated by ordinary civil law – and creates no new society. For an example of a (literal) social contract between members of a profession, see Davis 1998, 43-60. For an example of a (hypothetical) “social contract” between the profession and society, see Veatch, 1981. The Debian Social Contract is an actual social contract in this civil sense; Guston’s contract between science and society probably is not. (For detailed explanation of why science probably has no contract with society, see Davis 1995.)

The *political contract*, the last of my five, ends a pre-political condition, creating *political society*, that is, a number of individuals (citizens) capable of acting as a single self-governing body (as in the American Constitution’s “We the People”). A political society is a corporate entity, not just a civil society (a number of people living together), a civil state (the subjects of one government), or a jurisdiction (the subjects of one legal system). Like the legislative or governmental contract, the political contract can be a literal contract only if morality is already in place. The political contract can

impose formal moral obligations if, but only if, it is a literal contract and includes consent to law (“law” here being the positive rules of conduct that a self-governing people enacts for itself – and those subject to it – directly or through representatives). Locke’s *Second Treatise* presents a good example of a theory of (literal) political contract. Locke (1947, §211-43) explicitly argues that political society survives the dissolution of government and the disbanding of the ordinary legislature. (For a defense of this literal-contract interpretation of Locke, see Davis 2002, 239-78.)

If political contract operated only within the conceptual space between morality and (positive) law, it would be a special case of civil contract (as the charter of a political party is). But that is not where it operates. The political contract necessarily operates within government and legislative. The political contract is a contract by which individuals gain the (joint) power to make laws for themselves (directly or through representatives). So, for example, Locke (1947, §87) says: “there is only political society where every one of the members hath quitted his natural power, resigned it into the hands of the community in all cases that excludes him not from appealing for protection to the law established by it.”

Though a civil contract may make some laws formally morally obliging (for example, when a profession’s code of ethics requires obedience to law), or even seek to influence how laws are made (as the charter of a political party does), a civil contract cannot be a contract for self-government (the joint making of laws). Such a contract is always (by definition) political rather than civil. So, Nozick’s protective associations are mere civil associations, the products of civil rather than political contract (though the associations perform some services a civil state typically performs). Even Nozick’s “minimal state” is not a state at all (that is, a civil jurisdiction or civil state in our sense), since (by definition) it lacks the power to make or enforce laws; its only power is to protect natural rights. (See, for example, Nozick 1974, 52.)

The choice of the terms “civil” and “political” for this distinction is somewhat arbitrary. Etymologically, the terms are almost twins. “Civil” comes from the Latin for inhabitant of a city (*civis*) just as “political” comes from the Greek for city (*polis*). Yet, the choice is not altogether arbitrary. It tracks some common uses. For example, Americans typically distinguish the “*civil* rights” of freedom of religion, equal access to employment, and so on from the “*political* rights” of voting, running for office, and so on. Civil rights (in this sense) seem to be precisely those rights one can have even in a mere civil society (in our sense); political rights, the rights of self-government that go with membership in political society (in our sense).

The distinction between political society, on the one

hand, and government and legislature, on the other, is, I believe, important (as I shall suggest below). Since some readers may find the distinction counter-intuitive enough to seem unclear, let me clarify it by giving two examples, one of governmental and legislative contract without political society and the other, of a political society without government or legislature.

First, how can there be a governmental or legislative contract but no political society? I can make a (literal) contract for government or legislature without contracting for *self*-government. I may, for instance, trade an oath of allegiance to a government (or legislature) for its protection without joining the corresponding political society. This is precisely what one does when one becomes a resident alien. The alien voluntarily comes under the government and laws (as a subject) without becoming a citizen in the full sense (a member of political society). A whole people (or, perhaps, each individually) might do much the same, for example, by agreeing to be the colony of another country. They would (assuming no flaw in the contract) thereafter be morally bound to law and government over which they had no control. They would constitute a civil state and legal jurisdiction (perhaps even a relatively just one) but not a political society.

Second, how might a political society exist without government or legislature (and so, without governmental or legislative contract)? Consider a number of people agreeing with each other to be bound by the laws they make. They might, being a small number, agree as well to meet whenever there is a reason to interpret, enforce, or change the law (without agreeing on a set procedure for doing so). They would constitute what anthropologists now call “a stateless society”, that is, a number of people living in the same region in (relative) peace with common customs (laws) and substantial interchange, but without (standing) legislature or (standing) government. They would lack a (distinct) contract creating a legislature or government. They would nonetheless be a political society, that is, a society for self-government. They would have governance without government, legislation without legislature.

Some critics of social contract admit the possibility of political contract, indeed, admit its realization on a small scale now and then (for example, the Plymouth Colony’s founding “compact”), but deny that any political entity as large even as Locke’s England in fact ever had such a contract. For example, Simmons (1993, 199) observes that there is “simply not much evidence in actual states of ordinary citizens doing things that look very much like giving morally interesting consent to political authorities ... hordes of active consenters were no more in evidence in Locke’s England than in twentieth century England.”

The reason Simmons – and other critics of Lockean social contract – have trouble finding “hordes of active

consenters” is, I think, that their theories do not tell them the right place to look. If they looked in the right place, the institutions of political society (in the sense used here), they would find what they are looking for. For example, let them visit the offices of the Chicago Board of Elections. There, on every week day, “citizens” line up to register to vote. By claiming the right to vote, these (nominal) citizens voluntarily enter political society (whatever object they have in view); that is, they become citizens strictly so called, full members of a self-governing people (with the right to vote on election day, to sign nominating petitions, and so on). Registrants do not promise anything; they only voluntarily (and expressly!) claim certain benefits, the political rights of a citizen. Their claim, being accepted, is their consent (that is, their undertaking to obey the constitution giving the benefits in question, whatever in particular – within the bounds of morality – the constitution says and whatever laws it generates). That consent lasts as long as they continue to claim membership (and their claim is accepted). If that quiet line of would-be registrants does not seem active enough or large enough to constitute the “horde of active consenters” Simmons asks for, the Board of Elections need only announce that it is permanently disenfranchising those already registered to bring large crowds into the streets in protest. Though not everyone values membership in political society, “hordes” of us certainly do.

Some social-contract theories are explicitly theories of “legitimacy”, that is, explanations of how a certain otherwise troubling state of affairs (usually, governmental or legislative authority over us) is (at least sometimes) morally justified (morally required or at least morally permitted). Some theories of legitimacy (those of Hobbes or Locke, for example) are (in part at least) explicitly about formal moral *obligation* to obey government, legislature, political society, or a certain civil association. Such theories have a role for literal contract. Other theories of legitimacy are about the *rights* of government, legislature, political society, or certain civil associations in virtue of their utility, contribution to justice, or other reason capable of supporting only material obligation (or no obligation at all). Such theories have no role for literal contract. “Contract”, if it appears at all, will have to work by analogy or metaphor (by appeal, for example, to “hypothetical” or “ideal” consent). Theories of legitimacy relying on literal contract should answer certain questions (Locke’s, for example); theories in which “contract” is an analogue of literal contract or a metaphor should answer others (such as those of Rawls or Gauthier).

Much the same is true of theories of “allegiance”. Allegiance either is or is not a formal moral obligation. If a *formal* moral obligation, it should arise from promise, oath, or other act capable of creating literal

contract. If, however, allegiance is understood as arising from utility, contribution to justice, or the like material considerations, either there will be no moral obligation or the obligation will be material. Any talk of “social contract” will then rely on analogy with literal contract or on metaphor.

III. Some Consequences of These Distinctions

We may combine these distinctions into the following matrix (though, on a three-dimensional page, a cube would be better, allowing for columns concerned with parties to the contract): [see below]

Note that I have omitted “material” from the analogue column, allowing for the possibility that some analogies to contract might generate formal moral obligations (as Rousseau and Kant both apparently believed).

One interesting feature of this matrix is that all but one of the fifteen possible cells is open. Only literal moral contract is ruled out *a priori*. Since no cell necessarily depends on any other, a “contract” filling one cell need not compete with a “contract” filling another. For example, a theory of why we have a formal moral obligation to obey government (we have that obligation because, and only because, say, we swore allegiance to the government) may, or may not, be consistent with

a theory of why we owe formal moral obligation to its laws (depending, say, on whether the government is understood to have the power to make laws or law is understood as arising only from custom).

The independence of the cells suggests at least four questions we might put to any putative reference to “social contract”:

1. *Is this contract a moral obligation?* (If not a moral obligation, why use “contract” at all? What analogy or metaphor underwrites the use?)
2. *Is the moral obligation formal or material?* (If material, why use “contract”? What analogy or metaphor underwrites the use?)
3. *Does the contract create a society* or instead bind individuals or a civil association to a (corporate) society already existing? (What work is “social” supposed to do?)
4. *If the contract creates a society, is the society in question a civil society, civil state, civil jurisdiction, political society, or civil association?*

Would we learn anything worthwhile by putting these questions to anyone using “social contract”? I believe that we often would. I shall now provide some evidence of that a) by examining some classic arguments against social contract (Hume’s), b) by doing the same for a modern critic of literal social contract (Rawls), and c) by examining a claim of contract between public and a profession (Robert Baker’s 1993 analysis of the 1847

Contract	literal	analogue	metaphor
moral (parties: individuals)	[conceptually closed]	explains moral obligations generally (e.g. Gauthier)	suggests an insight into morality generally (e.g. Glaucon?)
governmental (parties: the people, individuals, the government, or some combination)	founds formal moral obligation to civil state (e.g. pre-Hobbes social contract)	explains moral obligation to government (e.g. Kant)	suggests an insight into some moral obligation to government (e.g. British banks and their regulators)
legislative (parties: the people, individuals, the legislature, or some combination)	founds formal moral obligation to laws (e.g. Hobbes)	explains moral obligation to law (e.g. Rousseau)	suggests an insight into some moral obligation to law (e.g. “social contract with science”)
civil (parties: individuals, or civil society with some individuals)	founds formal moral obligation to do what a civil association enacts (e.g. Debian Contract”)	explains moral obligation to what a civil association enacts (e.g. Veatch)	suggests an insight into some moral obligation to a civil association (e.g. “the social contract between business and public”)
political (parties: individuals)	founds formal moral obligation to do what political society enacts (e.g., Locke)	explains material moral obligation to do what political society enacts (obligation to “democratic process”)	suggests an insight into some moral obligation to political society (no example)

Code of Ethics of the American Medical Association). I believe this evidence sufficiently varied to suggest the usefulness of the classification (even if the parsing of examples so far offered does not).

Consider, first, Hume's claim that:

human affairs will never admit of this consent, seldom of the appearance of it; but ...conquest and usurpation, that is, in plain terms, force, by dissolving the ancient governments, is the origin of almost all the new ones which were ever established in the world....Reason, history, and experience show us that all political societies have had an origin much less accurate and regular [than the people's consent]...(Hume 1948, 362)

Question 4 asks us to consider what Hume means by "political societies". The answer seems clear. Hume uses that term (more or less) interchangeably with "governments"; he draws on evidence concerning the origin of governments to establish his claim concerning "political societies". We should therefore understand his "political society" to mean (what we have called) a "civil state". So understood, everything Hume says here may well be true. But if, as I have suggested, Locke understands "political society" in our sense, not Hume's, then this criticism (apparently directed at Locke) is entirely irrelevant. Hume denies that civil states have their origin in consent, but Locke's claim concerns another class of entity, political societies (in our sense), about which Hume says nothing here.

Second, consider what is perhaps Hume's most famous criticism of social contract:

Should it be said that, by living under the domain of a prince which one might leave, every individual has given a *tacit* consent to his authority and promised him obedience, it may be answered that such an implied consent can only have place where a man imagines that the matter depends on his choice (Hume 1948, 363).

Question 2 above instructs us to ask whether the obligation to obey the government ("prince") is formal or material – and if formal, whether it rests on literal contract or on some analogue or metaphor. There is much in Locke's *Second Treatise* that is not clear. But Locke is clear that "Nothing can make any man [a subject or member of a commonwealth] but his actually entering into it by positive engagement and express promise or compact" (Locke 1947, §122). "Tacit" (or "implied") consent, whatever it does, cannot make anyone a member of political society (a citizen of a "commonwealth") – and so cannot explain the formal moral obligations of citizens. For Locke, tacit consent must explain something

else, the obligations of *noncitizens* (those who have not given express consent to enter political society or not had their express consent accepted) – whether visitor, resident alien, or denizen. Further, Locke does not seem to think that every civil state can (rightfully) claim even tacit consent (however free its subjects are to leave). Any civil state not founded on the consent of the people, for example, the Turkish dominion over the Greeks, seems (he says) so unjust that it is not even owed tacit consent. Any subject may (without injustice) rise against it. ("Who doubts but the Grecian Christians, descendants of the ancient possessors of that country, may justly cast off the Turkish yoke which they have so long groaned under, whenever they have an opportunity to do it?" (Locke 1947, §192))

We might then read Locke's appeal to tacit consent as no more than the claim that noncitizens (including native-born residents) owe just government (a government deriving its powers from political society) obedience while (but only while) they remain within its domain. Insofar as a government is just, we have an obligation to defer to its laws. Locke's "tacit consent" would then *not* constitute a literal contract but a quasi-contract. The "contract" should be translatable into non-contractual obligations (an obligation of justice to cooperate with institutions insofar as they are just). On this interpretation of "tacit consent", Hume has simply misunderstood Locke. We can have, according to Locke, (material) obligations from tacit consent (in this sense) without "choice" but only while we are in a reasonably just jurisdiction. And that is Hume's view too (insofar as society's interest includes justice). So, for example, Hume says:

Government is a mere human invention for the interest of society. Where the tyranny of government removes this interest, it also removes the natural obligation to obedience. The moral obligation is founded on the natural (Hume 1948, 112-3).

Locke and Hume in fact thus seem to agree (more or less) about moral obligations arising from mere presence in the "domains of a prince". Locke need only admit that his use of "consent" is analogical for "tacit consent" even though literal for "express consent".

Now let us consider the most important of contemporary social-contract theorists. Rawls uses "social contract" in the moral-analogue sense. His social contract ends "the original position" (a moral state of nature), a condition from which the principles of justice (and, indeed, of all morality) are absent. His "contract" involves no (morally binding) consent, only an "agreement" (that is, a congruence of individual judgments) concerning the principles to govern the writing of the constitution

of one's civil state (and jurisdiction). Rawls has nothing (positive) to say about a political, civil, legislative, or governmental contract. His constitutional convention merely assumes his two principles of justice (and the rest of ordinary morality); his legislature and government, a constitution. His principles of justice leave citizens generally free to form civil associations. His citizens owe what he calls "political duty" because they are subjects of a relatively just government, not because they have literally consented.

To many, perhaps even to Rawls himself, *A Theory of Justice* seems to stand against the possibility of a literal *political* contract – but does it? The two cells in question – moral analogue and literal political contract – are not necessarily related. In effect, Rawls himself admits that: He defines "duty" as a moral requirement resting on considerations of justice *rather than* fairness. Moral requirements resting on fairness, including requirements arising from promise, he calls "obligations". Rawls does not, as far as I can tell, ever say whether a "political duty" is a *formal* requirement, but it seems that it is not. To show that a political duty, say, the duty to obey some law, derives from considerations of justice rather than fairness, one would have to know what the law says. One would have to consider how the law's content comports in every detail with the two principles of justice. One cannot simply rely on (imperfect) procedures to guarantee that the law is, absent surface flaw, free of fundamental flaw (by appeal, for example, to the authority of "the democratic system"). (Hence, Rawls' defense of civil disobedience *in a democracy*, 1971, 363-77.) Rawls also does not say that "political obligation" (as he calls it) is formal. But it seems that it must be: all (prima facie) moral obligations arising from the principle of fairness are. Rawls' distinction between duty and obligation thus seems to track our distinction between material and formal obligation. For Rawls, political duty (a material obligation) and political obligation (a formal obligation) may both be present in society, both absent, or one present and the other absent. They must be (more or less) independent moral entities.

Now and then Rawls even notes this independence. For example, during his "argument for the principle of fairness", he says:

It is also true that the better-placed members of society are more likely than others to have political obligations as distinct from political duties. For by and large it is these persons who are best able to gain political office and to take advantage of the opportunities offered by the constitutional system. They are, therefore, bound even more tightly to the scheme of just institutions. To mark this fact, and to emphasize the manner in which many ties are freely assumed, it is useful to have the principle of

fairness (Rawls 1971, 344).

Rawls thus acknowledges a form of actual social contract ("ties freely assumed"), one by which individuals enter an existing contract one by one (by taking office or taking advantage of other opportunities that political society offers). So, Rawls' theory of justice cannot be, as is often supposed, a competitor of those social contract theories that appeal to literal contract (governmental, legislative, or political) to establish a *formal* moral obligation to obey government, law, or political society. Like other theories relying on an analogue of contract, Rawls' theory of justice cannot answer questions that a theory of literal contract can (questions about political obligation as distinct from political duty). We need not choose between Rawls (whose concern seems to be material obligations of justice) and Locke, Rousseau, and Kant (each of whom – according to our matrix – seems to be concerned with a somewhat different question).

One last example: Writing on the history of medical ethics, Robert Baker argued that the American Medical Association understood the obligations that its 1847 code of ethics assigned physicians, patients, and the public as deriving from (what we would call) a civil contract: "As the three chapter titles to the American code make evident, the profession's manifest intent in drafting the code is to *establish a contract, a quid pro quo, with the public*: the profession, on its part, pledges internal regulation and service in exchange for a societal ratification of the profession's autonomy and prerogatives" (Baker 1993, 191-92). The 1847 code in fact uses neither the language of contract nor even anything like "*quid pro quo*", but simply speaks of (something like) reciprocal duties (in something like Rawls' sense). Consider, for example, Article II.1: "The members of the medical profession, upon whom the performance of so many important and arduous duties towards the community [fall]...., certainly have a right to expect and require, that their patients should entertain a just sense of the duties they owe to their medical attendants."

Our Question 2 asks whether the contract in question is supposed to create a formal or material obligation. Since in each case of reciprocal duties that the 1847 code describes, the duties are connected by material considerations ("just sense of the duties"), the "contract" in question can at most be an analogue of contract strictly speaking – and we are then entitled to ask what use "contract" has here. Baker cannot simply answer that the use of "contract" brings out the reciprocal nature of the duties. Their reciprocal nature is obvious from the language of the code itself. What is also obvious from the code itself, but lost by being described in contract terms, is that these reciprocal relations (are supposed

to) arise from the nature of things. They are not mere conventions. The analogy with contract is not helpful.

The lesson to be taken from what has been said here is not that there is (at most) one true theory of social contract. There may be many true theories, if only because there are many questions (at least fourteen) to which social contract (of one sort or another) might be an answer (or part of an answer). The lesson to draw, if only one is to be drawn, is that we should be more careful in our use of the term “social contract” than theorists generally have been – and even more careful in our use of theories associated with the term.

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Political Patriotism

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Abstract

As evidenced by the reactions to Martha Nussbaum's famous essay of 1996, patriotism is a contested notion in moral debate. This paper explores the suggestion made by Stephen Nathanson that patriotism might be understood as "love of one's country", and suggests that this phrase is misleading. It suggests that patriotism, like love, is not rational, and it fails to distinguish two kinds of object for that love: one's cultural community and one's political community. Accordingly, this phrase can lead to a kind of nationalism which involves chauvinism and militarism and that is, therefore, morally objectionable. The problem arises from ambiguities in the notion of "country" which is said to be the object of such love. Moreover, "love" is not the appropriate term for a relationship whose central psychological function is that of establishing an individual's identity as a citizen. I suggest that the proper mode of attachment involved in patriotism is identification with one's political community, and that the proper object of a patriot's allegiance is the political community thought of without the emotional, nationalistic and moralistic connotations that often accompany the concept of community. The "political patriotism" that arises from such an attitude is sceptical of "the national interest" and does not accept that our moral responsibilities to others stop at national borders. In this way political patriotism is consistent with a cosmopolitan stance towards human rights and global justice.

Key words: patriotism, nationalism, chauvinism, citizenship, cosmopolitanism.

Introduction

As evidenced by the reactions to Martha Nussbaum's famous cosmopolitan essay of 1996, patriotism is a contested notion in moral debate (Nussbaum 1996). Many people think of patriotism as "love of one's country". Stephen Nathanson elaborates on such descriptions by defining it as an attitude that involves:

1. Special affection for one's own country
2. A sense of personal identification with the country
3. Special concern for the well-being of the country
4. Willingness to sacrifice to promote the country's good. (Nathanson 1993, 34-5)

In what follows I will question the appropriateness of

the concepts of "love" and "affection" in definitions of patriotism and also highlight the ambiguity of the notion of "country" that features in them. I will then propose a normative concept of patriotism, which I call "political patriotism." My argument will be that, in contrast to nationalism and other chauvinistic forms of patriotism, political patriotism is an ethically acceptable stance for cosmopolitan thinkers.

Love of Country

To speak of patriotism as a love or a special affection for one's country suggests that it is an emotion. Accordingly, some writers suggest that it is neither rational nor based upon a considered judgement (Keller 2007; MacIntyre 2002; Oldenquist 1982). We do not survey the countries

of the world and make a judgement as to which of them is worthy of our affection. If we have such a feeling, we simply find ourselves with it. Love is not a feeling that is rationally based. In a romantic context, we do not choose whom we might love, but find ourselves falling into love with them. If love were based on a rational appraisal of the beloved, we would be apt to change our affections if we met someone who fulfilled our criteria for romantic excellence more fully than the one we actually loved. But if we were inclined to do this we would not really be in love. If patriotism were a form of love it would also be irrational in this way. We would just find ourselves having such a feeling without any rational basis and without any judgement having been made by us about the worthiness of our country.

Moreover, in all but the most unusual cases, the country that we have the feeling for is *our* country. For most people this will be the country of their birth, but for many it will be their adopted country or the country to which they have migrated. To explain the logical point that patriotism is love of *our* country, we can use the analogy of parental love. Parental love is love for the parent's own child. It is not a love of children generally which happens to be applied to one's own child. It is not love of childlike qualities which, because the parent happens to find them in their child, they then focus their love onto that child. It is the love of that particular child simply because that child is *their* child. In a similar way it is said that patriots love their country simply because it is *their* country. Using the parental love analogy shows that it is true by definition that the country a patriot loves is their own country. They might love or admire other countries for one reason or another but those loves are not cases of patriotism, just as loving another's child is not a case of parental love. The explanation for parental love being necessarily directed upon the parent's own child is clear. Most often it is based on blood ties and in other cases it is based on a bond that is created through adoption or a second marriage.

If we endorse the theory that patriotism is a special case of love: namely, love of one's country, and if we agree that there is no rational basis for such a love, we might nevertheless give an account of how patriots come to love their country. If it is not on the basis of reasons, then it will be a causal and psychological matter. It seems to be a psychological fact about most people that, in the course of their upbringing, they come to love their countries. Most basically, this will be because their own country is the country that they are most familiar with. If their country is the country of their birth, their country will also typically be the place where their most formative and valuable experiences have taken place. It will be the country whose history they have studied in school and celebrated in public events and holidays. At school they will have taken part in rituals such as

saluting the flag. It will be the country whose citizens' achievements have been most celebrated in their news media. The traditional values that they have acquired will be linked to the traditions of that country. Much of their experiences of art and entertainment will have come to them with a significance that speaks to them of their country. In some countries they will have heard stories about ancient links between the people and the land; between the race and its ties to the very soil upon which the country is based. In other countries they will have heard stories about settlers carving a new and civilised life out of the wilderness, or about the battles that were necessary to establish the nation in the face of opposition from invaders or internal threats.

For migrants, on the other hand, there will be stories of families saved from economic hardship, political oppression or religious persecution, and of how the new country has been a source of refuge or opportunity. Migrants tend to enjoy split feelings about their countries. Many continue to feel links to, and take an interest in, the country of their birth, while also finding themselves with positive feelings towards the country in which they have settled. When they return to the country of their birth, whether to visit friends or enjoy a holiday, they often feel a special connection to their old country despite many years of separation. They might feel themselves torn when the football team of the old country meets the football team of the new. Whom will they barrack for? One British politician is reported to have said that it should be part of an English citizenship test that migrants barrack for England in such cases (Sen 2006, 153). The crucial point here is that we are talking about feelings and affections which cannot be artificially produced by rational decisions or certified by loyalty tests. They are a product of an upbringing which is inevitably imbedded in a specific country.

As plausible as the social psychology account sketched here might be, I do wonder whether the picture of patriotism as love of one's country that it gives us is accurate. Is patriotism to be understood as an irrational and socially caused affection for one's country? Are the analogies with romantic love and parental love appropriate? One of the ethical implications of such analogies is that such a love should withstand negative judgements about the beloved. The love of a spouse should survive most if not all misdemeanours that the spouse might commit or blemishes in beauty or character that the spouse might suffer from. Parents should not reject their children when they fail to fulfil expectations or even turn to crime, but must continue to support them out of their love for them. If love of country is like this, does it follow that patriots must continue to love and support their countries even if their governments abuse human rights or engage in unjustified wars? Is there no point at which a rational appraisal of one's

country's moral and political status should counter the positive feelings that upbringing will have produced? If rationality plays no part in one's love of country, then it would seem not. If patriotism is a special affection for one's country, I doubt that we should call it "love" understood on analogy with such irrational forms as romantic or parental love.

Identification

Let us consider what is meant by the second clause above: "a sense of personal identification with the country". "Identification" is an important concept in this context. It refers to how persons understand themselves and what self-images they have. It refers to what persons will find important and to what they will give priority. It refers to the norms they internalise and how strongly they feel themselves bound by them. If persons identify themselves as Catholic, to use an example not directly linked to patriotism, they will see themselves as living a life dedicated to achieving salvation and union with God in heaven through participation in the sacramental life and theological beliefs of the Catholic Church. They will give priority to the rituals, doctrines and practices of the Church and think of themselves as Catholics to the extent that they fulfil those requirements. If they are in situations of ethical conflict, they will follow the guidelines of Catholic moral theology and will feel themselves to be sinners if they should fail to follow those norms. Their identification with their faith will lead them to hold very strongly to their moral convictions. Presented with an idea or a temptation that is contrary to the norms of their faith, they will reject it, not only as a violation of those convictions but also as an affront to who they are. They will also take part in public demonstrations of their religious commitment, whether it be through processions in the city streets or participation in pilgrimages to places sacred to the faith. Moreover, they will relate themselves to the central stories of their religion, seeking to live a life that imitates that of Jesus in relevant respects.

How would what we have learnt about what it is to identify oneself with a group in the case of religion apply to patriotism? What would "a sense of personal identification with a country" amount to? What does it mean to understand oneself, or announce oneself to the world, as an Australian? It would seem to imply that one relates oneself to the story of Australia and that one would want to participate in the rituals that mark one as an Australian. The history of a country is an ongoing saga with a vast cast of participants. But there are some people who are participants and others who are not. In calling oneself an Australian one is saying that one is a participant in that story and not the story of some

other country. In this way one can take pride in the achievements recounted in that story, feel shame at the wrongs that have been done in it, and be committed to the progressive continuation of that story into the future and to playing a positive role in it. One associates oneself with other Australians, whether it be sports heroes, stars of entertainment, successful business entrepreneurs, or soldiers serving in other parts of the world.

Whereas the theory that patriotism is love of one's country would say that the processes of psychological formation, including engagement with national rituals and memorials, create affection for one's country, I would say that what they produce is identification with one's country. If the story of one's country is predominantly a positive one, this identification will tend to produce in the patriot a feeling of pride. The processes through which a person comes to identify with his or her country produce, not love for, but pride in, one's country. One can feel pride in one's country to the extent that one identifies with it and with its achievements. Of course, there is a negative side to this. The story of Australia also includes shameful episodes – especially in relation to the dispossession of the aboriginal inhabitants and their subsequent treatment. While the ideological apparatus which seeks to create positive feelings for one's country will stress the positive achievements, the negative episodes must also be dealt with.

Our identity is a framework from within which we see the rest of the world. I think about the world and my obligations within it as an Australian, as a male, as someone well-to-do, as an atheist, as a member of a family, as white, as 'Western' and so on. The consequence of this is that when I have to decide whether to extend hospitality to others, the fact that one of the possible objects of my moral attention is an Australian, for example, is not so much a factor to be weighed up along with other factors such as the urgency of their need. Rather, it has the effect of drawing my attention to that person in a way that it is not drawn to another. This is why in news reports, when seventy people are killed in some disaster, we have our attention drawn to the fact (or drawn *by* the fact) that one of them was Australian. This is clearly not a matter of justice, which ought to be impartial. But it is a matter of human psychology which structures and expresses our identity in these and other ways.

If pride is a predominant expression of national identification in a self-confident country such as Australia, identification can take other forms in countries or communities that have been oppressed or humiliated in the course of their histories. Recent commentary on the causes of Islamist terrorism, and on religious fundamentalism more generally, has described the victim mentality that often grows out of stories of national defeat or religious persecution. To identify with a

defeated people is often to court resentment and anger and to feel that only violence can restore the pride of one's people (Armstrong 2000; Ali 2007, ch. 7).

Interpreting love of one's country in terms of pride and identification helps to explain the very close link between patriotism and militarism. As a sociological fact there seems no doubt that there are very strong and frequent links between the two. Soldiers march at almost all of the rituals and celebrations that forge the identification of Australians with their country. Australian soldiers posted abroad are said to be serving their country even in cases where the foreign policies being pursued are ultimately those of the USA or when they are serving as part of a UN mandate. The bodies of war casualties and even of those who died by accident or friendly fire in foreign campaigns are brought home in coffins draped in the national flag. To be a soldier and to face danger in uniform is seen as the quintessential example of patriotism. The stories that constitute the historical lore of a nation will most often be stories of battles fought and won in order to establish and defend the national borders. These stories invite contemporary compatriots to identify themselves with the brave soldiers whose past exploits have forged the nation and its national character. Soldiers put their lives at risk, and those of us who sit comfortably at home readily identify with them in order to swell our pride. The sacrifices made by soldiers also highlight the fourth of Nathanson's explications of what love of country might mean: namely, "Willingness to sacrifice to promote the country's good". Soldiers are seen as being willing to make the ultimate sacrifice, and many do. Whether they do so explicitly or self-consciously for the sake of their countries or whether their soldiering was just a way to escape unemployment or meaninglessness is immaterial. The rhetoric of patriotism will ensure that their deaths or wounds are interpreted as gifts to the nation with which their compatriots can identify.

Concern

The third explication of what love of country might mean was, "special concern for the well-being of the country". This might be thought to extend to a special concern for one's compatriots. But, very often, "the well-being of the country" is understood in economic terms. When Australians are urged to buy Australian products, for example, the prosperity is envisaged as benefiting the whole national community. It might begin by being the prosperity and profitability of the Australian companies whose goods are being favoured, but through secure employment and contributions to an equitable system of social welfare through taxation, this prosperity should flow through to the whole country.

Such examples raise the question of what might be meant by "the national interest". It would seem to include national prosperity based on successful private enterprise, along with protection of the borders and the state's territorial integrity. National security is often said to be central to the national interest, but this frequently extends from protecting the nation's territory and commercial resources at home to enhancing economic opportunities and securing natural resources abroad, whether by diplomatic or by military means. But the more important question is whether the objects of these interests correspond to what is loved when we speak of "love of country". By and large the national interest corresponds to the interest of the nation-state. Given that the nation-state is a legally defined jurisdiction over which a government holds responsibility and within which commercial enterprises and individuals engage in their activities and pay taxes, there can be no doubt that there is a close link between every individual's pursuit of sustenance and prosperity and the success of the national economy and of the government in protecting it. However, is this what we love when we love our countries? Is this what we take pride in when we identify with our countries? Is this what we are concerned for when we display a "special concern for the well-being of our country"? There may be some instances where we take pride in the achievements of our country's entrepreneurs just as we do of our country's sporting champions, but this will be because they are conspicuous high achievers with whom we can identify rather than because they have contributed to the country's prosperity. Indeed, we admire them even if the profits they have generated go off shore. It is enough that they are our compatriots and that they are successful. Our pride and identification is based on their being successful compatriots rather than upon the benefits they may have given our nation-state. It seems, then, that love of country is not always coextensive with a special concern for the national interest.

Country

Let us return to the phrase "love of one's country". I have suggested that "love" should not be understood on analogy with romantic or parental love, but that it is better understood as a psychological form of identification, which ideally leads to pride in one's country and concern for its well-being. But what do we understand by "country"? Do we mean the nation-state of which one is a citizen, in whose political and commercial life we participate, and whose laws structure our lives? The social psychology account given above seems to suggest a different answer. This suggests that our bonds of loyalty are forged with our historical

people, its language, culture, and traditions. We may love the ethnicity which has shaped us and our outlook on the world. We may feel an attachment to the land on which we are born and whose very physical features have engrained themselves upon our hearts. We may relate to the religion of our forefathers or to the music and iconography we experienced as children. None of this may bear any direct relationship to the national citizenship with which we find ourselves. National borders are notoriously arbitrary. Borders often split peoples who share traditions and languages into different states, not only in countries that were once colonies of European powers, but even in countries with long histories of autonomy and political independence. Consider the Belgians, the Kurds, the Basques or the Tibetans. The most egregious examples are in Africa where hardly any borders correspond to the homeland of a people united by cultural traditions and ethnic identities. So what is the object of patriotism? Is it one's country defined as the nation-state of which one is a citizen, or is it the ethnic, religious, or cultural group with which one identifies (Parekh 2003)?

According to Anthony Giddens,

The nation-state, which exists in a complex of other nation-states, is a set of institutional forms of governance maintaining an administrative monopoly over a territory with demarcated boundaries (borders), its rule being sanctioned by law and direct control of the means of internal and external violence (Giddens 1985, 121).

The notion of one's country could refer to either this purely administrative notion of the nation-state, or to one's community bound together by history, ethnicity, language, or a common social project. Many states contain a number of such communities (and sometimes not as wholes). It seems, then, that the notion of "country" as the object of one's affection or identification is ambiguous. It follows that the notion of patriotism is ambiguous. It can mean identification with one's traditional, ethnic, religious or national community, or it can mean one's loyalty to the bordered political community or "polity" of which one is a citizen. Nathanson's use of the term "country" obscures this ambiguity and the true nature of the object of one's loyalty or allegiance which he describes as "love of country". But insofar as he places stress on emotions such as affection, it seems to me that the proper object of the patriotism he describes is the cultural community with which one identifies rather than the nation-state of which one is a citizen.

One should not adopt an inflated conception of one's national-state or of one's nationality. One's nationality is nothing more than one's membership of the nation-state

of which one is a citizen. It is simply what is indicated on one's passport. If it is morally valuable it is for the same reasons that one's citizenship is morally valuable. One's nationality understood as citizenship shapes one's moral commitments as a matter of pragmatic convenience and reciprocal justice. All that is needed in even the most multicultural of societies is that all the individuals and communities that comprise it respect the rule of law, contribute to the common good by paying taxes, and participate in its political processes in appropriate ways. This is what is meant by a "polity". One's nationality is one's membership of a political community to which one has moral obligations as a citizen. Any deeper form of loyalty such as "love of country" is an optional extra. It seems either artificial or ideological to speak of a common project of seeking a good life (Taylor 1996, 119-21) or of an "imagined community" (Appiah 1996, 27). The polity of which one is a member is a political reality that has legal and pragmatic effects, while one's community is the object of one's affections and the source of one's identity.

Nationalism

The idea of a nation as an "imagined community" united by a common national project, culture or ancestry contributes to the ideology of nationalism. Nationalism became prominent in Europe during the nineteenth century and was used by rulers of European states in order to foment hatred of other nation-states and to encourage people to enlist in armies which would then engage in military adventures against each other (Cobban 1969). As an ideology it served the interests of ruling classes in their colonial expansion and in their competition with other nations for wealth and glory. It also served their interests by redirecting social unrest and quests for social justice into hatred of foreign powers. This led to the emergence of the modern European idea of a nation as a territory and a population coextensive with administrative borders and legal jurisdictions reinforced with a mythology which spoke of the destiny of a people as defined by those borders. "Nation building" – at least in its nineteenth century European forms and also its post-colonial forms in the emerging world – involved the attempt to bind people to the nation-state by bonds that are more than just pragmatic or based on shared interests or reciprocal duties. Even in the absence of a unifying tradition, religion or ethnicity, what such processes seek to create is allegiance and loyalty to the nation which go beyond merely instrumental forms of membership.

Accordingly, the psychological phenomenon of nationalism occurs when one's identity-shaping community and one's nation-state are felt to correspond.

For a nationalist, the connection that one has to one's nation-state will not feel arbitrary or merely pragmatic. It will be felt as an inseparable part of one's identity. It is an object of commitment. The nationalist transfers the bonds he feels with his ethnic, linguistic or religious community to the nation-state of which he is a citizen. Cosmopolitans would be highly suspicious of these kinds of allegiance or loyalty and would see them as forms of nationalism that ought to be avoided. Loyalty to one's identity-forming community is a valid form of belonging, but nationalism is a dangerous ideology (Appiah 2005, ch. 6).

But why is it important to avoid nationalism? Is there anything morally questionable about feeling a high degree of identification with one's nation-state? Would such a degree of identification lead to morally reprehensible forms of tribalism? To begin to explore this question let us return to Stephen Nathanson. Nathanson speaks of extreme forms of patriotism which involve:

1. A belief in the superiority of one's country
2. A desire for dominance over other countries
3. An exclusive concern for one's own country
4. No constraints on the pursuit of one's country's goals
5. Automatic support of one's country's military policies. (Nathanson 1993, 29)

I would suggest that this sketch accurately describes nationalism. If I am right in this, then nationalism would be distinguished from patriotism not only by having a different object: namely, the nation-state, but also by being a different kind of stance towards that object: namely, an irrational commitment bordering on fanaticism. I would suggest that, if love of country or identification with one's country takes the form of nationalism as explicated above, it is not a morally valuable stance or one which should take priority over the outlook of cosmopolitanism.

The five attitudes above that constitute extreme patriotism or nationalism are irrational. If everyone around the world believed that their own country was superior, most of them would have to be wrong since only one country can be superior. The desire that one's country have dominance over others is the same desire for glory and status which have led rulers and kings into battle with each other for centuries. Whether such battles are fought in contemporary business board rooms or the cabinet rooms of governments, the logic of such competitiveness leads inexorably to war. In a world of finite and diminishing resources, competitiveness can only lead to struggles over access to such resources. Third, to be concerned for one's own country at the expense of others or even to the exclusion of others is simply a case of selfishness writ large. Just as selfishness

is morally vicious if it is pursued at the expense of others or through exploiting others, so national interest is ethically reprehensible if pursued at the expense of, or through the exploitation of, other peoples. It is also irrational in that it will lead to resentment and thence to international instability. Fourth, anyone who thinks that there are no constraints on the pursuit of one's country's goals is someone who would be prepared to break both civil and international law, and also any moral norms, in order to secure their country's interest and power. Fifth, the link so often made between patriotism and militarism can often lead to automatic endorsement of a country's military policies. No matter how unjustified a war might be, anyone who questions it will be deemed disloyal or a traitor. Any dissent will be deemed an insult to the sacrifices made by the soldiers brought back in body bags. Any consideration of the humanity or of the interests of "the enemy", or the deaths and injuries suffered by their civilians and soldiers, will be deemed cowardly and treasonous.

It should not be necessary to take much time to show that these attitudes are irrational and unethical. However, if one has conceived of nationalism as an extreme form of patriotism and of patriotism as love of one's country, and hence as an emotion not subject to the scrutiny of reasonable reflection, then it is very difficult to say how this irrational form can be avoided. If nationalism is an extreme form of patriotism and if patriotism is an irrational emotion then how can reason and common sense be deployed in order to prevent this extreme being reached?

The Ethics of Patriotism

We now have a number of intersecting distinctions. We have Nathanson's distinction between patriotism and extreme patriotism, along with my suggestion that this extreme patriotism should be thought of as nationalism. Nathanson clearly disapproves of extreme patriotism but not of what he calls "moderate patriotism". Then we have my suggestion that patriotism is itself an ambiguous notion referring to both a form of pragmatic and legal citizenship of the nation-state of which one is a member, and to allegiance to the people with whom one identifies and whose traditions one feels oneself belonging to. I have already explicated this form of patriotism through the process of identity formation rather than through the analogy with irrational love. I must now ask what moral judgements should be made about such processes and to the attitudes they produce.

In order to do this, let us use a different analogy. Imagine that you are a fan of a football club. Your parents supported the club before you were born and took you to its matches from an early age. You now

take a keen interest in the club's activities. You attend all the matches you can, even travelling long distances in order to do so. You dress in the team's colours and give friendly greetings to strangers dressed in the same colours. You enjoy talking with other supporters about past premierships and heroic deeds performed by star players. At the matches you barrack loudly, abuse the umpires, argue with the supporters of the opposing team, sing the club anthem vigorously, regard any free kicks awarded against your team as unjust and any awarded against the opposing team as thoroughly deserved, and so on. When the team wins you are elated and when they lose you feel crushed. You have done nothing more than add your voice and enthusiasm to the large crowd of supporters but when your team wins, you bask in its glory. When it loses you feel despondent. When its players cheat you feel real shame and when they display the virtues of sportsmanship you feel pride. You are a law-abiding citizen so you don't become drunk and disorderly during or after the game and you do not engage in any hooliganism or violence against opposing supporters or their property. Nevertheless, you are hearty and boisterous in support of your team. In discussions with others you will claim that yours is the best team, prevented from taking the premiership only because of bad luck or bad umpiring decisions. You give money to the team through club memberships and raffles. You give priority to going to the matches over most other social events, and you read the sporting pages of the press avidly every day for news of your team's players. In short, you love your team, are irrationally committed to it, take great pride in it, and identify yourself with it. It is easy to see how this sketch offers a suitable analogy for patriotism and even for nationalism. All the features of those phenomena listed above are present. This allegiance came to you as part of your upbringing and is now part of your social and existential identity. You love your team and are prepared to make sacrifices for its well-being.

The way in which many people passionately follow their sports teams or sporting heroes tells us something about the human condition. Friedrich Nietzsche (1844-1900) has argued that all of life – and thus human life also – involves struggles for domination. He calls this “will-to-power”. Animals compete against one another not only for access to food and resources and thus for survival, but also for dominance in their groups and for access to mates. In the context of human life, this competitiveness is sublimated and transformed into a struggle for status, self-affirmation, self-differentiation and dominance over others. We all want to shine. We want to be unique. We avoid merely fitting in with the mass of people. We pursue activities that require high levels of ability and we often create formal competitions to decide who has acquired the greatest skill. Alongside

sporting competitions, we have musical talent quests, beauty pageants, and business competition. We are restless to succeed and to be better at our chosen calling than anyone else. Of course, these inclinations are tempered somewhat by ethical rules and constraints of etiquette so that the achievements that flow from them are turned to the benefit of others, but, without these constraints, human life would be a cut-throat struggle of the kind that Hobbes had postulated. It is not always a matter of acquiring power over others. It is often a pursuit of recognition and of status. We want to be acknowledged and we want our achievements praised. But we do not only want this for our individual selves. We also want it for the groups we identify with. We want our people or our club to be acknowledged and recognised. Moreover, we bask in the glory that our club or our people might achieve. Being a fan of a sporting club illustrated this well. We identify with the club. The basis of this identification might be historical – our parents and their parents also followed that club – or geographical – we live in the town of which that club is the representative – or arbitrary – we like the colour of their livery. But once we have made the commitment and identified ourselves as a fan of that club, then the successes of the club become our successes and its failures become our failures. Our enthusiasm for the club is an expression of will-to-power mediated by psychological identification with that club.

My first suggestion is that patriotism, both in its moderate and extreme, nationalist forms, should be understood as a form of will-to-power in the same way as being a fan of a football club can be.

But there is a crucial difference. However intense your enthusiasm for a football team or a sports hero and however total your commitment to them, you are always able to say to yourself that it is only a game. If you are a rational person, you will be aware that none of the excitement, ritual, legends, heroes, victories and losses of a football club is of ultimate importance. You might not ever say this to yourself and the rhetoric into which you have immersed yourself may seem to speak of ultimacy, but you would not be prepared to kill anyone to defend the honour or interests of your team. You would not refuse to attend your spouse's funeral if it were held on the afternoon of a match – even if it were a Grand Final. Joking with friends over a few drinks you might swear that nothing is more important to you than your team's fortunes, but you would secretly know that you were acting out a part. You would be able to laugh at yourself. You would enjoy your commitment as a kind of play acting or a charade. Taking it seriously and avowing its ultimacy is part of that game. You identify yourself as a team supporter and you would play out the role that this gives you, but you would be subliminally aware that it is a role. Your commitment would be ironic.

Such irony is not appropriate in the context of love. You don't love your spouse with the secret thought that it is only a game. You don't love your child with an implicit laugh at the role you are playing as a parent.

My second suggestion is that patriotism should be understood through the analogy, not of romantic or parental love, but of being a football fan. If the irony and hidden detachment that marks a reasonable commitment to a football team could be applied to one's commitment to one's country or one's people, then patriotism could be seen as an ethically harmless commitment and the excesses of nationalism could be avoided. Nationalism or extreme patriotism arises when the commitment to one's country becomes absolute and inflexible so as to override any moral constraints and any norms of reasonableness. This suggests that a morally acceptable form of allegiance to country – whether in the form of the nation state or in the form of one's people and its traditions – is a form that is attended by flexibility and an absence of absolutism: that is, by irony. Just as a rational person must judge that a football team has no ultimate importance, so one needs to consider how important the object of one's patriotic allegiance should be. My love for my spouse has an object that is highly significant and demanding and any degree of irony would be inappropriate. I would say the same in relation to my child. But of my country we can certainly ask how important it is and what the degree and scale of our commitment should be. Insofar as nationalism or extreme patriotism is a form of commitment which smacks of fanaticism, any degree of irony will destroy it. And so it should.

But does this mean that the milder form of patriotism that Nathanson has described and which he espouses can be endorsed by a cosmopolitan? While I think such patriotism is as harmless as barracking for a football team, I don't think it should be given much ethical significance or normativity. In and of itself one's country is of little importance. Both patriotism and nationalism become pernicious if the special focus upon one's country that they espouse elevates that country into having an importance of its own and militates against the scope and urgency of one's concern for human rights and social justice at a global scale. The ethical commitment of a cosmopolitan is to human rights and global justice. The cosmopolitan's own country has a role to play in the pursuit of human rights and global justice both in its internal policies and in its foreign policies. Accordingly, the cosmopolitan pursues her global ethical concerns through the political processes of her own country and therefore has some commitment to those processes.

Political Patriotism

Accordingly, what we need is a political conception of patriotism. I define "political patriotism" as loyalty to the *polis* of which one is a member. I intend, with this phrase, to echo the notion of "political liberalism" used by John Rawls, through which he articulated the idea of a pragmatic approach to political engagement free of commitments to values and conceptions of the good life not shared by all (Rawls 1993). My concept is also akin to that of "constitutional patriotism" espoused by Jürgen Habermas, which expresses feelings of solidarity that grow out of democratic participation rather than out of commitments to romanticised notions of the nation or to ethnic, linguistic or religious communities (Habermas 1996; Lacroix 2002). It was Socrates in the *Crito* who first articulated this form of social and political loyalty and respect for the rule of law. Offered the chance to escape from prison and his judicial execution, Socrates refuses on the ground that "the Laws" have been of service to him by establishing the society in which he was able to flourish, and have thereby earned his loyalty and commitment. To subvert the rule of law by escaping would be to undermine the political consensus upon which Athens has established its social order. Whereas other cities were ruled by power, force and fear, Athens was a polity that depended upon the cooperation of its members. This cooperation is an instance of political patriotism: a practical stance towards the political structures of which one is a part based upon the extent to which those structures protect human rights and produce social justice. In the modern European tradition this idea is best expressed by the notion of a social contract through which both the legitimacy of the state and the citizen's obligation to respect the rule of law are established by an implicit acknowledgement of the contract-like practical commitment of both to social justice. Allegiance to the state is secured by the state's adhering to its part of the implicit bargain when it protects citizens from foreign incursions or from domestic criminality and when it secures a just distribution of social goods. This allegiance to the state is expressed by a willingness to contribute to the common weal by paying taxes, serving in the military, contributing to the economy, and participating in political decision making. This form of patriotism may be most readily elicited in a modern, pluralist and liberal state, but it can also arise in other forms of political organisation in which rights are protected and the laws applied impartially. Such patriotism defines the political community as an object of one's allegiance. The willingness to participate in the political process in accordance with civic duty is a form of that allegiance. However, the political community is seen, not as an

object of ultimate importance or blind loyalty, but as a means for securing the political goals of justice and the protection of human rights. This form of patriotism is not seduced by the romance of the nation or constrained by the sanctity of tradition. Nor does it imagine that the demands of human rights or of justice stop at the borders of the state of which one is a citizen. Political patriotism could even be seen as a practical and localised form of cosmopolitanism.

Nathanson's argument against militaristic forms of patriotism provides an unintended hint of this idea. He argues that it is a mistake to admire as patriotic only soldiers who are prepared to, or actually have had to, give their lives for their country. We should be prepared to praise as patriotic anyone who sacrifices something to promote the country's good: people like fire fighters, nurses and teachers. According to Nathanson, businessmen who pay their taxes, judges who administer the law with impartiality and politicians who seek the people's good without fear or favour are all patriots in this sense. I would respond by arguing that the term "patriot" has now become too broad. What these ethically admirable people are doing is pursuing a range of values which are good in themselves. The national identity of these values or of the people who benefit from them is irrelevant. Safety from fire, social justice, impartiality in the rule of law, education and health care are all values that it is good to pursue. But they are not values that depend on any identification with a nation or a country. It is admirable to pursue them and we should praise those that do so, but it adds nothing to expressions of that admiration to call those that one admires in such contexts patriotic. It is commitment to people, to justice and to human rights which motivates such virtue. One's country has nothing to do with it.

And yet it does at a political level. If we interpret "one's country" as the nation-state of which one is a citizen or legal resident, then we can acknowledge the political system of this nation-state as the forum in which we can pursue the moral values of human rights and social justice. The nation-state has a role to play. The administrative concept of a state is a social and historical necessity (Glazer 1996). The territorial boundaries of legal jurisdictions need to be defined. The range and scope of government responsibilities need to have borders. And the capacity of political institutions and participants to effect change is limited and defined by such jurisdictions and boundaries. If the government of a state or its citizens wanted to effect a change in another state for humanitarian reasons, they would not have the jurisdiction to do so and would have to act on a government-to-government basis or through international political institutions such as the UN. The issue of humanitarian intervention is a vexed one, but my point for the moment is that any actions taken in the pursuit of

social justice or for the protection of human rights around the world need to be taken through governmental and political institutions in one's own state and in the other relevant state. Even cosmopolitans have to acknowledge the practical importance of the state in the pursuit of both cosmopolitan and national goals. It is this necessity that grounds that form of patriotism I have called "political patriotism".

Igor Primoratz has argued that patriotism may consist in pride in one's nation-state based on the moral accomplishments of that state rather than upon its successes in international competition, whether in the fields of commerce or war. Primoratz calls this "ethical patriotism" and describes it as a concern for the ethical status of one's country and of its moral standing in the world community (Primoratz 2008). This position does not pursue the political, economic and cultural advantage of one's country – either exclusively as in extreme patriotism or critically as in moderate patriotism, but its moral interests. It asks a country to take a cosmopolitan stance in its foreign policies. What one's commitment is to when one is an ethical patriot in this sense, is the value of global justice and the importance of human rights both within one's own nation-state and beyond it. One's nation-state is merely a vehicle for pursuing those values. At best the pride one might feel in one's citizenship of an ethical state will serve to motivate the political engagement which ensures that one's state acts as a good global citizen. But the state is not, of itself, an appropriate object of nationalist or patriotic fervour.

Self-Determination

There is one qualification that I need to make to my rejection of nationalism as extreme patriotism of the form expressed in such slogans as "my country, right or wrong!" and of even moderate patriotism understood as "love of country". Nationalism can have politically progressive effects as well as bellicose and competitive effects. As Immanuel Wallerstein has argued, solidarity can be a weapon of the weak against the strong. Only the strong can afford to be cosmopolitans (Wallerstein 1996). When a people united by language, culture or tradition is subjugated or colonised by a more powerful people or state, its sense of itself as a people and the way in which individuals identify themselves with their language, culture or tradition can become a powerful political force. Struggles for national liberation or for self-determination on the part of peoples are seen by many commentators as legitimate and are frequently acknowledged by international law. The UN affirms the right of peoples to self-determination although it acknowledges that it is neither practicable nor desirable for all peoples united by language, culture or tradition to

become sovereign states. Self-determination needs to be given form as political autonomy within federated states or other political structures acceptable to all concerned. Whatever the difficulties that arise from struggles for self-determination, my point is that they are motivated by a form of nationalism which is politically legitimate. Such forms of nationalism are political expressions of linguistic, religious or cultural forms of identity and, as such, are deeply motivational. They are yet another form of Nathanson's "love of country". While I would consider that a dose of irony is morally required for even these kinds of nationalists, I would consider them legitimate bases for political engagement and struggles for human rights and social justice in those cases where a people is unfairly subjugated or oppressed. It is at such points as these that identification with one's people combines with political patriotism to produce a valid form of nationalism.

Conclusion

Patriotism can be an ethically appropriate identification with one's political community. It is appropriate to the extent that one's political community honours human rights and pursues justice in all parts of the world. In this way it does not put the national interest or dreams of national glory ahead of cosmopolitan values, and it does not imagine that one's own nation, ethnic identity or cultural traditions are of paramount importance. Political patriotism is leavened with a touch of irony.

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Principles of Paternalism

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Abstract:

When, if ever, is paternalism justified? I defend the principle that paternalism is justified only if it is neutral, that is, the motivation for it is compatible with all conceptions of the good life. Three other principles of paternalism are examined. The balancing view says that we must balance the values of liberty and well-being against each other and that paternalism is justified only if well-being outweighs liberty. The consent principle says that paternalism is justified only if consented to. The voluntariness principle says that intervention is justified only when the conduct in question is substantially nonvoluntary. These three views are either implausible, plausible only if they are supplemented with the neutrality principle, or plausible only because they already presuppose that principle.

Keywords: paternalism, liberal neutrality, consent, voluntariness.

Paternalism is the restriction of an individual's freedom for his or her own good. Laws against drugs, prostitution, pornography, gambling, and euthanasia, insofar as they are intended for the good of those whose freedom is restricted, are examples of paternalism. They might also involve other issues, such as harm to others or the violation of moral principles, but they are often to some extent paternalistic since the rationale underlying the laws is partly that the restriction of freedom is for the good of the one restricted. When, if ever, is paternalism justified? One extreme view is that paternalism is never justified. This is the view expressed by Mill's liberty principle:

The only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant (Mill 1859, ch. 1 para. 9).

At the opposite extreme is the view that paternalism is justified whenever it would be to the benefit of someone. Restrictions of freedom that are misguided might end up making the person worse off and would for that reason be unjustified. But if they do benefit the person, on this

view that is sufficient to make the intervention justified.

Perhaps the truth lies somewhere in between these two extremes. Paternalism is surely sometimes justified but not just whenever it succeeds. Even if it does, there are other considerations – such as the value of respecting individual choice – to be taken into account, which rule out some but not all paternalism. Principles of paternalism attempt to set out these considerations. In this article, I will defend a particular principle of paternalism, one that requires paternalism to be guided by considerations that are neutral between different conceptions of the good life. I start by setting out that view and then examining three other principles of paternalism. The article argues that these other principles are either implausible, plausible only if they are supplemented with the neutrality principle, or plausible only because they already presuppose that principle.

Although paternalism can occur between individuals, this paper will be concerned only with the issue of state paternalism, that is, the question of whether and when government may justifiably have paternalistic policies.

1. The Principle of Neutral Paternalism

The principle of paternalism I will defend sets a necessary condition for justified paternalism: paternalism is justified only if it is *neutral*. According to the ideal of neutrality, justifications for government action should not appeal to any conception of the good. Instead, state action ought to be based on rationales that are compatible with a wide range of conceptions of the good. (Defenders of neutrality include Rawls 1993; Barry 1995; Larmore 1987; and Nagel 1987.) Without this neutrality constraint, it would be permissible for government to be guided by a conception of the good. If it is good to appreciate high culture, for example, then the state has reason to encourage such appreciation. In a neutral state, on the other hand, opera should receive no special treatment over soap operas or wrestling (though some neutralists have tried to show that such support can be justified without violating neutrality (Dworkin 1985)).

I am not sure whether we should accept neutrality for all state action. Powerful critiques of neutrality include those by Raz 1986; Sher 1997; and Wall 1998. But we should accept it for paternalistic action. Paternalism that is *non-neutral* is illegitimate, while paternalism that is *neutral*, on the other hand, may be justified. Giving a precise account of this distinction is difficult. The basic idea is that non-neutral paternalism is motivated by a particular conception of the good life or some element of one, while neutral paternalism is motivated by considerations that are compatible with all conceptions of the good. Some examples help illustrate the distinction. Forcing someone out of his couch potato lifestyle would be contrary to the paternalised's own conception of the good. Censoring bad music for the good of those who would otherwise listen to it involves intervention that is motivated by a particular conception of good music. Forcing a blood transfusion upon a Jehovah's Witness would violate her own understanding of her good as conforming to her interpretation of the teachings of Jehovah. Intervention with a mountain climber who fully appreciates the risks involved would rest on an appeal to a prudent and safe conception of the good as better than a lifestyle of risk and danger. The requirement of neutrality blocks these cases of paternalism that are driven by non-neutral considerations.

An example of neutral paternalism is hygiene regulations for food manufacturers. They are paternalistic since consumers lose the option of buying food not subject to such regulations (which would be at a lower price), but they are neutral since no conceptions of the good would require not avoiding contaminated food. If some lifestyles do involve eating contaminated food, then even this paternalism would be non-neutral unless some way could be found to exempt people with those

lifestyles from the regulations. So, what is neutral turns upon whether some values are generally sharable by all conceptions of the good. If a paternalistic policy is based on a good that is in conflict with a conception of the good, then it is non-neutral. Other examples of non-neutral paternalism include (inasmuch as they are paternalistic) laws against pornography, prostitution, drugs, and incest. Other examples of neutral paternalism include traffic regulations, food labelling requirements, vehicle and machinery safety regulations, and laws against misleading advertising. These all close some options for people's own good, but without appealing to a particular conception of the good. Rather, the ideas of the good that underlie them (for some ideas of the good must underlie any paternalism) are general ones that do not conflict with any particular lifestyle or doctrine.

Requiring neutrality for paternalistic action leaves open the possibility that government could base its non-coercive and non-restrictive policies on non-neutral considerations. Supporting the arts, for example, so long as people are not forced to appreciate them, would be non-neutral non-paternalism. A state-supported religion could also be legitimate so long as people are not forced into it. (See Clarke 2006 for more detail.)

This account of neutrality is still rather loose. Defenders and critics of neutrality have themselves struggled to clearly define the concept of neutrality, but I will assume that something like the above is a coherent distinction. The principle of neutral paternalism permits some paternalism but only when it is guided by neutral considerations. Even if paternalism guided by non-neutral considerations would benefit someone, it is ruled out. Why should we accept this principle? One way of defending it would be to argue for neutrality generally. If there is a strong argument for neutrality, then all state action must be neutral, and hence so must paternalistic state action. However, it is not clear that we should require neutrality for all state action. It is possible and perhaps plausible to permit non-neutral action so long as it is not paternalistic. Funding the arts is non-neutral but not paternalistic so long as people aren't being forced into art galleries (Clarke 2006). Instead, the method I shall follow is to examine a number of principles which provide alternative explanations for when and why state paternalism should be limited, and criticise these principles. The principle of neutrality, I shall argue, emerges as underlying these principles. I argue that the alternative principles are either in various ways problematic or insofar as they are plausible, they need to be seen as complements of neutrality rather than alternatives to it.

2. The Balancing View

One possible explanation concerning the justifiability of paternalism is *the balancing view*, which its main defender, Daniel Brock, claims is ‘the natural view in commonsense morality’ (Brock 1988, 551). According to this view, there are two values at stake in paternalism. The first is the value of liberty¹, the value of people choosing and pursuing those choices without interference. The other value is individual well-being, which paternalism aims to protect or promote. The two values coincide when a person freely chooses that which is for her own good, but they conflict when a person chooses contrary to her own good. In these conflict cases, the person’s good could be furthered by paternalistic intervention that overrides her choice for his own good, or her liberty could be respected at the cost of her well-being. According to the balancing view, if the threat to well-being is sufficiently weighty then paternalism would be justified. If, on the other hand, the restriction of liberty would be significant and the gain in well-being relatively trivial, then paternalism would be unjustified. The balancing view requires weighing up the liberty and well-being at stake in any given case in order to determine whether paternalism would be justified.

The balancing view seems to supply a plausible explanation in many cases of possible paternalism. Preventing a person from unknowingly crossing a dangerous bridge restricts his liberty in only a trivial way while benefiting him greatly. Similar balancing is appropriate when a person is about to jump off a building in a temporary but intense fit of depression. The importance of protecting well-being in these cases outweighs the value of liberty. On the other hand, people often seem to make mistaken choices that lessen their well-being but where intervention would be inappropriate. People would be better off, for instance, by choosing leisure activities more worthwhile than watching television. Smokers would usually be better off not smoking. Intelligent people who read nothing but cheap and poorly written novels could spend at least some of their time more rewardingly reading great literature. But these cases strike many as being instances where liberty outweighs well-being, making intervention objectionably intrusive. These judgements are all accounted for by the balancing view.

The balancing view, however, is problematic. People sometimes choose to sacrifice their well-being for others

or for a cause. They also sometimes mistakenly make decisions concerning far-reaching matters such as where to live, who to live with, and what occupation to pursue, thereby setting back their well-being. Engaging in risky activities such as mountain climbing, hang gliding, and racing car driving threatens well-being. Whether intervention in these cases is warranted, according to the balancing view, depends on how to weigh liberty against well-being. We need some way to guide us in deciding how to balance the two views. Giving liberty great weight will avoid intervention in these cases, but how do we know how much weight to give it? We could simply assign weights to give us the results that we intuitively want, so that liberty has great weight in the above cases but not much in cases where we intuitively feel paternalism is justified. But this seems to be begging the question about when paternalism is justified. The balancing view is supposed to give us an answer to the question but would instead give us whatever answer we already hold. So the balancing view requires some non-question begging method for determining the appropriate balance between liberty and well-being when they conflict.

Brock does not provide a method for how the balancing is to proceed, but he argues that in many cases where it would seem that the value of well-being outweighs that of liberty, there is no real conflict between liberty and well-being. This is because engaging in freely chosen goals contributes to one’s well-being (Brock 1988, 555). A concern for well-being therefore requires refraining from paternalistic intervention rather than providing a motivation for it. Suppose Brother Francis believes it is immoral for non-human animals to be used in lethal experiments and so volunteers as a subject in an experiment in order to save non-human animals that were to be used (Brock 1988, 554-5. Brock attributes the example to VanDeVeer, 1986. In order to make the case one of paternalism, we must set aside a concern for the welfare of non-human animals). In doing so, Brother Francis risks significant harm to himself. It may be thought that on the balancing view, the harm is great enough to outweigh the restriction of liberty involved if Brother Francis was prevented from volunteering. But Brock argues that Brother Francis is not worse off since freely and knowingly choosing self-sacrifice in order to forward a goal that he considers is of great importance, advances rather than sets back his well-being (Brock 1988, 555).

The problem with this reply of Brock’s is that if what he claims is true, then it is impossible for a person to engage in a freely chosen goal that sets back her well-being. No matter how harmful the activity, how painful it is, or how much it seems contrary to the person’s interests, she is actually better off through having freely chosen and engaged in the activity. Brock’s argument

¹ Brock describes this as the value of autonomy or self-determination. I use ‘liberty’ to avoid the theoretical baggage of the other terms and because the way it is explained by Brock is more consistent with liberty than the more complex notions of autonomy and self-determination.

reduces all moral goals to prudential or self-interested ones. This is completely at odds with the way that people themselves see their goals. Brother Francis, let us assume, does not view volunteering to save non-human animals as in his overall self-interest. He says that it is *not* in his interests, but that he feels morally compelled to do it anyway. Certain goals are worth pursuing for moral reasons that are not accompanied by or reducible to self-interested reasons. Sometimes people freely choose activities and thereby become no better or even worse off.

Such decisions may be made for moral reasons, but they need not be. A person may freely choose self-mutilation. He may be better off as a result. Perhaps the mutilation results in a large material reward. Or perhaps he makes the decision in the light of a carefully worked out philosophy which he is devoted to in all other aspects of his life, and such devotion may lead to a rewarding life. But say neither such factors apply. He engages in severe self-mutilation for some cheap thrills and fleeting fame. He also may agree that the decision is against his interests. In this case, it seems perverse to say that the freely chosen activity advances the person's well-being. It is another case of a person freely choosing an activity that makes him worse off.

Brock's attempt to show that liberty and well-being do not conflict in many cases is therefore unpersuasive. People can and do freely choose activities that make them worse off, and weighing their liberty to do so against their well-being requires some method for weighing the two values. We have yet to be given such a method, but I suggest that the neutrality view provides one, not in the sense of a mathematical formula for weighing the two values but by providing some rules for guidance: when interference with people's choices is motivated by non-neutral considerations, then liberty outweighs well-being. The value of people's freedom to make their own decisions, even though they will be worse off than they would be with interference to guide them into more worthwhile conceptions of the good, outweighs the loss in well-being. But when, and only when, well-being is threatened in some neutral sense, that is, when intervention can be guided by goods that are compatible with all conceptions of the good, then a concern for well-being may (but does not necessarily, since there may be other conditions that must be satisfied) outweigh the value of liberty. In other words, restricting liberty for a person's own good is permissible only when the intervention is guided by neutral considerations. On this interpretation of the balancing view, neutrality is a necessary condition for justified paternalism. (Here I repeat an argument I made in Clarke 2006, 120).

3. The Consent Principle

I turn now to another view: that paternalism is justified only if the paternalised person has consented to the interference. This principle is defended by Haksar 1979.

3.1 Future and Hypothetical Consent

Consider first, consent that is future or hypothetical rather than present or prior and actual. Future consent is consent after the intervention; hypothetical consent is what people would counterfactually consent to under certain circumstances (Haksar 1979, 249). Consider some cases that illustrate these principles. If we force a woman to marry against her will, she may come to genuinely love her husband and consent to the earlier intervention. With regard to hypothetical consent, people who worship false gods 'would, if they saw things clearly, see the absurdity of their ways of life' (Haksar 1979, 250) and agree to intervention. These illustrations may strike some readers as demonstrating the implausibility of future and/or hypothetical consent as justifications for paternalism because they seem too intrusive. They show that future and hypothetical consent cannot be *sufficient* conditions for justified paternalism. But those conditions could still be *necessary* conditions. If future consent is necessary for justified intervention, then if a woman forced to marry fails to give her subsequent approval, the intervention is not justified. And if she does subsequently approve thereby satisfying the condition, there could nevertheless be other reasons why such force is morally prohibited. If hypothetical consent is necessary for justified intervention, then even if forcibly liberating people who worship false gods could be supported by their hypothetical consent, there could nevertheless be other reasons why such force is wrong.

These considerations can be turned to the advantage of the neutrality view I am defending. If future and hypothetical consent are only necessary though not sufficient conditions for justified paternalism, then there must be further conditions that explain why cases of unjustified paternalism that would pass the tests set by future and hypothetical consent are unjustified. That is, if there are cases of paternalism that are unjustified even though they pass the tests of future and hypothetical consent, then there must be further principles of paternalism that explain why those cases are unjustified. One of these principles, I suggest, is set by the neutrality constraint. Forcing a woman to marry against her will is likely (though not necessarily) to be interference that is guided by a conception of the good ('not necessarily' because it may be compatible with her conception of the good, which shows that neutrality is also a necessary but not sufficient condition for justified paternalism). And forcing people out of their false religions for their

own good is also paternalism that is guided by non-neutral considerations. These cases may be consented to hypothetically or in the future but fail the test of neutrality. If we accept the constraint of neutrality, both these types of paternalism would be unjustified. Hence future and hypothetical consent need to be supplemented with the neutrality constraint in order to make them more plausible. They are not alternatives to neutrality but complements of it.

Someone forced into a more worthwhile way of life could subsequently or hypothetically consent to the forcing. So could someone forced to appreciate high art rather than low culture. A further assumption, the assumption of neutrality, is needed to rule out these cases of paternalism. The examples may strike the reader as unlikely. We might be confident that people would not subsequently consent to intervention that prevented them from leading a life in conformity to their own conception of the good, or that if they do, such consent would be the result of manipulation and therefore not justified. A person who is content watching game shows on television is not going to agree afterwards with being forced to attend operas instead. But such ‘conversions’ can occur; people could genuinely endorse, either later or hypothetically, intervention that forces them into a new lifestyle. Any intuition about the unlikelihood of the counter-examples, I suggest, is not based on any deep understanding of what people would or would not agree to in the future or hypothetically. Rather, it is based on the thought that such intervention would be wrong even if the predicted consent were an accurate one. And the wrongness of this intervention, I have been arguing, is explained by the neutrality constraint.

3.2 Actual Present/Prior Consent

Consider another principle: paternalism must be accompanied by actual consent, either present or prior to intervention, of the subject to be justified. This principle sets a necessary condition for justified paternalism. The consent principle rules out as unjustified many cases of paternalism, such as forced religious worship or forced marriage, which are not consented to.

However, it rules out too much. In emergency cases (and the cases are paternalistic since the people are rescued for their own good without being given any choice), such as stopping a person from unknowingly crossing a dangerous bridge, pulling a person out of the way of an oncoming truck, or preventing a person from leaping from a building in a fit of depression, paternalism is sometimes justified at least to ensure that the person knows what she is doing, even though there is no consent.

A possible move here is to say that the consent needed to justify intervention ‘need not be explicit, it may only be tacit’ (Haksar 1979, 240). In some cases there is no

explicit consent to the intervention, but tacit consent could be presumed since there is a practice of helping people in certain situations, and since most people would like to be helped in those situations and do not object to such practices (Haksar 1979, 240).

But it is not clear that people can be said to consent, even tacitly, to intervention in these cases. The fact that there is a practice of helping people in certain situations and that I have not objected to that practice does not mean that I have consented, even tacitly, to intervention when I find myself in the relevant situation. Consent, whether explicit or tacit, is an act to intentionally give others, by virtue of that act, a right that they did not have before. There is an intention to change the moral situation. (This aspect of consent is noted by several writers. See Simmons 1998; Plamenatz 1968, 18). Usually these intentions are explicitly expressed but they can also be tacit, as when we buy goods from a supermarket; nothing explicitly is said but both buyer and seller intend to relinquish rights to their goods/money. Merely not objecting to social practices of helping people in emergencies does not involve an intention to change the moral situation; not objecting does not mean that one intends to give up one’s rights. And so it is a mistake to assume there is consent in such cases. It may be objected that some cases of tacit consent in law do not require intention.² Even if so, imagine a case where a person unknowingly about to cross a dangerous bridge can definitely not be presumed to have consented to intervention because she is unaware of a general practice of saving people in such circumstances and so was unable to choose whether to register her approval or disapproval of such a practice beforehand. Intervention nevertheless does not seem objectionable. Despite the absence of consent, paternalistic intervention still seems acceptable in emergency cases. Tacit consent may accompany many such cases, but intervention seems reasonable independently of such consent. The consent principle cannot account for these seemingly acceptable cases of paternalism. The neutrality principle, on the other hand, can. Paternalism in emergency cases is not guided by any particular conception of the good. The good involved, the avoidance of death, is compatible with all conceptions of the good.³ Hence paternalism in those cases passes the test of neutrality and would, so long as it complies with other conditions for justified paternalism, be justified.

2 This point was raised by an anonymous reviewer for this journal.

3 Some conceptions of the good may involve not avoiding death. In these cases, neutrality requires not forcing the avoidance of death on the person. But in most emergency cases, it would be safe to assume that rescuing the person would not violate neutrality.

So consent is not necessary for justified paternalism, since it is faced with the counter-examples of interventions in emergency cases where consent cannot be obtained. But while consent is not necessary for justified paternalism, it is - along with other plausible conditions such as that the consent is voluntary, that the paternalist is reasonably competent, and that no third parties are harmed - sufficient. If the paternalised person consents to intervention for his own good then it is justified. A smoker may consent to his friends helping him to kick the habit by hiding his cigarettes. Someone may consent to being forced to save a fraction of her income to support her in old-age. Such cases, if they count as paternalism at all⁴, are justified paternalism.

Moreover, they are justified even if guided by non-neutral considerations. Intervention to force a couch potato to experience high culture is justified when the couch potato has given his consent. Hence there is a class of counter-examples to the claim that neutrality is a necessary condition for justified state paternalism. When paternalism is consented to, it is justified even though the neutrality constraint is not satisfied. My claim must therefore be adjusted to the proposition that neutrality is a necessary condition for justified *unconsented-to* paternalism. I take this to be a minor adjustment. With most, if not all, instances of government paternalism, it is not possible to choose whether to consent to it or not. Neither the fact of residing in a country, nor that of voting in elections establishes that a person consents to any paternalistic policies that the state may enact. There are some imaginable cases of state paternalism that may be consented to, such as state-run organisations that force those who sign up to their programmes (thereby consenting) to attend a museum at least once a week, or state insurance plans applicable only to those who agree to them, where once you have agreed you can not afterwards refuse to pay the premiums. But most state paternalism is not of this nature. Hence I shall continue to talk of neutrality as a necessary condition for justified state paternalism without mentioning the qualification that the condition is only necessary for unconsented-to paternalism, since the latter covers almost all paternalism.

4. The Voluntariness Principle

A highly influential principle of paternalism is set out and defended by Joel Feinberg. He claims that

the state has the right to prevent self-regarding harmful conduct when but only when it is substantially nonvoluntary, or when temporary intervention is necessary to establish whether it is voluntary or not (Feinberg 1986, 126).

Feinberg claims that people's choices are voluntary if they make them 'when fully informed of all relevant facts and contingencies, with their eyes wide open, so to speak, and in the absence of all coercive pressure' (Feinberg 1986, 104). If this principle is accepted, it may provide a means of ruling out wrongful paternalism without recourse to a principle of neutrality. According to the voluntariness principle, so long as a person's decision is voluntary then interference is prohibited, even though the decision may be mistaken and harmful. Hence much non-neutral paternalism would be ruled out since many instances of forcing people into more worthwhile activities would interfere with their voluntary choices. People can and do make choices on the basis of misguided conceptions of the good – such as joining a patently false religious cult – and though these choices are mistaken in that sense, they are voluntary and therefore, according to Feinberg, immune from intervention.

Feinberg sets out a full account of a perfectly voluntary choice. Such a choice is one where (A) the chooser is competent, i.e. not an infant, insane, or severely retarded, (B) the choice is not made under coercion or duress (which includes evils from natural sources, and coercive offers), or (C) more subtle manipulation such as subliminal or post-hypnotic suggestions, (D) the choice is not made because of ignorance or mistaken belief of the factual circumstances or the likely consequences of the choice, and (E) the chooser does not choose in circumstances that are temporarily distorting. This final category rules out choices made impetuously, while fatigued, excessively nervous, or agitated, under the influence of powerful passions or moods such as rage or depression, under the influence of mind-numbing drugs, in severe pain, in a neurotically compulsive state, or under severe time pressures (Feinberg 1986, 115).

Most choices, Feinberg admits, fall short of this standard of perfect voluntariness to some extent. To categorise all decisions that fall short of perfect voluntariness as nonvoluntary and therefore open to intervention would permit paternalism in too many cases where we would normally think it unjustified.

⁴ They are perhaps not accurately described as paternalism. The reason that the paternalist intervenes may be merely that the person has consented and not because he (the paternalist) thinks it is for the paternalised's good. (This point was suggested to me by Jerry Cohen.) But the paternalist may be motivated by both reasons, and insofar as his motivation is the person's good then his behaviour is paternalistic.

But, as Feinberg points out, voluntariness is a matter of degree, with *perfectly voluntary* decisions at one end of the continuum, and *completely involuntary* acts, such as when one is completely controlled by external forces, at the opposite end. *Fully voluntary* choices, says Feinberg, are those that come close to the 'perfect' end of the continuum, while *nonvoluntary* choices are those that fall substantially short of the ideal (Feinberg 1986, 104). It is only nonvoluntary choices, rather than all those that fall short of perfect voluntariness, that may legitimately be interfered with. We would not think that interference would be warranted when a person makes a decision when slightly fatigued, or slightly nervous, or with a mild headache. These would all, however, make the decision less than perfectly voluntary. But, given that the factors listed are all a matter of degree, it is only if they occur to a substantial degree, such as if there is severe fatigue, nervousness, etc., that the choice fails to be fully voluntary and may therefore be subject to intervention.

The principle of voluntariness permits paternalism toward children and the mentally ill, and towards people about to make decisions that will involve great harm, without being aware of the potential harm or being in certain psychological states such as severe depression or emotional stress. The voluntariness principle also rules out paternalism in many cases. Forcing couch potatoes into more active lifestyles, for example, would usually be unwarranted under the voluntariness principle since people who choose an inactive lifestyle do not do so as a result of coercion, manipulation, factual mistake or any other voluntariness-vitiating factors. Mistakes about the value of activities do not count as factors that make decisions nonvoluntary, on Feinberg's (and any plausible) account of voluntariness. People's voluntary choices that flow from their conceptions of the good are to be left free from interference, regardless of the truth or falsity of those conceptions. Hence the notion of voluntariness seems to provide an account of paternalism that can provide a principled limit to intervention, without recourse to the neutrality constraint. I shall argue, however, that accepting the voluntariness principle makes one committed to also accepting the neutrality constraint. Rather than being alternatives, the two notions are complementary.

It is not clear, to begin with, what the factors that Feinberg lists as establishing voluntariness have in common. They are not implied by the common sense definition of 'voluntary', which means acting without being forced. While voluntariness clearly rules out being forced, coerced, and manipulated⁵ (factors B and C in the list above), it does not so obviously cover the others.

5 Severely manipulated that is, such as hypnotised or brain-washed. Mild manipulation such as persuasive advertisements do not render acts influenced by them nonvoluntary.

Infants and the mentally retarded (A) can act voluntarily. So can those who are ignorant of factual circumstances (D). Some of the circumstances grouped under category E, concerning temporarily distorting circumstances, may make an act nonvoluntary, such as a neurotically compulsive choice, but also sometimes will not, such as decisions made under time pressure or when swayed by emotions. What general explanation, then, can be given for the various factors that Feinberg lists under his expanded notion of voluntariness?

The first account I shall suggest is a straightforward one, though it is not Feinberg's. Voluntary decisions, understood as those where categories A to E are satisfied to a significant degree, are those that are likely to be correct, that is, for the person's good. Nonvoluntary decisions are more likely to be against a person's interests. Such decisions occur in circumstances where the person is likely to choose in a way that will cause her harm. Children, the mentally ill, people ignorant of relevant facts, or those influenced by drugs, or certain psychological states, or those subject to coercion or manipulation⁶ are more likely to choose against their interests than competent, fully informed, sober, calmly deliberating adults. The circumstances that Feinberg lists under the notion of voluntariness are all exceptions to the rule that people are the best judges of their own interests.

This interpretation can account for why voluntary decisions must not be interfered with, but nonvoluntary ones may be. The latter are likely to be mistaken and require intervention to protect the person's interests, while the former, being less likely to be mistaken, will not require intervention. But there is one class of circumstances that are likely to result in mistaken decisions that are not included in Feinberg's list of voluntariness-vitiating factors. These are decisions made in the light of a misguided or worthless conception of the good. A person can be competent, free from coercion and manipulation, fully informed of the relevant factual circumstances, not be subject to any distorting circumstances, and yet choose a couch potato lifestyle or choose cheap pop over classical music or pornography over Proust. But such choices are against the person's interests. He is guided by a mistaken conception of the good and would choose differently if he had a sound conception. Why aren't such cases classified by Feinberg as nonvoluntary along with the other types of cases where people are likely to choose mistakenly against their own interests? The answer, I suggest, is that interference in such cases would violate

6 Coerced or manipulated people are likely to choose the right option in their circumstances, such as handing over the money rather than losing their life, but the decision would usually, in the absence of the coercion or manipulation, be against their interests.

the neutrality constraint. Decisions made in the light of a misguided conception of the good may be against a person's interests and that person's interests would be advanced if they decided on the basis of a better conception of the good. But they should be protected from state intervention because paternalism ought not to be guided by non-neutral considerations. While similar to nonvoluntary decisions in that they are likely to be mistaken, decisions made on the basis of misguided conceptions of the good ought to be classed with voluntary decisions, therefore protected from intervention. Without the neutrality constraint, choices made on the basis of misguided conceptions of the good would be classified, along with the other circumstances that tend to result in mistaken choices, as nonvoluntary and therefore may be subject to paternalism.

So the voluntariness principle can be made sense of with the addition of the neutrality principle. But there is second explanation for what the various considerations in the voluntariness principle have in common, an account favoured by Feinberg. This is that they reflect an ideal of personal autonomy. All of the factors listed reduce the autonomy of the decision. Rather than being *good* decision, it is an *autonomous* one; one that reflects the autonomous choice of the person. A fully voluntary decision reflects the autonomy of the chooser. Feinberg claims that when the conditions of voluntariness are satisfied, that is, when factors A to E are met and the conduct is voluntary, the choice that a person makes is 'the faithful expression of the settled values and preferences of the actor, or an accurate representation of him in some centrally important way' (Feinberg 1986, 117). When the choice is nonvoluntary, then 'it does not come from his own will, and might be as alien to him as the choices of someone else' (Feinberg 1986, 12). These comments reflect a concern for autonomy. The voluntariness principle rests, according to this interpretation, on a conception of personal autonomy.

This autonomy explanation is not, however, independent from the neutrality principle. Respecting autonomous choice already has the neutrality constraint built into it. This is why mistakes due to misguided conceptions of the good are not included; respect for autonomy rules out intervening with decisions that derive from false conceptions of the good. That the autonomy-interpretation of the voluntariness principle requires acceptance of the neutrality constraint is supported by Feinberg's comments above; non-neutral intervention would conflict with the 'settled values and preferences of the actor'. Respecting autonomy, so the argument goes, requires not interfering with a person on the basis that her chosen way of life is misguided. Hence paternalism ought to be neutral.

So on whichever interpretation of the voluntariness principles – the best-judge interpretation or the autonomy

interpretation – is accepted, the neutrality constraint is implied. It is implied directly by the best-judge interpretation since the neutrality constraint is needed to rule out intervention with decisions based on misguided conceptions of the good. And it is implied indirectly by the autonomy interpretation because a concern for autonomy already embodies a concern for not imposing a conception of the good on a person. The voluntariness principle must hence be interpreted as implying the neutrality principle rather than being an alternative to it.

Conclusion

The examination of the principles of paternalism in this article provides support for the neutrality constraint as a necessary condition for justified paternalism. The balancing view was unable, without further interpretation, to give any clear answers about paternalism. The neutrality constraint provides a way of interpreting the balancing view. The consent principle, in its future and hypothetical forms, is too permissive and needs to be supplemented with neutrality. Actual present or prior consent is too restrictive compared to the neutrality principle. The voluntariness principle also needs to be supplemented by the neutrality constraint in order to make it plausible. Without the assumption of neutrality, there would be no grounds for classifying as voluntary, and therefore immune from intervention, many decisions people make in the light of misguided conceptions of the good. Together, these considerations give us strong grounds to accept the principle of neutral paternalism.

What this means in practical terms must await a full account of the distinction between neutrality and non-neutrality, but my guess is that the principle of neutral paternalism allows food labelling requirements, vehicle and machinery safety regulations, and laws against misleading advertising, but rules out laws against drugs, prostitution, pornography, gambling, and euthanasia as illegitimate. The former are interventions that are guided by general considerations that do not conflict with any particular conception of the good, while the latter are interventions guided by particular views about the ways in which people should lead their lives.

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What Do You Mean I Should Take Responsibility for My Own Ill Health?

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Abstract

Luck egalitarians think that considerations of responsibility can excuse departures from strict equality. However critics argue that allowing responsibility to play this role has objectionably harsh consequences. Luck egalitarians usually respond either by explaining why that harshness is not excessive, or by identifying allegedly legitimate exclusions from the default responsibility-tracking rule to tone down that harshness. And in response, critics respectively deny that this harshness is not excessive, or they argue that those exclusions would be ineffective or lacking in justification. Rather than taking sides, after criticizing both positions I also argue that this way of carrying on the debate – i.e. as a debate about whether the harsh demands of responsibility outweigh other considerations, and about whether exclusions to responsibility-tracking would be effective and/or justified – is deeply problematic. On my account, the demands of responsibility do not – in fact, they can not – conflict with the demands of other normative considerations, because responsibility only provides a formal structure within which those other considerations determine how people may be treated, but it does not generate its own practical demands.

Keywords: responsibility, distributive justice, luck egalitarianism, public health policy, alcoholism, smoking.

1. Luck Egalitarianism, Public Health Policy and The Appeal of Tracking Responsibility

Intuitively, it seems right that a gambler who gambles away all of their money and is now living in squalor should have a weaker entitlement to claim benefits to remedy their poverty than someone else who was born into poverty, and the reason for this seems to be that the gambler is presumably more responsible for their own deprivation than the person who was born into it. Whether gamblers are indeed responsible for their own financial difficulties or not is not the issue; my point is rather that *if* we think them responsible for their own financial difficulties *then* we will likely also think that they have a weaker claim to receive financial assistance to bail them out of those difficulties than others who were not responsible for their otherwise similar financial strife.

Arguably, the same underlying intuition about how people's entitlements should *track their responsibility*

also finds expression in many versions of the luck egalitarian position.¹ For example, to luck egalitarians like Eric Rakowski and Richard Arneson, responsibility plays a fairly straight forward regulatory role in shaping people's entitlements. Rakowski believes that if someone is responsible for their own deprivation then they and not anyone else should suffer the burdens associated with that deprivation. This interpretation of Rakowski's (1991) position is suggested by Elizabeth Anderson who argues: "Consider an uninsured driver who negligently makes

¹ In much luck egalitarian thinking responsibility also plays a role in shaping people's duty to contribute something to helping others, and not just their entitlement to be helped – this feature is clearly visible in the cameos of Rakowski's and Anderson's positions that I provide below, as well as in much of the work that will be cited and quoted below – however for the sake of readability in what follows I will sometimes drop the reference to this other important role that responsibility plays in luck egalitarian thinking, and just talk about its role in shaping people's entitlements.

an illegal turn that causes an accident with another car. Witnesses call the police, reporting who is at fault; the police transmit this information to emergency medical technicians. When they arrive at the scene and find that the driver at fault is uninsured, they leave him to die by the side of the road. According to Rakowski's doctrine, this action is just, for they have no obligation to give him [publicly funded] emergency care[; and i]f the faulty driver survives, but is disabled as a result, society has no obligation to accommodate his disability" (Anderson 1999, 295-6).

And although Arneson's responsibility-catering prioritarian account is more subtle and sophisticated – roughly, he believes that priority should be given to helping those people who are worse off and who were not responsible for their own deprivation over those who were, and that the funds used to help them should preferably be obtained from those who are better off and who were not responsible for their own good fortune rather than from those who were – on his account people's entitlements should still track their responsibility. For instance, Arneson argues that it is better to help the unlucky poor rather than the imprudent poor because the former are not responsible for their own deprivation, and that it is better when those who pay for making others better off are less rather than more responsible for their greater holdings because the former are less entitled to their holdings than the latter (Arneson 2000, 344). In a sense, Arneson's responsibility catering prioritarianism recommends that those who are responsible for their own situation (whether good or bad) should be largely left alone wherever possible, and that redistribution should mainly take place between those who are not responsible for their own situation (again, whether good or bad), with resources flowing from the undeserving rich to the undeserving poor.

Thus, on both Rakowski's and on Arneson's accounts, it is largely automatic that if someone *was* responsible for their own deprivation then their entitlements to assistance should be affected because they rather than others should now *take* responsibility for it, and the main difference between their positions is in how closely people's entitlements will track their responsibility. On Rakowski's account responsibility entails ineligibility to claim benefits, and on Arneson's account responsibility affects who gets priority over whom, both in terms of eligibility for receipt of benefits as well as providing the funds for payment of benefits to others.²

Others also think that something like the responsibility-tracking intuition sits at the core of luck egalitarianism. For instance, in discussing luck

egalitarianism Susan Hurley argues that "[w]hen responsibility plays a ... role in distributive justice, it tells us ... that goods are exempt from redistribution to the extent to which people are responsible for them and that distributive justice is only concerned with redistributing goods that are a matter of luck for people" (2002, 63). Eli Feiring summarizes this idea as follows: "The concern of distributive justice is 'to eliminate so far as possible the impact on people's lives of bad luck that falls on them through no fault or choice of their own'. Inequalities generated by the individual's voluntary choices are, however, acceptable and do not give rise to redistributive claims on others. Nobody is required to mitigate the effects of these choices" (2008, 33). This also seems to be the point of Gerald Cohen's suggestion that "genuine choice excuses otherwise unacceptable inequalities" (1989, 931), and of Ronald Dworkin's distinction between "brute luck" and "option luck" (1981). Alexander Kaufman also attributes this intuition to luck egalitarians when he speaks of "[t]he luck egalitarian intuition that egalitarians should compensate only for disadvantage for which persons cannot reasonably be held responsible" (2004, 822). Similarly, Maureen Ramsay argues that luck egalitarians "share a common commitment to the intrinsic moral importance of holding people responsible for what they freely choose to do", because to their mind "unequal distributive consequences that are due to ... voluntary choices [are things] for which people are responsible" (2005, 434). And some even take a harder stance and argue that not only is it *not necessary* to eradicate such departures from strict equality, but that we positively *ought not* to eradicate them – for instance, Daniel Markovits commits himself to this position by arguing that the two aims of egalitarianism (i.e. choice preservation and luck eradication) compete with one another, and that when they come into conflict with one another the former aim should *never* be sacrificed for the sake of the latter aim (2003).

Consequently, luck egalitarians may endorse a social welfare policy under which a smoker who refuses to quit and consequently becomes ill, would have a weaker entitlement to receive publicly funded medical treatment than someone else who suffers similar health problems but not due to things for which they are responsible. The reason why on their accounts this person's entitlements would be reduced is precisely to take account of the fact that the smoker is allegedly responsible for their own deprivation whereas the other person is not.³ That

2 More precisely, what is tracked is the *extent* of people's responsibility, since responsibility is not a light switch (an on/off thing) but something that comes in *degrees*.

3 I am not endorsing any particular claims here about who is responsible for their respective health problems and who is not, but rather I am only reporting that others think that some smokers, alcoholics and obese people are more responsible than others for their health problems, and that to

is, given the scarcity of medical resources, if some people must miss out on receipt of medical treatment, then it should surely be those who were responsible for their own ill health rather than those who were not. This seems to be the point of Arneson's reply to Anderson's critique when he urges that considerations of responsibility *must* play a role in determining people's entitlements, for otherwise "some individuals [who] behave culpably irresponsibly, again and again, [will end up] draining resources that should go to other members of society" (Arneson 2000, 349). Claims along similar lines are also made about alcoholics who due to their excessive consumption of alcohol develop liver cirrhosis and now need a liver transplant; here it is claimed that their position on the waiting list for a liver transplant should be demoted in relation to others who are not responsible for their liver cirrhosis. This, for instance, seems to be Walter Glannon's position – he argues that given the scarcity of medical resources "entitlements to healthcare for a diseased condition are inversely proportional to control and responsibility" – and he also claims that "[t]his view is supported by the egalitarian ethic espoused by certain political philosophers [he names Rawls, Dworkin, Arneson and Roemer] who argue that society should indemnify people against poor outcomes that are the consequences of causes beyond their control, but not against outcomes ... for which persons are responsible" (1998, 35). Finally, similar claims about how some people's entitlements should be reduced on account of their responsibility for their own ill health are also made about people who become obese because of poor eating habits and insufficient exercise and who now also need expensive medical treatment for such conditions as type two diabetes and coronary heart disease. For instance, the World Health Organization (WHO) claims that there are causal links between obesity and "increases in blood pressure, unfavourable cholesterol levels[,] coronary heart disease, stroke, diabetes mellitus, and many forms of cancer" (2002, 9), and although they do not endorse such a harsh public health policy, Martens (2001, 172-3) points out that this kind of argument could be mounted.

2. Some Arguments For and Against Luck Egalitarianism

The responsibility-tracking intuition – i.e. the intuition that people should *take* responsibility for those things for which they *were* responsible, and that no one is entitled to expect others to take this responsibility for them – has some harsh consequences. But are these

consequences *excessively* harsh – for instance, might some of this harshness perhaps be justified – and might luck egalitarians perhaps find ways of legitimately *avoiding* the harshness that can't be justified? Critics think either that all of this harshness is excessive, or else that even in their best-case scenario luck egalitarians will still have to endorse at least some excessive harshness; but luck egalitarians think that all of the harshness that is excessive can be avoided, and that the remaining harshness can be morally justified. In this section I will explain why I find the critics' complaints to be ultimately unconvincing or misguided, but why the luck egalitarians' position also strikes me as flawed.

2.1. The Critics' Complaints and some Problems with those Complaints

Most objections to luck egalitarianism fall into one of four groups: (i) *harshness* objections, (ii) disagreements about the *extent* of people's responsibility or about our ability to *know* that extent, (iii) claims that luck egalitarianism would be *intrusive* or *wasteful*, or that choice and luck are too *intertwined* to ever be untangled from one another, and (iv) claims that medical decisions (e.g. about organ transplants) should be made purely on the basis of *clinical* considerations.

Firstly, ever since Elizabeth Anderson's (1999) influential paper, critics have argued that luck egalitarianism is *excessively harsh* and thus morally unattractive, because it would be awful to abandon someone in their time of need and to offer them little or even no aid just because they were responsible for their own current plight. Anderson asks "If much recent academic work defending equality had been secretly penned by conservatives, could the results be any more embarrassing for egalitarians?" (1999, 287), and in response she charges luck egalitarians with having lost sight of truly egalitarian aims such as addressing "the concerns of the politically oppressed"; redressing "inequalities of race, gender, class and caste"; and eradicating "nationalist genocide, slavery and ethnic subordination" (Anderson 1999, 288).⁴

However, this criticism seems weak because the luck egalitarian's point is not that it is *nice* to abandon someone who has fallen on hard times (even if this is due to their own bad choices), but it is rather that these people have no entitlement or claim on the rest of us *as a matter of justice* to help them out – that was surely Rakowski's and Arneson's position in the passages that were quoted earlier. Whether there are other reasons to help these people – e.g. reasons of charity – is besides the point, because the luck egalitarian's rather minimal position is that equal treatment *qua equal* does not entail

take account of this responsibility their entitlements to utilize public health care resources should be reduced.

4 For recent expressions of this worry see (e.g. Voigt 2007, 394; or Cappelen and Norheim 2005, 477).

that we must eradicate *all* departures from strict equality, but *only those* departures for which those people who are affected by them are not responsible, and that nobody has a legitimate claim on the rest of society *as a matter of justice* to eradicate their voluntary disadvantages (e.g. see Kaufman 2004, 830). Thus, although Anderson claims that such severe responsibility-based disentitlement clauses are inequalitarian because they fail to take up the cause of the needy, those luck egalitarians who endorse such disentitlement clauses will probably not be swayed by Anderson's appeal to our sympathy since they will see such harshness as merely an expression of the plausible intuition which lies at the heart of all luck egalitarian thinking – namely, that equality requires the preservation of people's choices, but only once those choices have been cleansed of the distorting effects of luck (e.g. see Markovits 2003; or Vincent 2006a), or what I also referred to above as the responsibility-tracking intuition – and hence they maintain that there is therefore nothing inequalitarian about their recommendations, even if there is something cold, stark and uncaring about them.

Secondly, many critics have also argued that the people whom luck egalitarians identify as legitimate candidates for harsh treatment were actually not (fully) responsible for their own deprivations – for instance, they argue that alcoholics who now need a liver transplant due to alcohol-induced liver cirrhosis are not (fully) responsible for the fact that they now need a liver transplant – or they cast doubt over whether we can ever really know the extent of their responsibility for their own deprivations. Here, the addictive nature of tobacco and alcohol, the unavailability of reasonably priced healthy food alternatives as well as the proliferation of unhealthy but inexpensive junk food (and advertisements for such), and the declining number of public parks and other recreational facilities in large and densely populated cities where people could engage in physical activity, are among the most commonly cited reasons for why these people are allegedly not fully responsible for their own ill health or for why we face epistemic barriers in trying to ascertain the degree of their responsibility (e.g. Buyx 2008, 873; Steinbrook 2006; Banja 2004).

However, this way of defending the interests of those whom luck egalitarians would otherwise abandon is also unsatisfying. One reason for this is that it is surely implausible to maintain that these people bear absolutely *no* responsibility whatsoever for their current state of health – for instance, that the alcoholic with liver cirrhosis is no different *at all* as regards their responsibility for their current ill health than someone whose liver packs it in due to a genetic liver degenerative disorder – and yet that is the sort of thing which opponents of this harsh policy would have to maintain if they really wished to establish that these people should be treated no worse than victims of bad

luck. But secondly, even if it were not implausible to suppose that these people are completely innocent, the other reason why I do not think that this is a promising line of argument for the critics is because if I get their sentiments right, then their concern is not just to establish that everyone who is *not* responsible for their own ill health should be cared for properly under the public health system, because this is not something that luck egalitarians would take issue with.⁵ Rather, their core concern is surely that we should not abandon even those who *are* responsible for their own ill health, and that the public health system should take just as good care of them as it does of those people who are not responsible for their own ill health. And if I am right in thinking that this is their core concern, then the debate about whether alcoholics, smokers and the obese *are* in fact responsible for their health problems or not is quite peripheral (though not unimportant), since the real issue is not what should happen to those people who are *not* responsible for their own ill health, but rather what should happen to those people who *are* responsible (or who are partly responsible) for their own ill health. Put another way, the real question is who should take responsibility for what Cohen might call *voluntary disadvantages* (e.g. see Cohen 1989, 916) – i.e. those disadvantages for which the affected parties *are* responsible – and my concern is that even if we took on board what the critics say about various responsibility-undermining factors, we would still have to abandon some people to a harsh fate when their disadvantages are voluntary, because this objection leaves intact the idea that people should take responsibility for their own voluntary disadvantages.

Thirdly, critics have also argued: (a) that a luck egalitarian society would be terribly *intrusive*, since the state would need to send out inspectors to periodically check on everyone to see whether they had been the beneficiaries of some undeserved good fortune or the victims of undeserved bad luck; (b) that all of this checking would be very *wasteful*, because too great an administrative cost would need to be borne by society to unearth all of the undeserved burdens and benefits; and (c) that what luck egalitarians ask us to do – namely, to pull apart those effects which are due to people's choices from those effects which are due to people's luck – can not be done because our choices are far too *intertwined* with luck for them to ever be pulled apart from one another. Elizabeth Anderson levels the first charge

5 Indeed, many of the refinements that have been made to luck egalitarian theories (see the end of the next paragraph for Maureen Ramsey's citation of luck egalitarians who attempt to make such refinements) have had to do with identifying cases in which the parties concerned are not fully responsible for their own situation, and excluding them from the harsh treatment.

when she writes that a luck egalitarian “system requires the state to make grossly intrusive ... judgments of individual’s choices. Equality of fortune thus interferes with citizens’ privacy” (1999, 310). And, for instance, Ramsay levels the second and third charges: the second, when she claims that even if we could disentangle luck from choice, in political philosophy any “procedure [used to accurately determine the extent of people’s responsibility] would be ... *prohibitively costly*” (2005, 446, my emphasis); and the third when she claims that Rawls and Dworkin do not satisfactorily disentangle choice and luck from one another – that they still have “difficulty [in] determining [what is] genuine choice” – and she frames Arneson, Cohen and Roemer’s positions as unsuccessful⁶ attempts to find a better way of negotiating the “inter-relatedness between abilities and ambitions” (2005, 434).

However, these objections are also rather counter-productive, because they too sound more like endorsements of what luck egalitarians are saying rather than like genuine critiques. After all, no effort is made here to resist the basic assertion that *this* is how those people who are responsible for their own deprivations should be treated – i.e. that they should take responsibility rather than expecting others to do this – but rather there is only the sad resignation or lament that unfortunately we will not be able to treat them as we ought to because doing so would either result in a terribly intrusive society, in resource wastage, or because it is simply humanly impossible to untangle luck and choice from one another. And although these objections have not gone unaddressed by the theorists whose positions they target – for instance, Ramsay (2005) and Feiring (2008) mention various luck egalitarian responses which in my opinion meet the critics’ challenge – in the end I think that much of this back-and-forth argument is wasted effort because these objections miss the main point in the first place. At the end of the day, even if luck egalitarians could not meet those objections, those who raise them would still have to concede that luck egalitarians’ hearts are in the right place because *if only we could* disentangle choice from luck in an economically efficient way and without unduly intruding into people’s lives, then we *should* after all do precisely what luck egalitarians recommend, and thus the only thing that saves people’s bacon are these annoying practical limitations!

Finally, some critics also argue that when it comes to such things as organ transplant decisions, those

decisions should only ever be made on the basis of *clinical considerations* – e.g. whether a prospective liver transplant recipient’s health problems can be treated using a less intrusive method (e.g. living a healthier lifestyle or perhaps taking certain medications), or whether they are likely to resist the temptation to drink alcohol after their surgery, or even by assessing their chance of surviving a liver transplant operation – rather than on the basis of whether one person is more responsible for their present need for a liver transplant than another person (e.g. Neuberger 1999; Beresford 2001). However, this response seems to ignore the problem rather than dealing with it, since in a climate of scarcity – for instance, more people need a liver transplant than the number of livers that are available, and more money could always be thrown at the public health system – we may sometimes need to make difficult choices between cases which are otherwise identical *except* for the fact that one person is apparently more responsible for the fact that they are now deprived than another, and the question that needs answering is whether in *such* cases it is legitimate to use such considerations as tie-breakers.

In my opinion the critics’ position is not strong. Firstly, nobody denies that luck egalitarianism will sometimes be harsh, but on the luck egalitarian account that harshness is not excessive because that is simply what justice is like – i.e. justice is cold, stark and uncaring. Secondly, luck egalitarians can accommodate the critics’ complaints about mis-attributions of responsibility – indeed, many have refined their positions precisely as a response to such criticisms – and in any case this objection offers little solace to those who are (partially) responsible for their own deprivations, since it does not protect them from being treated in a second- or third-rate manner. Thirdly, the *intrusive*, *wasteful* and *intertwined* objections sound more like sad laments about the practical difficulties associated with treating people in the way that justice requires – i.e. they sound like endorsements of what luck egalitarians are saying – rather than like genuine criticisms. And fourthly, even if we accept the claim that clinical considerations should play the most important role in informing medical treatment decisions, we may still have to make difficult choices when we are faced with clinically identical cases, and what critics would have to explain is why considerations of responsibility should not be used as tie-breakers in such cases. For these reasons I find the objections that critics level at luck egalitarianism to be either unconvincing or misguided.

2.2. Problems with the luck-egalitarian position

However, this should not be taken as an endorsement of the luck egalitarian position; I shall now offer two minor and one main argument against luck egalitarianism.

6 On her account, neither Arneson, Cohen nor Roemer offers us an acceptable way to “separate out the relative contributions of heredity, environment and voluntary choice to estimate the extent to which anyone is justifiably advantaged or disadvantaged because of their own actions or behaviour” (Ramsay 2005, 444).

First of all, there is reason to be weary of the reply that was offered earlier to the harshness objection on the luck egalitarians' behalf – i.e. the reply that justice is simply like that (cold, stark and uncaring), and hence that for this reason there is nothing unjust about abandoning people who were responsible for their own disadvantages to suffer the consequences of their own actions. In essence, the problem with this reply is that it merely asserts, rather than establishing, that the proper concern of justice is narrow (i.e. that justice need only concern itself with responsibility-tracking) rather than wide (i.e. that a plurality of considerations inform what is just and what is not). Without dwelling on this issue, my point is simply that one way to interpret the critics' harshness objection is as an objection to the narrow understanding of justice – i.e. as a call to re-assess the sorts of considerations which we take to be relevant to decisions about justice – and if we understand their objection in this way then this reply will simply beg the question against their position.⁷

Secondly, although luck egalitarians have indeed refined their positions to take account of the various objections that critics have levelled against them – for instance, they recognize that people's responsibility can be undermined by such things as constitutional and circumstantial bad luck, by addictions, etc. – we may worry that at least some of these refinements seem rather *ad-hoc*. For instance, although one reason to not reduce people's entitlements to (e.g.) healthcare even when those people happen to be responsible for their current health deprivations might indeed be that doing so may reduce their ability to be responsible agents in the future, technically *any* prejudicial treatment of a person (i.e. irrespective of whether it has to do with the provision of healthcare or of some other benefit) may reduce people's range of future life options, and that in turn may adversely affect their ability to be fully responsible agents in the future. But since we do not take this to be a reason to refrain from tracking responsibility in *all* cases, it is not clear why we should take this to be a reason to refrain from tracking responsibility in the specific cases that luck egalitarians wish to exclude (e.g. healthcare) from the harsh treatment. As Stemplowska points out, "people often disagree over which disadvantages are acceptable" (2009, 239), and my worry is that once we allow ourselves to exclude one domain of disadvantages from the responsibility-tracking rule, then there will be no principled way of excluding other domains of disadvantage as well.

However, most importantly, the third reason why I

find fault with the luck egalitarian position is because I think that the responsibility-tracking intuition upon which it rests – i.e. the intuition that people should *take* responsibility for those things for which they *were* responsible, and that no one is entitled to expect others to take this responsibility for them – is itself lacking in justification. In what follows, I will first argue that claims about what outcomes or states of affairs people *are/were* responsible for having brought about refer to a very different kind of responsibility concept than claims about *taking* responsibility. Secondly, I will argue that since these two claims refer to two different kinds of responsibility concepts, that claims about the former kind of responsibility need not necessarily entail anything about the latter kind of responsibility. On my account, if we wish to deduce conclusions about how people should be treated from premises about what they have done, then some kind of normative bridging premises will need to be cited. But since normative premises themselves stand in need of justification – for instance, we can't just state that all murderers should be executed without citing any supporting arguments, because as the literature on this topic has shown while utilitarian considerations may support treating people in one way, deontological considerations may justify completely different sort of treatment – it is therefore far from clear that a finding that someone was responsible for their own ill health will automatically lead to the harsh conclusion that their entitlements to have that deprivation remedied should now be reduced.⁸

(i) Six different responsibility concepts

Responsibility is more of a "syndrome" than it is a single concept, or put another way, there is not just one single concept which answers to the name "responsibility", but rather there are many different though related concepts each of which under various circumstances – e.g. depending on what we are trying to express – legitimately answers to that name. To see this, consider this parable about Smith the ship captain (adapted from Kutz 2004, 549; adapted from Hart 1968, 211):

(1) Smith had always been an exceedingly *responsible* person, (2) and as captain of the ship he was *responsible* for the safety of his passengers and crew. However, on his last voyage he drank himself into a stupor, (3) and he was *responsible* for the loss of his ship and many lives. (4) Smith's defense attorney argued that the alcohol

7 The distinction between a *narrow* and a *wide* understanding of justice is brought to mind for instance by Zofia Stemplowska's comparison of "all-things-considered justice" to "narrowly defined egalitarian justice" (2009, 238-9).

8 Despite some superficial similarities between Feiring's (2008) recent argument and the argument which I will present here, our arguments are in fact very different because while Feiring's claims are based on Hurley's (2002) previously-cited analysis of what we ought to do about *involuntary* disadvantages, my analysis relates to *voluntary* disadvantages.

and Smith's transient depression were *responsible* for his misconduct, (5) but the prosecution's medical experts confirmed that Smith was fully *responsible* when he started drinking since he was not suffering from depression at that time. (6) Alas, his employer will probably have to take *responsibility* for this tragedy, since the victims families' claims for damages far outstrip the limits of Smith's personal indemnity insurance policy.

The word "responsibility" is used in this passage in at least six different ways. First, there is a claim about his *virtue responsibility* – Smith was normally a dependable person, someone who took their duties seriously, and who normally did the right thing. Second, there is a claim about Smith's *role responsibility* – in his role as the ship's captain Smith had certain duties to various parties, both on and off his ship (these are sometimes referred to as our "responsibilities"). Third, there is a claim about his *outcome responsibility* – it is alleged that various states of affairs or outcomes, such as the loss of the ship and many of its passengers and crew, are rightfully attributable to him, as something that he did. Fourth, there are two claims about *causal responsibility* – Smith's defense lawyer alleged that Smith's aberrant behaviour was caused by the alcohol and by his depression. Fifth, there is a claim about Smith's *capacity responsibility* – since Smith was not suffering from depression at that time, the prosecution therefore argued that his mental capacities were fully functional, and hence that his moral agency was fully intact. And finally, comments are made about *liability responsibility* – about who should now do what in order to "take" due responsibility for what has happened; in this case financial liability is mentioned because this is apparently one way in which responsibility might be "taken", but we might also suppose that to take due personal responsibility Smith should also apologise to the bereaved families and then spend a term in prison.⁹

(ii) Backward-looking and forward-looking responsibility concepts

However, these various responsibility concepts can be roughly apportioned into the following three groups, the last two of which are particularly relevant to the point which I wish to make: while some of them are largely *descriptive* (i.e. virtue- and capacity responsibility), others look *backwards* in time towards things which have allegedly already happened in the past (i.e. causal- and outcome responsibility), and others look *forward* in time towards things that allegedly ought to be done in the future (i.e. role- and liability responsibility).

9 For an indepth discussion of these different responsibility concepts as well as of the relationships which obtain between them see (Vincent 2006b and 2009).

Thomas Scanlon notices the different directional orientation of the concepts that fall into the latter two groups when he argues that "[t]o say that a person is responsible, in th[e backward-looking] sense, for a given action is only to say that it is appropriate to take [that action] as a basis of moral appraisal of that person[; on the other hand], judgments of responsibility [in the forward-looking sense] express substantive claims about what people are required ... to do for each other" (Scanlon 1998, 248).¹⁰ Peter Cane and Antony Duff also note the different directional orientation of responsibility claims that fall into the latter two groups. For instance, Cane draws a distinction between attributions of what he calls "historical responsibility" which allocate responsibility to people "for past conduct", and claims about what "prospective responsibilities" are imposed upon someone by the law (Cane 2004, 162). Cane argues that "[i]n a temporal sense, responsibility looks in two directions. Ideas such as accountability ... look backwards to conduct and events *in the past*. ... By contrast, the ideas of roles and tasks look *to the future*, and establish obligations and duties" (Cane 2002, 31, my emphasis). On the other hand, Duff distinguishes "*prospective* responsibilities [which] are those I have before the event, those matters that it is up to me to attend to or take care of" and which look forward in time, from "*retrospective* responsibilities [which] are those I have after the event, for events or outcomes which can be ascribed to me as an agent" and look backwards in time (1998, 290-1, original emphasis).¹¹

I cite these different authors to show that even if we only carve up the domain of responsibility claims in the roughest of ways, we should at least notice their inherent temporal directionality – while some responsibility claims aim to report something about the past, other responsibility claims aim to make some sort of prescription for the future. Thus, my first point is that in the sort of debates with which this article concerns itself, claims about what people *are/were* responsible for refer to a different kind of responsibility concept than claims about *taking* responsibility – they are

10 Scanlon uses the terms "responsibility as attributability" and "substantive responsibility", but I think that these are equivalent to my outcome responsibility and liability responsibility respectively. Christopher Kutz (2004, 549), Stephen Darwall (2006, 91-1, notes 5 and 7) and E. Feiring (2008, 36) also seem to interpret Scanlon as I have, and Feiring even adopts Scanlon's term "substantive responsibility" to refer to this forward-looking responsibility concept.

11 Duff elaborates on this in a later article (2004-5). In actual fact, Cane and Duff carve up the domain of responsibility concepts somewhat differently to the way that I do, but at least the main idea that responsibility concepts can look in two temporal directions is the same.

different responsibility concepts because they have very different content – and this leads me to think that the responsibility-tracking intuition which states that *if* you are responsible for something *then* you (and not others) should take responsibility for it, cites *two different* responsibility concepts – outcome responsibility is cited in the antecedent and liability responsibility is cited in the consequent. Thus, a more accurate statement of the responsibility-tracking intuition would read something like this: if you are outcome responsible for something then you (rather than others) should take liability responsibility for it.

(iii) *The transition from outcome responsibility to liability responsibility*

The reason why it is important to observe that the responsibility-tracking intuition makes use of two different responsibility concepts rather than just one generic responsibility concept, is because it is not obvious how consequent claims about liability responsibility are derived from antecedent claims about outcome responsibility.

One source of the problem here is that if these are indeed two different concepts – one that looks backward in time and is used when we wish to report something about the past, and the other which looks forward in time and which is used to make prescriptive claims about the future – then it is not clear why claims about the former (i.e. outcome responsibility) tell us anything about the latter (i.e. liability responsibility). What sort of transition is it that is allegedly made when we move from the backwards-looking claim that some state of affairs is rightfully attributable to a particular person, to the forward-looking claim that this person should now respond by doing various things?

Is the idea meant to be that claims about liability responsibility are already *contained within* claims about outcome responsibility? Given that each of these concepts has a radically different kind of content – one looks forward in time while the other looks backwards in time – I can not see how this could be so, and Scanlon also urges that it is crucially important to distinguish these senses of responsibility from one another, precisely because a failure to do so “leads to the view that if people are responsible ... for their actions [in the backwards-looking sense] then they can properly be left to suffer the consequences of these actions”, or even that nobody else has the responsibility to help them. However, he argues that this conclusion “rests on the *mistaken* assumption that taking individuals to be responsible for their conduct [in the backwards-looking sense] ... *requires* one to also say that they are responsible for its results in the [forward-looking] sense” (Scanlon 1998, 293, my emphasis). On his account these are two separate issues – conclusions about a person’s forward-looking

(liability) responsibility are not already contained within prior claims about their backward-looking (outcome) responsibility. Similarly, Robert Goodin also argues that “[t]ask responsibility [which appears to be the name that he gives to what I call liability responsibility] is often thought to flow, automatically (indeed, analytically), from blame responsibility [my outcome responsibility]. To determine whose responsibility it should be to correct some unfortunate state of affairs, we should on such logic simply determine who was responsible for having caused that state of affairs in the first place. Those who are responsible for causing an unfortunate situation are responsible for fixing it. ... Nothing, it seems, could be simpler, more analytically straightforward” (Schmidtz and Goodin 1999, 151). However, on subsequent pages he points out that it is far from obvious that this assumption is justified because these are two separate concepts.

Alternatively, is the idea perhaps meant to be that conclusions about liability responsibility are logically deduced from premises about outcome responsibility? A number of authors have argued that if this is indeed meant to be a logical transition, then it is one that will only be valid if we also include some normative bridging premises in the deduction. For instance, Howard Klepper has argued that since these are two very different responsibility concepts, the transition from claims about outcome responsibility to claims about liability responsibility must be some form of *moral* implication – presumably what he means is that a person’s outcome responsibility does not *automatically* entail any particular conclusion about their liability responsibility unless we also add some further moral premises about what duties befall those people who are outcome responsible for some kind of state of affairs (Klepper 1990, 235-9). However, if Klepper is right, then somewhere between our premises about outcome responsibility and the conclusions about liability responsibility we must also find some further normative premise which specifies what should be done to outcome responsible parties. Hence, if we wish to derive claims about liability responsibility from premises about outcome responsibility, then we will also need to cite some further normative premises over and above claims about these parties’ outcome responsibility, and since the responsibility-tracking intuition assumes that this transition happens automatically – i.e. that it is obvious that those who *are* responsible should *take* responsibility – it must therefore be rejected.

A related kind of problem with the responsibility-tracking intuition can also be observed when we notice that claims about taking responsibility are not generic, because whenever someone claims that another person should take responsibility for something, they nearly always have some specific kind of treatment in mind – some specific things which those parties should allegedly

now do – in order to now take the responsibility which they think it is their due to take. Suppose for instance that I am responsible for causing a car accident in which your child is seriously injured or maybe even killed; precisely *how* should I now take responsibility for what I have done? Exactly what should I now do in order to take the allegedly due responsibility? Would it be enough, for instance, if I just rang my insurer and arranged for them to compensate you for the medical and special care costs that you will now incur, or for the funeral costs, and perhaps a little extra to cover your family's pain and suffering? No? Well, if that would be a bit too light, then perhaps I should instead (or also?) be made into your child's permanent carer (if they survived); would that suffice as me taking responsibility for what I have done? Or maybe I should be punished in some way – would that suffice?

The point is that even if we agree *that* I should now take responsibility on account of having *been* responsible for your child's misfortune (i.e. a position which I just rejected), we will still be very far from figuring out precisely *how* I should now take that responsibility, because this depends on a wide range of normative considerations which concern themselves with determining what would be an appropriate way of responding to this kind of tragedy.¹² Thus, my second point is that even if we thought that claims about liability responsibility do automatically follow from (or are already contained within) premises about outcome responsibility – i.e. that we need not cite normative bridging premises to deduce *that* someone should take responsibility from the fact that they were responsible – then there would still be another role for normative bridging premises – namely, to tell us *how* that responsibility should now be taken.

Hence, there are at least two reasons to reject the responsibility-tracking intuition. Firstly, we have insufficient reason to suppose that by themselves claims about a person's outcome responsibility entail *that* they should now take or accept liability responsibility. Secondly, even if claims about outcome responsibility alone had been sufficient for the derivation of conclusions about liability responsibility, then they would still not be sufficient to determine precisely *how*

the party in question should now take their liability responsibility. On my account, the fact that someone *was* outcome responsible for something entails neither *that* they should now take liability responsibility for it, nor that they should take liability responsibility for it *in some specific way*. Thus, for both of these reasons I urge that to derive conclusions about liability responsibility from premises about outcome responsibility, we must also make reference to some normative premises.

(iv) *Reactive norms, the normative premises that bridge the gap*

These premises which help bridge the inference gap between the backward-looking outcome responsibility and the forward-looking liability responsibility claims will presumably look something like this: those who are outcome responsible for X should take liability responsibility in manner Y. And given that the duties which these premises confer will befall only those who we have already established *are* outcome responsible – i.e. one will only ever incur those duties as a reaction to being outcome responsible – I shall refer to them as *reactive norms*, since they are *norms* that govern our *reactions* to outcome responsible parties.

Once reactive norms are added to this picture, it ceases to be a mystery how the transition from backward-looking claims about outcome responsibility to forward-looking conclusions about liability responsibility is made – the fact that the latter are forward-looking whereas the former are backward-looking is no longer a problem because reactive norms help bridge this temporal and logical inference gap. So, for instance, if one of our reactive norms stated that someone who is outcome responsible for another's quadriplegia should become that person's carer, then that is indeed what those who are outcome responsible for others' quadriplegia could now be asked to do. Likewise, if another one of our reactive norms stated that those who slander others shall be publicly flogged, then that too is what could be done to those who slander others. Finally, if another one of our reactive norms stated that those who are outcome responsible for another's losses shall compensate them for the full extent of those losses, then that too is how outcome responsible parties could be treated.

(v) *Normative considerations and the justification of reactive norms*

However, this now raises the question of where such reactive norms might come from, because even if we grant that some sort of normative premise is indeed required to bridge the gap between the backward-looking claims about outcome responsibility and forward-looking conclusions about liability responsibility, given that in the end such premises may justify treating people in various often-coercive ways, these premises must surely

¹² For instance, Feiring also points out that “[i]t is ... not obvious *exactly* what [it] means” to say that “people should be held responsible for their medical condition in virtue of their prior conduct” (2008, 33, my emphasis). Serena Olsaretti has also recently argued that it is often far from clear precisely what the consequences of a person's actions – i.e. those consequences that they must allegedly bear when they happen to be responsible for their own current deprivation – might be; after all, “if no one did anything after the dices [sic] are tossed, [then] there would be no loss for the gambler to bear at all” (2009, 7).

also stand in need of justification.

To see how reactive norms might be justified, let us momentarily look at what goes on in debates within the criminal law where people address the question of whether (e.g.) the death penalty is a fitting sentence for certain criminal offences. This question is often approached from two different angles: while some approach this question from the utilitarian angle and argue that such severe punishments can only be justified if in the end their benefits (e.g. deterrence of others from committing similar crimes and prevention of those who have already committed those crimes from re-offending) will outweigh their costs (e.g. from a utilitarian perspective, killing a criminal is also an evil), others approach this question from the deontological angle and argue that such severe punishments can only be justified if considerations of (e.g.) retributive justice warrant them. However, putting these details aside, what I wish to highlight about this debate is that what people involved in it are doing is that they are trying to settle the question of whether a particular reactive norm of the criminal law – in this instance, the death penalty – is justified by either utilitarian (deterrence) or deontological (justice-based) arguments.

Presumably, in other areas reactive norms are justified in a similar manner too. For instance, in tort law one reason why we might expect outcome responsible people to compensate their victims for their losses, is because of the deterrent effect that the knowledge that financial liability will be imposed onto us if we are found to be outcome responsible for another's losses will have on everyone's actions – e.g. presumably people will take greater care while driving. Or, this same reactive norm might also be argued for by citing the alleged requirements of corrective justice, and here there is plenty of room for disagreement about whether corrective justice supports this reactive norm or not. Never the less, this discussion is only intended to provide a sketch of what role arguments about justice or utility (and presumably other normative considerations such as beneficence, caring and so on) play in disputes about responsibility – namely, they are often intended to inform our beliefs about what *reactive norms* there is most reason to endorse – and those reactive norms are in turn needed to support drawing subsequent conclusions about how people should be treated (i.e. about their liability responsibility) from earlier claims about what they have allegedly done (i.e. on account of their outcome responsibility).

(vi) *The relevance of the above discussion for my assessment of luck egalitarianism*

I have argued that it is far from clear that if you are responsible for something then you should now take responsibility for it, or that you should take responsibility

for it in some specific way. On my account, to be justified in deducing conclusions about how people should be treated from premises about what those people are responsible for having done, we must also cite some relevant reactive norms, and those norms must themselves be justified through normative arguments. But since luck egalitarians assume that the transition from outcome responsibility to liability responsibility is largely automatic – that is, after all, why they treat responsibility-tracking as a default position from which any proposed departures must be justified *qua* departures from a legitimate norm – their position therefore rests on a deeply flawed assumption.

Put another way, on my account luck egalitarians should not be as quick as Rakowski and Arneson to reduce the entitlements of those people who were outcome responsible for their own deprivations, because normative considerations also have a role to play in determining whether this should indeed be done or not, and these considerations are intrinsic to the egalitarian project – i.e. they inform us about what taking responsibility should involve – and not extrinsic distractions from that project's main concerns. While luck egalitarians assume that people's entitlements should *automatically* track their outcome responsibility, on my account this is not automatic for two reasons: firstly, it is not automatic that people's entitlements should track their outcome responsibility because *whether* someone's outcome responsibility should affect their entitlements or not depends on a possibly wide range of normative considerations, and some of these may recommend against doing this; and secondly, because it is also plausible that outcome responsibility may only be relevant to *other aspects* of how outcome responsible parties should be treated, but not to their *entitlements per se*.¹³

3. Misgivings about the Debate

Although I find fault with both sides' positions, my critique of the luck egalitarians' position has broader consequences for the debate treated as a whole.

To see this, notice that two features are common to much of the discussion that I summarized in the first half of this paper. Firstly, considerations which tame the alleged harshness of the luck egalitarian commitment

¹³ For instance, we may instead decide that those who are outcome responsible for their own ill health should be compelled to attend compulsory cooking classes, or that they should be involuntarily committed to drug detoxification clinics, but that they should still all get the same sort of medical treatment as others who are not responsible for their similar ill health.

to responsibility are often conceived of by both sides to this debate as exclusions, constraints or restraints on the default responsibility-tracking rule which states that the degree of a person's responsibility for their own situation should to some extent determine the degree of their entitlement to receive public assistance, and the legitimacy of expecting some to contribute to funding the provision of such assistance to others. And secondly, depending on whether one is an advocate or a critic of luck egalitarianism, these exclusions, constraints and restraints are seen as either effective or ineffective, and as either justified or not justified. However, if my critique of the responsibility-tracking intuition is correct, then both of these features are problematic because considerations which tame the harshness of the responsibility-tracking rule are not external constraints that are imposed upon responsibility from the outside, but rather they are internal to the concept of responsibility – i.e. they are the source of the reactive norms which mediate the transition from backward-looking claims about what a person is allegedly responsible for having done or brought about, to forward-looking claims about how (and even that) they ought to now take responsibility – and so assessing such considerations along these two dimensions (i.e. as effective/ineffective exclusions to- and as justified/not justified departures from an otherwise legitimate responsibility-tracking norm) is also inappropriate. Put another way, if my rejection of the responsibility-tracking intuition is correct, then the demands of responsibility will not – because they can not – conflict with the demands of these other normative considerations, because responsibility only provides a formal structure within which those other normative considerations determine how people may be treated, but contrary to what most people seem to think, responsibility does not generate practical demands of its own which might conflict with other normative considerations and which must therefore either be justified or overturned by those other considerations.

This critique of the standard way in which debates about luck egalitarianism are carried out is useful for two reasons. First, it helps to explain precisely why the harshness objection is not merely a lament about the cold, stark and uncaring nature of justice (i.e. an outsider's lament about the unkindness of justice), but rather why it is indeed as I suggested above an objection to luck-egalitarianism on grounds of justice (i.e. an insider's complaint about the unjustness of luck-egalitarianism). The harshness objection is a justice-based objection because normative considerations – i.e. claims like “this is too harsh”, and their supporting arguments – play a key role in validating the transition from claims about a person's outcome responsibility to conclusions about their liability responsibility, and so such claims should be taken seriously by luck

egalitarians. Although it may indeed turn out that people's treatment should *in some way* be affected by their outcome responsibility, it is far from clear either *that* or precisely *how* their outcome responsibility should affect their treatment because these things depend to a large extent on a wide range of normative considerations.

Second, as regards debates about how smokers, alcoholics the obese and others in similar situations should be treated, the foregoing discussion entails that more effort should be devoted (on all sides in this debate) to exploring the reasons which allegedly support treating outcome responsible parties in various ways, because on my account the mere fact that someone is outcome responsible for their own ailment (where this is indeed the case) can never be sufficient to by itself establish either that they (rather than society) should now take responsibility for their own ill health, nor to tell us precisely how they should take that responsibility. Unfortunately, both sides in this debate have tended to assume that the only point which needs to be settled is the one about these people's outcome responsibility – i.e. *whether* alcoholics, smokers, the obese and others *are* outcome responsible for their respective positions – and so debates about whether such people are outcome responsible for their own situation or not tend to occupy centre stage in this area. But on my account, even if eventually both sides in this debate came to agree on who is outcome responsible for their own ill health and about the extent of their outcome responsibility for it, they would still need to reflect more on what this entails about how those people should be treated, because it is far from clear that what should now happen (if they are to take due responsibility for their actions) is that such people's access to publicly funded health care should be restricted. In essence, it is far from clear that even if smokers, alcoholics and the obese all turn out to be outcome responsible for their own ill health, then they should have their access to public health care restricted to take account of their responsibility, because this is just as much a normative issue as it is a matter of whether they were responsible for their own ill health or not.

4. Conclusion

Many modern luck egalitarian theories rest on the claim that to obtain/maintain equality we must preserve the effects of choice while eliminating the effects of luck; on the luck egalitarian account, to treat people as equals we need not eradicate all departures from strict equality but only some, since people who are responsible for their own departure from strict equality should, wherever possible, be left alone. However, this claim presupposes some version of the responsibility-tracking intuition, and I have argued that this intuition is remiss because the

mere fact that someone *was* responsible for some state of affairs is sufficient to establish neither *that* they should now take responsibility for it, nor that they should now take responsibility for it *in some specific way*. On my account, to establish either of these things, in addition to premises about what someone was responsible for bringing about, we also need premises about what ought to be done to/by people who happen to be responsible for those sorts of things – i.e. we also need some normative premises and arguments to support them – and we need to realize that the role which those premises play in generating practical conclusions about how people should be treated is not as external constraints imposed upon the harsh demands of responsibility, but rather that they are the very sources of the practical demands of responsibility.

In a way, on my account people are entitled to say: “So what that I’m responsible for my own ill health? In itself, this shows neither *that* I should now take responsibility for my own ill health, nor does it tell us *how* I should now take this responsibility.” To justify substantive claims about how people should be treated on account of the fact that they are responsible for something, we need a lot more than just claims about what they *are* responsible for – we also need substantive normative debate, and we should be a lot clearer about what role that normative debate will play in generating practical conclusions about how we may treat one another.¹

Endnote

This paper is an extended and revised version of the paper “Taking responsibility for voluntary disadvantages” which was published in the *Proceedings of the Third International Applied Ethics Conference in Sapporo* (2008, 297-312). It contains ideas and some text from the author’s PhD thesis *Responsibility, Compensation and Accident Law Reform* (2006) – especially from §6.3. – and those ideas were originally presented in 2006 at the Australian Society of Legal Philosophy conference at the University of Auckland, New Zealand in a paper entitled “A Critique of Responsibility-Tracking Egalitarianism”.

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Notes to Contributors

1. All submitted papers are subject to anonymous peer-review, and will be evaluated on the basis of their originality, quality of scholarship and contribution to advancing the understanding of applied ethics.
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5. In-text references should be cited in standard author-date form: (Walzer 1977; Kutz 2004), including specific page numbers after a direct quotation, (Walzer 1977, 23-6).
6. A complete alphabetical list of references cited should be included at the end of the article in the following style:

Walzer, M. (1977), *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, New York: Basic Book.

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Cohen, G.A. (1989), 'On the Currency of Egalitarian Justice', *Ethics*, 99 (4): 906-44.

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