

Reading Spinoza and Reading Kant - Irfan Ajvazi

This article poses the question of racism in philosophy. I will be

referring to the racism that we often ﬁnd in the texts of some of the most eminent ﬁgures of the history of Western philosophy, particularly Locke and Kant. They seem to express racist views that appear to us, but not apparently to them, to run counter to the ethical principles that they themselves proclaimed. However, the focus of this article is not so much on their racism, but on our ways of addressing it, or, more often, our ways of not addressing it. My question is whether there is not an institutional racism within contemporary philosophy that

emerges in our tendency to ignore or otherwise play down their racism while we celebrate their principles. It is to my mind shocking to see how little thought contemporary philosophers give to this issue, although there are deﬁnite signs that there is now at least a recognition of the problem, just as the sexism of so much philosophy is also now being more carefully scrutinized. [1] Because the details of both Lockeʼs and Kantʼs racism are now more readily available to anybody who wants to know about them than they were even three or four years

ago, it is important to think about what difference they might make to the way these thinkers are discussed and taught. In other words, we must explore the possibility, which some people may want to dismiss too quickly as a symptom of political correctness in the academy, that these investigations raise serious and difﬁcult philosophical questions that we need to attend to as a matter of urgency.

The unwillingness of philosophers generally to confront, for example, the failure of Locke and Kant to

oppose the African slave trade does not arise out of a healthy refusal to engage in tabloid philosophy, but represents both a moral and a philosophical shortcoming.

I should make it clear at the outset that I do not understand this article as offering reasons not to read them. In spite of my best efforts to avoid giving precisely this impression, some people have assimilated my efforts to the way that certain scholars attempted to use the facts of Heideggerʼs involvement with National

Socialism as a way to expel him from the canon: according to Gilbert Ryle, because Heidegger was not a good man, he cannot have been a good philosopher. [2] But I have never used that argument, nor sought to apply any variation of it to the works of Locke or Kant. My point is not that we should now bypass these thinkers, but that, given their unquestioned importance, such that we cannot afford not to read them, we should make their racism a further reason to interrogate them. In other words, because they were unquestionably

major philosophers whose impact lives on outside the academy as well as in it, their racism has a particular claim to our attention. This is what makes Kantʼs racism more philosophically interesting than that of Christoph Meiners, for example. So how should we address the racism of Locke and Kant? I will detail three initial tasks, but this is not intended as an exhaustive list.

The ﬁrst task is to research, acknowledge and address philosophically the racism of canonical philosophers in such a

way that it is seen in relation to the larger body of their work. This includes raising the question of how the racism of these thinkers relates to their philosophy. For example, Frege was strongly antiSemitic, but it is hard to draw a connection between his anti-Semitism and his philosophy. Heideggerʼs involvement with National Socialism raises serious questions that cannot be evaded by any philosophical assessment of his work, but his anti-Semitism, although undeniable, is not so easily associated with his philosophy, although an argument

along these lines can be formulated. The case against Heidegger quite properly relies on the fact that he was at work in a crucial time period when the question of the fate of the Jews could not be evaded, but at other times other moral questions impose themselves. Slavery was one of these. Western philosophy has been and is still largely in denial about its racism, not least because most specialists tend to be defensive about the thinkers on whom they have devoted years of study.

Take Locke, ﬁrst. It is true that Locke scholars for a number of years have recognized the need to address the question of his leading role in the administration of British colonial activities and his investment in the slave trade through the Royal African Company, as well as the Company of Merchant Adventurers, who operated in the Bahamas, but the consideration of these topics is still largely the preserve of historians and political theorists, as if they raised no philosophical questions. [3] Although the precise role that Locke played in

writing *The Fundamental Constitutions of Carolina* is unknown and may never be settled, it seems that, when that document grants to slaveholders ʻabsolute power and authorityʼ over their Negro slaves, the reference to ʻpowerʼ was added to the manuscript in his own handwriting to read: ʻEvery Freeman of Carolina shall have absolute power and Authority over his Negro slaves, of what opinion or Religion soever.ʼ [4] The point of the speciﬁc article of the *Fundamental Constitutions* was to resolve the

question of whether conversion to Christianity on the part of the slave would jeopardize the slaveholderʼs interest in his property. But Lockeʼs intervention in 1669 was continuous with his insistence in the *Second Treatise of Government* that subjection to ʻabsolute, arbitrary, powerʼ deﬁnes slavery. [5] With reference to power, the terms ʻabsoluteʼ and ʻarbitraryʼ are used by Locke virtually interchangeably. [6] And yet, as a generation of scholars have now repeatedly observed, the chapter ʻOf Slaveryʼ in the *Second Treatise* clearly excludes chattel

slavery of the kind practised in Carolina, because it is restricted to captives in a just war. [7] Locke must have recognized that what he said about legitimate forms of slavery in the *Second Treatise* contradicted the conditions he helped to establish for Negro slaves in Carolina. And the fact that ʻSlaves bought with Moneyʼ by planters in the West Indies make an appearance in the *First Treatise* shows that he was perfectly capable of relating his political theory to conditions outside England, when it helped his argument. [8] Nevertheless,

most commentators on Locke take it for granted that what needs to be explained is merely a contingent, anomalous, aberrant Locke behind which lies the benign farsighted liberal Locke, the Locke of whom Lockeans are proud to be the heirs.

Turning to Kant, it is hard to know whether the fact that Kant scholars waited for non-specialists like Emmanuel Eze and me to raise the issue of Kantʼs racism was because these scholars did not know the full range of Kantʼs works very well –

which would be somewhat damning if true – or because they persuaded themselves that there was nothing here worth discussing. [9] In any event, Kantʼs essays on race were acknowledged by philosophers until the Second World War, and it was only after that time that recognition of their existence seemed to be conﬁned to non-philosophers, such as Leon Poliakov and George Mosse, who included reference to Kant in their books on the background to the Holocaust. [10] It is true that some philosophers, and not just

historians of science, when writing on the ʻCritique of Teleological Judgmentʼ, saw that some of the central problems addressed in that work were ﬁrst formulated by Kant in his essays on race. [11] However, the racism that is apparent in those essays, as in his lectures on anthropology and on physical geography, was almost never brought into relation with his teleology, his moral philosophy, or his essay on universal history, in spite of the obvious question that they raised: how could his racism coexist with his moral universalism? [12]

Discussions of the racism of Enlightenment philosophers are often met by the response that the philosopher in question – it does not really matter who it is – simply shared the assumptions of the time. This suggests a second task: one must recognize the importance of context for an understanding of these philosophers. To assess their remarks one needs to know the range of views being expressed at the time in which they wrote. This exercises a form of external control on our judgements. The

ʻchild of his timeʼ defence cannot be used until we research what their contemporaries thought and particularly how their contemporaries responded to them. Although there does not appear to have been a thoroughgoing public debate about the legitimacy of chattel slavery until some time after Lockeʼs death, we do know that he was familiar with a debate, involving one of his former students, over the question of whether Christians can be enslaved, a question that concerned planters fearful about

the impact on their investment of missionary efforts among slaves. [13] Blumenbach objected to some of Kantʼs racial remarks against the Tahitians as unfair. [14] Concern about Kantʼs racism is not therefore a ʻnew concernʼ, the product simply of sensibilities that have only recently surfaced. This part of the inquiry is important because it makes it possible to decide whether or not an interpretation is anachronistic. [15]

A third and somewhat related task is to inquire into their sources,

paying particular attention to the selection of sources. What did they know, when did they know it, and what could they have easily known had they wanted to? To my surprise, in raising these questions I have made the kind of historical discoveries that one would have thought specialists in the area would have known long ago. My earlier discussion of Lockeʼs insertion of the term ʻpowerʼ in the *Fundamental Constitutions of Carolina* is a case in point. Even though the fact that Locke had a role in the drafting of this document has been widely

known, so far as I am aware no scholars focused on the evidence that Locke added the term ʻpowerʼ until I did. [16] Similarly, I ﬁnd it surprising that Kant scholars would not have noticed that Kant had alternative accounts of the character of Africans at his disposal from that ʻOn the Use of Teleological Principles in Philosophyʼ, and that when he characterized the freed Negroes of America and England as – like the Gypsies in Germany – unwilling without exception to work, he deliberately gave credence to the account provided

by James Tobin of the pro-slavery faction rather than that proposed by James Ramsay, a prominent opponent of slavery, although both were equally available to him in the same periodical. [17] Kant was well aware of the problem of alternative sources and explained why in his review of Herderʼs *Ideas*: one could prove whatever one chose to prove. [18] But that is why Kantʼs own choices must be carefully examined. Kantʼs failure to express disapproval of the chattel slavery of Africans, either in his published works or, so far as I can

tell, in his lectures, has to be understood in the context of the fact that this was one of the most prominent moral issues of his day.

**Excising contradictions**

These three tasks – identifying the problematic statements of these thinkers that are prima facie racist, locating them in the context of their works and the broader historical context, and establishing their sources – are basic tasks that intellectual historians would perform as a

matter of course, although they involve scholarly and historical skills that philosophy graduate programmes, for the most part, do not spend much effort in developing among their students. By contrast, many philosophers, even historians of philosophy, seem not to care about these tasks, because they are intent on taking the problem into a different sphere. Historians of philosophy tend for the most part to isolate Locke, Kant and Hegel from the historical realities which nurtured them and to which they responded. Furthermore, whole

volumes of their works are disregarded. In short, the basic rules of good history are disregarded. For largely historical reasons, the study of the history of philosophy in the English-speaking world has much more to do with maintaining its philosophical legitimacy in the face of the very narrow conception of philosophy that came to prominence in the period immediately after the Second World War than with meeting the standards that would establish its credentials as history.

For ﬁfty years or so historians of

philosophy have believed that they can write a work in the history of philosophy and brazenly rewrite the arguments of the canonical philosophers, if they think they can improve on what those philosophers had managed for themselves. For example, Bernard Williams in the preface to his book on Descartes explains that because Descartesʼ work was inevitably and essentially ʻambiguous, incomplete, imperfectly determined by the authorʼs and his contemporariesʼ understandingʼ, he would take it upon himself to write a ʻrational

reconstruction of Descartesʼ thoughtʼ. [19] The history of ideas, he explained, is ʻan historical enquiry and the *genre* of the resulting work is unequivocally historyʼ, but the history of philosophy faces ʻa cut-off point, where authenticity is replaced as the objective by the aim of articulating philosophical ideas.ʼ [20] Clearly the casualty of such efforts is an understanding of the historical dimension of a philosopherʼs work and I believe that this leaves anyone who takes this route ill-equipped to address the question of the coexistence in

the same thinker of both racism and moral universalism, which is why they tend to ignore one or the other, usually the racism. This approach allows philosophers to persist in presenting racism as no more than a surface feature of a philosophy, in contrast with moral universalism, which is a philosophical thesis that, as such, will always trump racist particularism.

What is a philosopher who believes that arguments are the base currency of philosophy to do in the face of a bad argument or a

contradiction in some text by a major historical philosopher? Whereas some academics seem to gain some satisfaction from exposing the errors of a Plato or a Kant, and for many of them this seems to be all the satisfaction they need, Williams seems to advocate that one simply pick and choose, add and subtract, until one arrives at what the philosopher should have said. If the problem is that a thinker appears to contradict himself or herself, then one can always drop one of the competing claims. The rule is that one saves the

proposition that is most worth saving, and it is only a slight extension of this practice to drop all claims that are in the least bit embarrassing, whether there is a contradiction or not. What remains is the ʻauthenticʼ doctrine of the philosopher in question. We are served a new, slimmer, more elegant Kant, after he has undergone liposuction and had the surplus removed. This is quite normal philosophical practice, which is why no eyebrows are raised when it is applied to Lockeʼs role in writing *The Fundamental Constitutions of*

*Carolina*, Kantʼs insistence on the racial superiority of whites, and, for that matter, Hegelʼs exclusion of Africa, China and India from history proper. What remains is a benign, sanitized philosophy.

Although most commentators choose to excise the racism from the philosopher in question in the way I have just described, a few have begun to address the contradiction between racism and moral universalism. They have found that sometimes imputing a racist position to the thinker renders them more coherent and

serves to defend their philosophical credentials. So when trying to explain why Locke accepted the idea that blacks could be slaves, but seems at the same time not to have wanted Native Americans to be slaves, Barbara Arnell simply concludes that the former were for him ʻless than humanʼ, although she seems to have no direct evidence for choosing that particular formulation. [21] Consider also the example of James Farrʼs essay on the problem of slavery in Lockeʼs political thought. [22] Following his recognition that Lockeʼs theory

positively condemns seventeenthcentury slave practices even though Locke invested in the African slave trade and was involved in legislation concerning it, Farr asks: ʻare there other grounds in Lockeʼs political thought that *would* justify seventeenth century slavery?ʼ His answer is as follows: ʻ*I fear* that there just are no other grounds. In particular, Locke was not a racist in the strong sense required to justify slaveryʼ. [23] Farr seems to be saying that it would be better that Locke had been a consistent racist than that he be caught

contradicting himself. Or, more precisely, it seems that Farr would prefer evidence that Locke was a racist in a strong sense than that he was inconsistent, where being a strong racist means having ʻboth an *empirical* theory that explains black racial inferiority and a *moral* theory that justiﬁes enslavement because of racial inferiorityʼ. [24] I do not accept Farrʼs account, which identiﬁes strong racism neither with strength of feelings, nor with the character of actions, but with explicit theories. Nor do I believe that he has exhausted the

historical evidence. But my interest here is that Farr, who was not a philosopher, nevertheless wants, above all, a Locke who is free of contradiction. Of course, had Farr been a philosopher of the kind that is all too familiar, he could have simply disregarded the evidence of Lockeʼs investment in the slave trade and in its institutionalization by declaring that this was not the real Locke. Indeed, he could also have disregarded any empirical theory on the grounds that it was not the real Locke either, as happens when philosophers read Kant.

This can most easily be illustrated by reference to Thomas Hill and Bernard Boxillʼs recent essay, ʻKant and Racismʼ. I applaud their essay as one of the few serious treatments of the topic, but I regard it as symptomatic of the failings I identify as endemic to predominantly analytic approaches to this topic. Hill and Boxillʼs strategy is to distinguish at the outset Kantʼs philosophical theses from his empirical claims, to which they assimilate his ʻracist and sexist beliefs and attitudesʼ. This allows them to segregate

what they call his ʻbasic ideas (e.g. the central and more foundational claims in the three Critiques and the *Groundwork*)ʼ from the ʻseparable partsʼ of that philosophy, which are ʻindependent of the basic ideas and perhaps falsely believed to be derivativeʼ from them, and from particular illustrations. [25] In other words, they operate by making distinctions. So long as there is no necessary connection between the ʻracist and sexist beliefs and attitudesʼ and what they identify as his main philosophical claims, then this

provides them with the basis for saying that, if Kant writes racist remarks, it is not the real Kant who does so.

So who is the real Kant? The ʻreal Kantʼ apparently is not the historical Kant but, rather, the author only of his ʻcentral philosophical principlesʼ. The real Kant is deﬁned not by texts so much as by select ideas that contemporary Kantianism ﬁnds valuable. So Kantʼs teleology is discarded because contemporary philosophers are sceptical about it and because it appears to be

separable. [26] The emphasis is on constructing a Kant that can meet the demands we place on a contemporary moral theory, including providing resources against racism. But it is striking that even within these very restricted accounts of Kant, the name Kant is still made to do all the work, and the theory remains parasitic on a brand name whose status largely derives from texts that are now for the most part ignored. I am thinking of the fact that for the generations immediately after Kant it was the *Critique of Teleological*

*Judgment* that was regarded as his true accomplishment. It is almost impossible for anyone taught Kant by a contemporary Kantian to make sense of most of what Schelling, Hegel, or Hölderlin had to say in praise of him, let alone the majority of their criticisms. For example, at the beginning of 1795 Hölderlin wrote to Hegel that he regarded the way in which Kant united mechanism with the purposiveness of nature to contain ʻthe entire spirit of the systemʼ. [27] That is to say, the version of Kant taught in history of philosophy courses today has

been developed to protect Kant against the criticisms leveled by his immediate successors, thereby making the writings of the latter appear arbitrary and idiosyncratic. The real Kant is the version of Kant that approximates most closely to what the philosophers who propose this construction recognize as the truth. The real Kant is the true Kant because common sense, freedom from contradiction, and, where possible, freedom from racism, are introduced as hermeneutic principles even where they contradict the

historical evidence. What one often ﬁnds is anything but the much-vaunted analytic necessity; what one ﬁnds is pick and mix. Kant himself is damned: his racist attitudes are judged to be incompatible with his basic principle of respect for humanity in each person. But ʻthe deep theoryʼ is salvaged to live and ﬁght racism another day. [28]

The point of contention here is not the racism of the historical Kant, which Hill and Boxill concede, but how philosophers can come to a better understanding of how

racism operates, the better to understand and so combat it. Hill and Boxill believe that in spite of his racism, Kantʼs moral theory ʻcan serve as a reasonable framework for addressing contemporary racial problems, provided it is suitably supplemented with realistic awareness of the facts about racism and purged from associations with certain false empirical beliefs and inessential derivative thesesʼ. But the problem of the coexistence of what they deem to be Kantʼs racist attitudes and his philosophical ideas

incompatible with those attitudes is not pursued. This is all the more surprising because their defence of Kant as a philosophical resource to address racism and particularly their defence of ʻreasonable deliberation and dialogue to address racial problemsʼ leads them to argue for an examination of racism in terms that I fully endorse. This is what they say: ʻsuch use of reason must be informed by an adequate understanding of the empirical facts about racism, its genesis, its stubbornness, its hiding-places, its interplay with other factors, and

the most affective means to combat itʼ. [29] My response is that if one indeed wants to address racism, then investigating Kantʼs racism in its coexistence with cosmopolitanism would have been a good place to start. One ﬁnds there an inﬂuential, articulate racism whose genesis, stubbornness, self-deception, and interplay with its opposite that is there to be studied. But how is this to be done?

Oneʼs answer to this question will depend on how we already think of racism, which is why I applaud

the publication of Boxillʼs recent anthology on this issue, Naomi Leake, *Food*, 2002 in which the essay ʻKant and Raceʼ is to be found. Reliance on a narrow deﬁnition of racism has led to a society which is obsessed almost exclusively with the task of avoiding saying certain things, especially policing certain types of essentialist remarks about racial inequality, while doing nothing to address, for example, inequalities in access to education, health care and economic wellbeing, as well as life expectancy, as they correlate with racial identity. If one

wanted to address those questions, in terms of both diagnosis and remedy, Kantʼs philosophy has, particularly in the curtailed versions now popular among Kantians, much less to recommend it than some other philosophies, and that too belongs under the topic of Kant and racism. And I might add that, although arguments drawn from Kant could be used to combat racism, historically they seem to have had little impact – as a study of, for example, debates about the abolition of slavery conﬁrms.

The analytic approach relies heavily on the assumption that the appropriate hermeneutical task in this context – the primary imperative – is to resolve the contradiction between racism and universalism in these philosophies, either by amputating one limb of the contradiction or by supplying a missing premiss. As Michel Foucault noted in *The Archeology of Knowledge*, both philosophers and historians have tended to operate on the assumption that the discourses they analyse possess coherence and that we all speak to overcome

the contradictions of our desires, our inﬂuences, and the conditions under which we live. [30] However, if, as Foucault suggested, we challenge that assumption, then the contradictions I have identiﬁed in Locke and Kant, far from being mere surface phenomena that can easily be surgically corrected, are perhaps better understood dialectically, although Foucault would not have liked the idea. [31]

Take the parallel and more familiar case of the contradiction between the American Declaration of Independenceʼs proclamation of

human equality and the practice of sexual discrimination and chattel slavery which the Founding Fathers continued to underwrite. The claim is still often made that the Declaration of Independence in some way entailed the emancipation of slaves and it was only a matter of time before the inference would be drawn and the United States would become the place it was destined to be. But another way to reconcile the Declarationʼs statement of the equality of human beings with the racist practices of the country was to declare *The Negro a Beast*, as

one author insisted at the end of the nineteenth century. [32] These alternative ways of resolving the contradiction are indeed opposed, but, from what I am here calling provisionally a dialectical perspective, it can in addition be seen that that opposition is sustained by their mutual adherence to the words of the Declaration. The Declaration of Independence, understood as an expression of a society sustained by a racially based slavery, called for both a universalism and a more explicit racism than had hitherto existed. To that extent it

is possible to see these rival positions as nevertheless mutually supporting each other, insofar as they both work to sustain the space that makes possible their opposition. [33] This allows some insight into the coexistence of moral universalism and racism in Kant, as I hope now to show by taking up a problem identiﬁed by Robert Louden in his recent book *Kantʼs Impure Ethics*.

**Cosmopolitan prejudice**

Louden quotes a passage from

Kantʼs *Conﬂict of the Faculties* where Kant writes that ʻall peoples on earth … will gradually come to participate in progressʼ. Loudenʼs gloss is that ʻKant is logically committed to the belief that the entire human species must eventually share in the destiny of the moral species: moral perfectionʼ. This leads Louden to identify Kant as a gradualist. Louden quotes a statement from the *Reﬂections*: ʻwe must search for the continual progress of the human race in the Occident and from there spreading around the world.ʼ [34] It

sounds no better in context. The previous sentence, the ﬁrst of the note, which unfortunately Louden does not cite, reads: ʻThe oriental nations would never improve themselves on their own.ʼ [35] The problem is that attributing gradualism to Kant seems to raise more questions than it resolves: given his view of the permanency of racial characteristics, including talents and dispositions, and given his opposition to colonialism and race mixing, one still has no answer to the question of how ʻthe entire speciesʼ would progress. Hence Louden explains, according

to a formula that is more familiar than illuminating, although Kant is logically committed to the idea that the entire species progresses in perfection, he is not personally committed. My hypothesis is that Kantʼs cosmopolitanism – his search for a purpose in human history – made his racism even more pronounced because the racial inferiority he already recognized now struck him as an offence against all humanity, an offence against this very cosmopolitanism. When we read in Kantʼs ʻIdea for a Universal History with Cosmopolitan Intentʼ

that Europe will probably give law to the rest of humanity, we should hear not only pride but frustration directed against the other races from a man who elsewhere will complain that the white race alone of all the races contains ʻall impulses and talentsʼ. [36]

When philosophers today ﬁnd in Kantʼs cosmopolitanism a resource for their own thinking, they need to be more aware than they are of the different ways in which it is severely compromised, at least in its original formulation. The cosmopolitanism that is

today taken to be an appropriate response to nationalism, or what some people like to call tribalism, is very different from Kantʼs cosmopolitanism because the latter was formulated not as an antidote to nationalism, let alone racism, but as an answer to the question of the meaning of human history. Kant could see purposefulness at work in nature, but he could not see anything comparable in human affairs, which, by contrast, seemed arbitrary. [37] A universal history with cosmopolitan intent addressed that problem, but at a

clear price. Henceforth, to be lazy was not merely to be less deserving – a judgement that, from Lockeʼs perspective, would be damning enough, as it would threaten Godʼs plan by running counter to his command ʻto increase and multiplyʼ. It was also to infect or compromise the very idea of humanity as Kant conceived it.

Kant expressed this concern in a number of places, most notably in his review of Herderʼs *Ideen* and in the *Critique of Judgment*. From Herderʼs perspective, all people

contributed to the idea of humanity, but in Kantʼs time laziness was not only a fault of select individuals; it was also widely regarded as a racial characteristic of, among others, Africans, Gypsies and South Sea Islanders. On Kantʼs account, their dispositions, like their other racial features, were the product of the effect of the climate on the germs (*Keime*) of their ancestors, a climate so benign that it gave them no reason to do anything but enjoy Natureʼs largesse. Hence the question of why they existed. This same question of purposefulness

that is at the heart of Kantʼs conception of cosmopolitanism is also at the heart of his concept of race. What makes Kantʼs concept of race so distinctive is its reliance on the teleological principle for judging nature in general as a system of ends. As I mentioned, Kant wrote in his review of Herderʼs *Ideen* that one can use the empirical evidence to give either a favourable or an unfavourable account of people like the Tahitians. But if history is to be read as if it has the meaning that he believed should be attributed to it, then there is no

choice. Kant saw the Tahitians as by nature less talented and so, although they may be better suited to survive their particular climate, their role in human progress was problematic.

From a dialectical perspective, Kantʼs stature as a philosopher derives from the way he helped to articulate and thereby helped to produce a radical transformation of the philosophical landscape, a shift in our way of conceiving ourselves and the world, something like what certain philosophers of science

sometimes call a paradigm shift. But this is invisible to an analytic approach. Cosmopolitanism as a philosophy of history embodies a new basis for prejudice: hatred, distrust or incomprehension in the face of those who, by refusing to assimilate to European ways, do not contribute to the march of humanity towards cosmopolitanism. This renders them in some sense less human. Hence believers in a certain form of reason renounce with all the zeal of religious believers those whom they see as refusing what reason demands of them. Then

universalists in the name of ʻallʼ attack those who seek to maintain their difference. A new more virulent strain of prejudice has germinated as a side effect of the new version of universalism. Theoretical racism does not only take the form of believing in polygenesis or a simple biological destiny. Racism is more often to be found in moral gradualism, geographical determinism, or in the gesture which demands ʻbecome like usʼ and which adds *sotte voce* ʻyou can never become like us because you are not one of

usʼ. [38] Cosmopolitanism in at least some of its versions is a constituent form of such racisms, not its contrary, which is why we need to be on our guard to recognize racism in the concrete – that is to say, in context. If analytic reasoning establishes that there is no necessary connection between Kantʼs caricature of Africans and his cosmopolitanism, [39] it can do so because it can choose to reformulate his cosmopolitanism so as to establish this result. That saves cosmopolitanism, but it does nothing to throw light on how racism operates within major

philosophical texts, let alone exploring ways to combat it. [40]

With his introduction of a more rigorously deﬁned concept of race, Kant opened up a new space for thinking: he took it into new territory. And then his thinking stopped. One could attribute this to cowardice or laziness, but it is more likely that, because this was new territory, he did not know what to think. Those who came after him worked within the space he opened up. He never resolved the problem of how to reconcile his belief in cosmopolitanism with

his racism, but this left a dangerous legacy, one which he occasionally glimpsed. To the question of how ʻthe entire speciesʼ might progress, he responded: ʻIt appears that all of the Americans will be wiped out, not through the act of murder – that would be cruel – but they will die out.… A private conﬂict will emerge among them, and they will destroy each other.ʼ [41] Kant, it must be remembered, was a defender of Native Americans against their exploitation through colonialism. But it is clear from this statement that when he

referred to the entirety of humanity he did not mean everybody. Indeed, in note 1520 of the *Reﬂexionen zur Anthropologie* Kant wrote in a somewhat sinister way: ʻAll races will be extinguished … only not that of the Whites.ʼ [42] But how would that take place? Kant explicitly opposed genocide as a solution, and commentators agree that that was not an option for him. In one place in *The Racial Contract* Charles Mills writes, ʻIʼm not saying that Kant would have endorsed genocide.ʼ [43] It is a throwaway line, much like Paul

Gilroyʼs similar remark in *Against Race*: ʻhe [Kant] does not himself conceive of genocide or endorse its practice against Negroes, Jews, or any other variety of peoplesʼ. [44] Nevertheless, Kant needed to reject it explicitly only because it suggested itself as a solution to the problem of reconciling a speciﬁc conception of progressive cosmopolitanism with a belief in the inequality of the races that threatened to frustrate it.

**Forgetting history**

I readily concede that most analytical philosophers will ﬁnd little, if anything, here to threaten moral universalism or cosmopolitanism as they understand it. It is for them enough simply to observe that they can formulate versions of these positions that do not entail racism. I also recognize that my call for a re-examination of the way that the study of the history of philosophy operates threatens a practice so thoroughly established that to many of its adherents it is obvious. When charges of sexism

and racism are levelled against a canonical philosopher they can easily be dismissed as the result of a failure to understand the task and procedures of the history of philosophy. But perhaps it is time to put that task and those procedures in question so as to challenge a history of philosophy that takes itself so seriously as philosophy that it forgets that it is also supposed to be history. Whenever a thinker is defended by use of the ʻcentral arguments defenceʼ the risk is that, in trying to marginalize the criticism, philosophy itself is rendered less

and less central because it comes to be more and more restricted. In other words, the price to be paid for defending some of the major philosophers of the Western tradition against charges of racism is that we diminish philosophy as an activity more generally. Ultimately ill-conceived defences of these philosophers do more to damage the place of philosophy in our culture than any of the evidence brought against them. Philosophers are not and never have been as divorced from historical reality as their defenders are forced to make them: Locke

was proud of the fact that he was a practical man and not just a thinker; however embarrassed we might now be about some of his activities, we do not serve ourselves by dismissing their relevance to an understanding of his thought. By teaching slimmed-down versions of these thinkers – the so-called ʻreal Kantʼ rather than the historical Kant – we contribute to the illusion that all that matters is the annunciation of ﬁne principles.

My point is not to deny or dismiss the need we feel to address the

contradictions in a philosopher, particularly when the contradiction arises in the context of moral issues. When this problem arises for us in the context of studying the life and works of philosophers to whom we feel especially indebted in our own thinking, the urge to ﬁnd a resolution is particularly strong. Nor would I deny that there is much to be learned from these exercises. But if the analytic philosopher has a way of separating off the question of the racism of great philosophers from what is considered to be their authentic

doctrines, thereby suppressing the problem in a way consistent with his or her overall philosophical stance, the continental philosopher has a different strategy: he or she is prone to offer ever more fanciful interpretations, turning the transgression into its opposite. [45] However, to the extent that I believe that so-called continental philosophy or, more precisely, dialectical philosophy is ultimately better equipped to address these issues than analytic philosophy because it is less prone to sacriﬁcing the complexity

of the issues to the distorting lens of false clarity and abstraction from historical reality, then it is so much the worse for continental philosophy, because it has largely failed to do so.

But let me end on a conciliatory note with what might be agreed by good-minded representatives of both approaches. Hill and Boxill close their essay by recognizing that ʻconﬁdent, complacent, well-positioned white peopleʼ will ﬁnd it difﬁcult to do what they know to be right and indeed still more difﬁcult to know what is

right. [46] The cure to self-deception, in so far as there is one, lies, they argue, in listening to what others with different viewpoints, attitudes and emotions say and indeed designing institutions to help us do so, institutions which would allow reason to do its work. I believe that this is a most signiﬁcant recommendation which would, if it was widely adopted, change what is taught under the name philosophy, as well as the way it is taught, and in a way that ultimately will impact on the question of whether philosophy in

the future addresses a broad audience or an increasingly narrow one. [47]

In the first few pages of chapter 4 of his *Theological Political Treatise* (1670), Spinoza defines his conception of the law. 1 In fact, he defines the law twice, first in terms of compulsion or necessity and then in terms of use. I would like to investigate here these definitions, in particular the second one, as it is Spinoza’s preferred one. The difficulty with understanding this definition is

that it contains an expression, *ratio vivendi*, that is repeated several times in the first few pages of chapter 4, but, unless it is taken as a technical term referring to law as use, it is easy to mistake it as a casual expression that might mean different things each time. As a result, it is indispensable to turn to the Latin text to unlock the technical meaning of *ratio vivendi*.

This holds a few surprises. First, there is a historical surprise. Spinoza’s definition of the law according to its use is typical of

the epicurean understanding of the law. This suggests that his account of the law is aligned with the epicurean tradition. 2 Moreover, it raises the question of why this epicurean conception of legality has not been noted in jurisprudence. Second, Spinoza’s conception of the law has the potential to make an intervention in contemporary definitions of legality, since it avoids both decisionism and positivism. Law defined as use can allow neither of exceptionalism nor of a conception of unalloyed legality

that remains immune from social and political influences.

An important inference will follow these considerations: when law is determined through its use, any law is invalidated or delegitimated by the mere fact that it does not contribute to the well-being of the community. This has a radical political potential that I will touch upon by way of conclusion. Spinoza’s epicurean conception of the law will turn out to be of contemporary political relevance.

**The two definitions of the law**

The opening couple of sentences of chapter 4 of the *Theological Political Treatise* define the law in the course of drawing a distinction between divine and human law:

The word law, taken in its absolute sense [*legis nomen absolute*], means that according to which each individual thing – either all in general or those of the same kind – acts in one and the same fixed and determinate manner, this

manner depending either on Nature’s necessity or on human will. A law which depends on Nature’s necessity is one which necessarily follows from the very nature of the thing, that is, its definition; a law which depends on human will, and which could more properly be termed a statute [*jus*], is one which men ordain for themselves and for others with view to making life more secure and more convenient [*ad tutius, et commodius vivendum*]. (48/57)

It is striking what is elided in this distinction. Specifically, it does not

say that the source or origin of divine law is revelation and that of human law is legitimacy or the sovereign as the one who has the authority to legislate. The two traditional sources of legality – a transcendent authority or the model of command and obedience – are absent from this definition.

The reason for these omissions is that these traditional avenues of approaching the law are not open to Spinoza. Revelation, according to chapter 1 of the *Theological Political Treatise*, is a

communication with God that is mediated through the prophets’ interpretation, which makes it a human construct. And the command and obedience model cannot account for divine law, since God or nature is understood in strictly impersonal terms by Spinoza. Instead of the traditional routes of approaching legality, Spinoza has recourse to a qualitative distinction between the absolute necessity of divine or natural law, and the dependence of human law on the will of a polity to preserve itself.

The evasion of the traditional way of understanding legality may solve Spinoza’s problem of making legality fit his understanding of revelation, but it creates another, serious problem. The qualitative distinction between necessity and will may be challenged on the grounds that the human will cannot be separated in reality from the necessity of nature. What we will and do forms part of the concatenation of causes and effects that constitute the totality of nature – a point forcefully argued for in Part I of the *Ethics*.

To bypass this further problem, Spinoza concedes that it appears as if we are using the word ‘law’ as it applies to nature ‘*per translationem*’, as a figure of speech or as a translation, of what is commonly understood by law, namely human law (49/58). The suggestion is that a more rigorous (*particularius*) definition of the law is required, which Spinoza promptly supplies: ‘law should be defined … as a logic of living [*ratio vivendi*] that one prescribes to oneself or to others for some end [*finem*]’ (49/58). The most

notable feature of this more rigorous definition is the supposition of the use of instrumental reasoning as a defining feature of the law. The law concerns a certain rationality in how we conduct our lives, which is concerned with calculating the ends of our actions.

Alas, this second definition also creates more problems than it appears to solve. In particular, both the expression ‘ratio vivendi’ and the idea of the ‘end’ (*finis*) are problematic. What do they refer to? How can we understand the

law as a logic of living irrespective of statute and political authority? And how can we reconcile the reference to ends here given Spinoza’s fierce rejection of teleology in the appendix to Part I of the *Ethics*? In other words, for an understanding of Spinoza’s second, rigorous definition of the law, we need to unravel how it is possible to understand law as broader than legitimacy as well as how law is related to means and ends relations. 3

I will take these two issues in turn by focusing on the terms *ratio*

*vivendi* and *finis* from the definition of the law. I will concentrate on the first few pages of chapter 4 of the *Theological Political Treatise*, because it is here that Spinoza specifically focuses on the definition of the law. It is worth reading the opening of chapter 4 very carefully, something which has rarely been done before.

***Ratio vivendi*: law and living**

The term *ratio vivendi* in Spinoza’s

definition of the law is unusual: ‘law should be defined … as a logic of living [*ratio vivendi*] that one prescribes to oneself or to others for some end’ (49/58). This expression is not uncommon in the *Theological Political Treatise* – for instance, we find it in the title of chapter 13. But its critical use in the definition of the law is unusual. 4

There are three distinct meanings of *ratio*: 1) it can be rationality or logic, as a translation of the Greek *logos*; 2) *ratio* can also mean proportion, just as in the

English ratio; and, 3) it can mean rule or regulation. In fact, the second and third meaning are derivative of the first one: proportion is a kind of mathematical logic and rule is the application of rationality. 5

Let us look next at how the expression *ratio vivendi* is translated in the major English editions. Shirley translates *ratio vivendi* as ‘a rule of life’. Curley translates it as ‘a principle of living’. 6 And Israel’s edition renders it as ‘a rule for living’. 7 These translations, even

if they seem similar, in fact suggest significantly different meanings to the predicate of the law. Shirley’s translation suggests that *ratio* refers to some externally imposed prescription; Curley’s that it denotes a universal principle; and Israel’s that *ratio* is more like an instruction for the conduct of one’s life. Thus, all these renditions of *ratio vivendi* translate it in such a way as to make it amenable only to human, not to divine law – even though Spinoza provides a second definition that is meant to cover both.

The reason that these translations fail to include divine law in the second definition is that none of these translations entertains the possibility that *ratio* refers here to rationality, which is the primary meaning of *ratio* – and which is precisely the meaning I am trying to convey with my translation as ‘logic of living’. The effect of not rendering *ratio vivendi* in such a way as to capture the idea that there is a *logic* to living, or that thought and life – mind and body – are intertwined, is to obscure an idea that is critical for Spinoza, namely, that there is no outside to

the law. If the law is a *ratio vivendi* indicating that there is no life without thought, then *ratio vivendi* is a property not only of the law but also of human nature. What could this strange idea entail?

If we look for other uses of *ratio vivendi* in chapter 4, we note that the term and its cognates appears no less than nine times in the three opening pages of chapter 4, from 58 to 60 in the Gebhardt edition. Let us examine them in sequence:

1) The first use of the term occurs at the beginning where Spinoza asserts the distinction between divine and human law. Spinoza highlights the necessity of divine or natural law. Humans have no capacity to break or disobey divine law – nor do they have a say in how it operates. This is not the case with human law. ‘The fact that people give up, or are compelled to give up, their natural right and bind themselves to live under certain *rationi vivendi*, depends on human will’ (48/58). *Ratio vivendi* refers specifically to human law or

specific statutes – notice the plural. It signifies the living arrangements that allow for the suspension of the law.

Spinoza immediately qualifies this distinction by noting that ‘in an absolute sense, all things are determined by the universal laws of Nature’ (48), whereby it may appear that a distinction between divine and human law is impossible. And yet, Spinoza insists on this distinction based on the transition from the monism contained in the idea that there is nothing outside the necessity to

nature, on the one hand, to the primacy of practical judgment, on the other. Spinoza outlines this move in two steps. First, he argues that human law ‘depends especially on the power of the human mind in the following respect, that the human mind, insofar as it is concerned with the perception of truth and falsity’, has a capacity which ‘can be quite clearly conceived without these human-made laws, whereas it cannot be conceived without Nature’s necessary law’ (48). This is the point that we learn in Part I of the *Ethics*, namely, that any

form of knowledge presupposes a totality or what Spinoza calls substance, God or nature. Second, given that there is no usefulness in tracing every thought or every action back to its original causes, ‘in terms of usefulness to life [*ad usum vitae*] it is better, indeed, it is necessary, to consider things as possible [*possibiles*]’ (49/58). In other words, the impossibility of knowing the totality requires that we make practical judgments. 8

So, the first use of *ratio vivendi* refers to human law in so far as it requires the operation of

practical judgment as a result of the recognition of nothing existing outside nature or God. We already see that the standard translation of *ratio* as rule in the definition of the law is limited and it would not allow for the relation between monism and practical judgment in the first use of *ratio vivendi* in chapter 4.

2) The second use is in the definition of the law we saw already as the *ratio vivendi* prescribed toward certain ends. I will return to this definition after examining all the remaining

uses of *ratio vivendi*.

3) Immediately after the definition of the law, Spinoza qualifies it by observing that such a conception of the law is obvious only to a minority whereas most people fail to perceive it since they ‘*nihil minus quam ex ratione vivunt*’ (49/59). Instead of the participle ‘vivendi’, Spinoza uses here the indicative of the verb ‘vivere’, to live. Ratio is also in a prepositional phrase with ‘ex’ meaning according to. Here, then, Spinoza is referring to people who live with nothing like (*nihil minus*)

rationality. Or, more simply, most people live without the capacity to make good practical judgments. In the sentence immediately after the definition, then, *ratio* clearly has the meaning of rationality – not that of rule.

4) Spinoza further explicates what it means for the law when people fail to exercise their *ratio* properly. He argues that since the majority do not understand the real meaning of the law, the legislators devise an expedient measure, namely, rewards for those following the law and

punishments for those who do not. Due to this expediency, most people have a wrong understanding of the law as a *ratio vivendi* that is prescribed (*praescribitur*) by a sovereignty exterior to themselves (*ex aliorum imperio*) (49/59). Thus the logic of living of the law comes to be associated with the ‘fear of the gallows’, that is, with the sovereign prerogative of life and death. This, however, does not make one a ‘just [*justus*]’ person (49/59) because this conception of the law on the model of command and obedience is nothing but a

trick or deception on the part of those who have power. Note that Spinoza does not outright reject this model, since it is still associated with *ratio vivendi*, that is, with a certain rationality concerned with the utility of the community. 9 In other words, Spinoza is not an anti-statist, nor an anarchist. Rather, his position is that political power (*imperium* or *summa potestas*) cannot possibly be the precondition of the law. *Ratio vivendi* precedes legitimacy – not the other way round.

5 and 6) All uses up to now seem to suggest that *ratio vivendi* refers to human law. The fifth and sixth uses dispel this impression. Here Spinoza repeats the definition of the law (use 5) as a *ratio vivendi* used for a specific end, but now specifies that this applies both to human and divine law. It is only the end of this *ratio vivendi* that changes. For human law, it is the protection of life and the state (*rempublicam*), whereas for divine law it is the knowledge of God as the only supreme good (*solum summum bonum*) for the human (49/59). If the definition of

the law above (in use 2) is consistent with the use here, then we cannot possibly translate *ratio* as rule, since no human rule can lead to the supreme good of Spinoza’s divine law.

In other words, if both human and divine law are to be defined on a common basis that refers to instrumentality or utility, then *ratio vivendi* cannot refer to a restriction or a compulsion of living according to specified rules. Rather, for the human and divine law to have a common

basis, *ratio* here must refer to rationality concerned with ends. I call this procedure the calculation of utility and I will return to it in the following section. Suffice it to say here that such a calculation may be linked to specific rules, but only to the extent that they are useful, that is, as effects of calculation. This means that for those who do not understand the real meaning of the law, *ratio* may be usefully misunderstood according to the command and obedience model – as we saw above in the fourth use. In other words, the misunderstanding of the law such

as to confine it to a model that is applicable only to human law and that relies on command and obedience can still perform a positive function in society – for instance, so as to lead people to obey the law. But this misunderstanding is only an expedient and not definitional of the law. Prior to legitimacy, we have *ratio* as the calculation of utility. Prior to the command model of the law, there is practical judgment.

This priority of practical judgment shows that judgments about the

utility of a community precede obedience, in which case no authority has legitimacy from the fact that it enjoys sovereignty. The priority of practical judgment implies that no constituted power is *ipso facto* legitimate, while it allows for the mobilization of utility to contest any notion of authority. It also shows that authority is grounded on how it justifies itself—that is, it uses instrumental rationality to justify its actions so as to construct its legitimacy. In short, *justification precedes legitimation*. 10

7, 8 and 9) Immediately after specifying that the *ratio vivendi* applies both to human and to divine law, Spinoza goes on to explain in what sense the divine law can be useful. This consists in the perfection of our intelligence (*intellectus*) as the means to secure our utility (*utile*), which is what the supreme good consists in (49–50/59). The supreme good consists in recognizing ‘firstly, that without God nothing can be or be conceived, and secondly, that everything can be called into doubt as long as we have no clear and distinct idea of God’ (50). In

other words, the supreme good consists in the recognition that there is nothing outside God (or monism), which is the precondition for avoiding the distracting and distressing idea that there are deities who can intervene in the course of nature to punish or reward us. Recognition of monism, then, leads to the overcoming of fear and anxiety – it leads to blessedness (*beatitudo*).

Spinoza summarizes his discussion of the supreme good as follows:

the *ratio vivendi* that has regard to this end [*hunc finem*] [i.e. to the supreme good] can fitly be called the Divine Law. An enquiry as to what these means [*haec media*] are, and what *ratio vivendi* is required for this end [*hic finis*], and the fundamental principles of an optimal commonwealth and the *ratio vivendi* of human relations [*inter homines*] follow from it, belongs to a general treatise on Ethics. (50/60)

Here, the supreme good that is

achieved by following the divine law is described in instrumental terms. The means and ends are provided by the *ratio vivendi* that is also responsible for good relations – social, political and ethical – amongst human beings. The supreme good has a *ratio vivendi* understood in terms of instrumentality. It is a living that rationalises conduct according to certain means and ends relations. *Ratio vivendi* as the predicate of both divine and human law can be translated as living under the guidance of calculating our utility or of forming

practical judgments.

Spinoza concludes the discussion of the supreme good that can be derived from the *ratio vivendi* by saying that its proper exposition belongs to a treatise on ethics, that is, the *Ethics* whose writing Spinoza suspends in 1665 to compose the *Theological Political Treatise*. If we turn briefly to the discussion of the supreme good in the *Ethics*, we will discover more about its indissoluble relation to *phronesis* or practical knowledge.

In Part IV of the *Ethics* – that is, the part written immediately after the completion of the *Treatise* – Spinoza defines the supreme good (*summum bonum*) in Proposition 36 as follows: ‘The greatest good of those who seek virtue is common to all, and can be enjoyed by all equally.’ The Demonstration explains that virtue is to ‘act according to the guidance of reason’, which Spinoza supports with reference to Proposition 24 of Part IV: ‘Acting absolutely from virtue is nothing else in us but acting, living, and preserving our

being [*agere, vivere, suum esse conservare*] (these three signify the same thing) by the guidance of reason [*ex ductu rationis*], from the foundation of seeking one’s own utility [*utile*].’ From Propositions 36 and 24, then, we can say that the supreme good is to act, live and preserve oneself through the use of reason or rationality (*ratio*) insofar as *ratio* signifies both the virtue and the utility of human conduct. There is a coupling, then, of rationality and living, but the rationality here is not directed toward adequate ideas that are

universally true but toward practical knowledge and the calculation of one’s utility. In other words, *ratio* here signifies the kind of instrumental rationality that I designate as the calculation of utility.

But why is this calculation of one’s utility ‘enjoyed by all equally’? Why does phronesis contributes to sociality? Spinoza addresses this in Proposition 35: ‘Only insofar as men live according to the guidance of reason [*ex ductu rationis vivunt*], must they always agree in nature.’ The

demonstration relies on the principle that what advances the utility of one person contributes to the utility of others given that rationality is common is to all. Consequently, as the second Corollary puts it, ‘when each one most seeks one’s utility for oneself, then everyone contributes the most to everyone else’s utility.’ Or, as the Scholium puts it more succinctly, ‘man is God to man.’ 11 The exercise of the calculation of one’s utility is not the same as egoistic self-interest. Rather, a proper exercise of the calculation of utility is a

precondition of sociality. We share common ends because the process whereby we arrive at those ends – that is, *ratio* – is common to all. The calculation of utility as a guide to living is common to all. Nobody is excluded from *ratio vivendi*. And this also means – given that *ratio vivendi* is the predicate of the law – nobody is excluded from the law.

If we return now to the definition of the law, how can we understand *ratio vivendi* so as to encompass all the meanings we discovered? We can say that law

is a ‘logic of living that one prescribes to oneself or to others for some end.’ Such a logic of living is a means toward the prosperity of both the individual and the community. This can take two forms that are not mutually exclusive. It can be either the blessedness that arises from monism, or the preservation of individual life and the life of the community that arises from human law. *Ratio vivendi* is, then, irreducible to the logic of authority that appeals to legitimacy so as to demand obedience. This does not mean that it may not be expedient

to use authority, but authority relies on something prior to it, namely, this *ratio vivendi*, that can be understood as the calculation of utility. We will in the next section see that this calculation of utility can be understood as *phronesis* in the epicurean tradition in which it is regarded as the highest good for the humans and the cause of all virtues.

Spinoza’s definition of the law in terms of the calculation of utility can be articulated as three interconnected ideas. First, Spinoza defines the law without

recourse to a model of command and obedience, that is, the model that links legality with authority and legitimacy. Second, it entails that everyone is subject to the law, since everyone has the capacity to calculate their utility. This capacity is enough to place everyone within legality. Or, Spinoza rejects the possibility that one can find oneself outside the law. Third, if everyone is subject to the law, the account of the genesis of the law no longer requires an ante-legal or extra-legal origin, either in revelation or in some founding violence – that is, it does not

require a political theological authority. We can understand the second and more precise definition of the law in chapter 4 of the *Theological Political Treatise* as the co-presence of these three ideas – the rejection of the command and obedience model as definitive of legality, the recognition that no one can be outside the law, and the anti-authoritarian thrust of the previous two positions.

It is worth underscoring that in this definition the calculation of utility contained in *ratio* is about

living or *vivendi*. Thus, it is about the preservation of life for the individual and the community. It other words, in the *ratio vivendi* of human law, the calculation of utility encounters the conatus. Spinoza’s law is about living and the pursuit of one’s most vital ends.

***Finem*: phronesis and the law**

Ivan Sergé notes that Spinoza’s conception of the law is incompatible with Jewish,

Aristotelian, Platonic and Stoic conceptions of legality. 12 I agree, but would like to add that this is because the definition of the law in terms of its use and utility is distinctively epicurean. It may appear strange to focus on the use and utility of the law in a time where instrumentality is largely seen as a key characteristic of neoliberalism, but we should remember that the means and ends relations were fundamental for a thinking of the ethical and the political for centuries – as for instance just a glance at the title of Cicero’s most famous ethical

treatise, *De finibus*, testifies. 13 This epicurean conception of the law is also incompatible with two main conceptions of legality that we can find in political philosophy in the last hundred years – namely, legal positivism and decisionism. Let us start with the epicurean connection before we turn to the contrast with the prevailing theories of law.

The connection between utility, use, law and justice is best described in Epicurus’s *Principal Doctrines*, a collection of forty

maxims or articles describing the key ideas of epicureanism, which are preserved in Diogenes Laertius. Articles 31 to 38 define legality in terms of utility. 14 Thus, article 33 says: ‘There is no absolute justice [καθ’ ἑαυτὸ δικαιοσύνη] but only a reciprocal agreement in specific places and times to prevent inflicting or suffering harm.’ 15 No justice is absolute, and hence no laws are inviolable, because justice consist in calculating within specific circumstances what is good and what is bad. In article 36 Epicurus articulates the same idea in

positive terms: ‘justice is common to all [κοινὸν πᾶσιν] and it consists in calculating the utility [συμφέρον] that contributes to sociality [πρὸς ἀλλήλους κοινωνία]; thus, depending on particular conditions, justice articulates itself differently.’ 16 We see in both of these citations how law and even justice are described in terms of their use and in particular how this use contributes to the utility of the community.

The notions of use and utility need to be further amplified, especially

given that epicureanism is often understood as a hedonistic doctrine that identifies pleasure as the end of life – whereby it is often contrasted to Stoicism that emphasizes duty. 17 A closer scrutiny of the epicurean texts, however, contradicts this hedonistic interpretation precisely by emphasising the importance of use and utility that are so important for Epicurus’s conception of the law. 18 Besides the law, the calculation of utility in epicureanism is understood as a defining feature of human activity and it is inseparable from

pleasure. This is intimated in the *Principal Doctrines*. According to article 5, ‘it is impossible to live a life of pleasure without being prudent [φρονίμως], and without conducing oneself ethically and justly’ – and, Epicurus immediately adds, vice versa. This idea remains nonetheless undeveloped in the *Principal Doctrines*. From the few surviving texts by Epicurus, the greatest assistance on this connection between use and rationality as calculation of utility or prudence is offered by the letter to Menoeceus.

Let me quote a long passage from Epicurus’s letter to Menoeceus to extract some insights that will be useful for our purposes of understanding the epicurean conception of the law:

When we say, then, that pleasure is the end of action, we do not mean the pleasure of the prodigal or the pleasures of sensuality. … It is sober reasoning that calculates the causes of every judgment to do or avoid doing something good or harmful, and banishing those beliefs through which the greatest tumults take possession of the

soul. *Of all this the principle and the greatest good is phronesis*. Wherefore phronesis is more significant even than philosophy; *from it spring all the other virtues*, for it teaches that we cannot lead a life of pleasure which is not also a life of usefulness, the good, and justice; nor lead a life of usefulness, the good, and justice, which is not also a life of pleasure. For the virtues have grown together with a pleasant life, and a pleasant life is inseparable from them. 19

This is not simply a passage that

blatantly contradicts the interpretation of epicureanism as hedonism. Additionally, the emphasis on phronesis, or what I also call above the calculation of utility, introduces a number of ideas that are crucial to Spinoza’s epicureanism.

The first point to note is the startling predicate to pleasure that Epicurus provides, namely ‘sober reasoning’. The word for reasoning here is *logismos*, not logos. If logos is what has come to be understood as Reason, *logismos* in the

masculine or *to logistikon* in the neuter is instrumental reasoning – as, for instance, Aristotle makes clear in the opening of Book VI of the *Nicomachean Ethics*. The life of pleasure requires this kind of instrumental thinking that concentrates on means and ends.

A distinctive feature of this instrumental reasoning is that it posits the inseparability of mind and body – it is, as Epicurus says, the absence of pain in the body and of anxiety in the soul. 20 This is the same point raised in article 33 of the *Principal Doctrines* cited

above, according to which justice aims to prevent harm. This instrumental reasoning is prominent in all the epicureans of the seventeenth century. For instance, Spinoza puts it as follows in the *Ethics*: ‘From the guidance of reason, we pursue [*ex rationis ductu sequemur*] the greater of two goods or the lesser of two evils’. 21 Spinoza immediately explains that this calculative or instrumental reasoning is not confined to the present but also includes the future in its considerations. 22 In any case, the point I am making is

that this *logismos* is not abstract or theoretical reasoning but rather a practical kind of reasoning that entrains ends and considers action.

When Epicurus writes that this practical reasoning is more significant than philosophy, he is pointing to a reversal of Aristotle’s position. According to Book VI of the *Nicomachean Ethics*, theoretical reason leads to wisdom and virtue more than practical reason. When discussing the priority of theoretical over practical reason in

the *Nicomachean Ethics*, Heidegger notes that this is the starting point of metaphysics and onto-theology. 23 We see Epicurus here evading that move. For him, the primary kind of knowledge is practical and it is articulated in the form of judgments that are calculations about pleasure – that is, calculations that combine ratiocination with considerations about the body.

Epicurus designates this practical, instrumental judgment as phronesis. This is the standard Greek name for this practical

knowledge that he describes here. What is unusual in Epicurus is that he makes phronesis the precondition of both the good and of virtue. Such a move is indicative of his materialism – of the fact that knowledge is not abstract but rather articulated through its effects and how it impacts on the corporeal order of things. It is the fact that – to use a contemporary formulation – knowledge is power. The suggestion that the good and virtue require phronesis is a bold one. Phronesis is a judgment that arises by assessing – or,

calculating – one’s given circumstances. Because it is a response to materiality, phronesis can never aspire to a thorough formalisation. Materiality is contingent and hence unthematisable. Any calculation in relation to materiality is faced with its ineluctable unpredictability. Spinoza is fully cognisant of this point and he embraces its positive potential. As I argue elsewhere, the notion of error is constitutive of his understanding of politics and of history. The seeming deficiency of phronesis – the fact that it has no steadfast rules to

prove its validity or that it has to think ‘without banisters’ – is turned into a positive heuristic principle by Spinoza. 24

**Neither positivism nor decisionism**

I have dwelled on this passage from the letter to Menoeceus because it brings to the fore a key idea that is critical for Spinoza’s definition of the law, namely, that the law is to be understood in terms of its use, which consists in how it facilitates the people’s

calculation of their utility or exercise of phronesis.

It is noteworthy that Giorgio Agamben in *The Highest Poverty* identifies a tradition that interrogates the law in terms of its use. This is the tradition of communal use in the Franciscan tradition. There is a key difference, however, from the epicurean tradition that I have designated as the source of Spinoza’s conception of legality. For the epicureans, use is definitional of the law. For Agamben, by contrast, the Franciscan conception of use

delineates an extra-legal space. For instance, he writes that ‘the juridical argumentation is here [that is, in the context of referring to use] bent on opening a space outside the law.’ 25 Whereas use pertains to jurisprudence through its exclusion from the law, according to Agamben, use pertains to jurisprudence because it is internal to the law by indicating the limits of legality, according to epicureanism and Spinoza. 26

Despite this contrast, Agamben’s starting principle that ‘Western

philosophy lacks even the most elementary principles’ of what he terms ‘a theory of use’ is nonetheless sound. 27 We can demonstrate this by comparing two dominant ways in which the law has been conceived in the Western tradition to contrast them briefly with the epicurean conception of the law. First, we can identify legal positivism. I do not want to be distracted here by the various views expressed within this school of jurisprudence, starting with John Austin in the nineteenth century before being further developed by

Hans Kelsen in Austria and H.L.A. Hart in England in the following century. I just want to point out one key feature of this tradition, namely, that law needs to be understood as a system that is closed. Thus, Hart in his *The Concept of Law* (1961), which is a sustained attempt to define the law, rejects any view that conflates legal with moral norms, or that does not draw a clear line of separation from social factors. 28 Such a conception of the law as a closed system is incompatible with any definition of the law in terms of living, as in

Spinoza’s definition