The Ironic Tragedy of Human Rights

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> If you are kissing your child or your wife, say that it is a human being you are kissing; if the wife or child dies, you will not be disturbed.
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> Epictetus[1]

> I wish you to write a book on the power of the words, and the processes by which the human feelings form affinities with them.
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> Coleridge[2]

I

The way the international human rights movement tells it, the idea of human rights finally came into its own in 1948, with the United Nations' Universal Declaration of Human Rights. Above all, the Declaration was a response to the Holocaust, to both its perpetrators and to the failure of the rest of the world to adequately come to its victims' aid.[3] Since that year, however, we have seen many additional cases of mass murder and genocide. Think of China, Bali, Cambodia, Ethiopia, Guatemala, the former Yugoslavia, Rwanda, Darfur, and China again. One could claim that such horrors would be even more frequent if not for the Declaration. But I want to argue otherwise. Because I believe that human rights have made mass murder and genocide more – rather than less – likely.

I'll begin with a puzzle. Consider the following. First: "The right to life of 6 million human beings was violated by the Nazis." Second, an excerpt from Jean Améry's account of his torture at the hands of an SS man:

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[1] *The Manual*, trans. George Long and Moses Hadas, in Hadas, ed., *Essential Works of Stoicism* (New York: Bantam Books, 1961), p. 86.

[2] "Letter to Godwin (September 1800)," quoted in Northrop Frye, *Words with Power* (Toronto: Penguin, 1990), p. 1.

[3] For an alternative, more accurate account, see Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Harvard University Press, 2010).

> In the bunker there hung from the vaulted ceiling a chain that above ran into a roll. At its bottom end it bore a heavy broadly curved iron hook. I was led to the instrument. The hook gripped into the shackle that held my hands together behind my back. Then I was raised with the chain until I hung about a meter over the floor. In such a position, or rather, when hanging this way, with your hands behind your back, for a short time you can hold at a half-oblique through muscular force. During these few minutes, when you are already expending your utmost strength, when sweat has already appeared on your forehead and lips, and you are breathing in gasps, you will not answer any questions. Accomplices? Addresses? Meeting places? You hardly hear it. All your life is gathered in a single, limited area of the body, the shoulder joints, and it does not react; for it exhausts itself completely in the expenditure of energy. But this cannot last long, even with people who have a strong physical constitution. As for me, I had to give up rather quickly. And now there was a crackling and splintering in my shoulders that my body has not forgotten until this hour. The balls sprang from their sockets. My own body weight caused luxation; I fell into a void and now hung by my dislocated arms, which had been torn high from behind and were now twisted over my head. Torture, from Latin *torquere*, to twist. What visual instruction in etymology! At the same time, the blows from the horsewhip showered down on my body, and some of them sliced cleanly through the light summer trousers that I was wearing on this twenty-third of July 1943.[4]

Now I ask you: Which of the two has greater impact? Which stays with you, and might even keep you up at night? That is, which is more *powerful*? Surely it is the second. Yet the reality represented by the first is infinitely worse.

Of all people, it is Joseph Stalin who tells us why. As he once purportedly declared, "One death is a tragedy, a million a statistic."[5] Indeed, I must confess to a purposive inaccuracy above.

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[4] Améry, "Torture," in *At the Mind's Limits: Contemplations by A Survivor on Auschwitz and Its Realities*, trans. Sidney and Stella P. Rosenfeld (Bloomington: Indiana University Press, 1980), pp. 32–33.

[5] Or as one psychologist put it more recently, "Because vivid information is more 'available' and easier to recall than pallid information, it often has a disproportionate influence on judgments." Scott Plous, *The Psychology of Judgment and Decision Making* (Philadelphia: Temple University Press, 1993), p. 126.

The correct figure for the Nazis' victims is over 22 million; 6 million refers to the Jews alone.[6] That so many people tend to overlook this is a testament not to their callousness, but to the inherent weakness of numbers for carrying meaning, for establishing fields of significance when in competition with powerful narratives such as Nazi antisemitism.[7] This is also why Hiroshima and Nagasaki have always been more notable than Dresden, even though the Allied bombing of Dresden is believed to have produced, by some estimates, 30,000 more civilian deaths. The lesson is clear: when it comes to the appreciation of historical events, literacy is more effective than numeracy because the contextual, or "thick," is more meaningful – more powerful – than the abstract, or "thin." This is why classical rhetoricians used to refer to vivid, detailed description as *enargeia*.[8]

Human rights talk, however, is thin. It refers to a biological species as well as to a series of universal, independently distinct things (the right to life, the right not to be tortured, etc.) that its members are said to bear. In various charters, schedules, and declarations, rights are often found in list form. Yet this only reflects how they're isolated from our concerns as social beings immersed in particular cultural practices. As John Locke once claimed, "Words become general by being made the signs of general ideas: and ideas become general, by separating from them the circumstances of time and place, and any other ideas that may determine them to this or that particular existence."[9] The problem, in other words, is that we tend to be interested in things precisely when they exist in a context with others. Indeed, the word "interest" comes from the Latin *interesse*, which means "to be between," while the *OED* tells us that the root of "abstraction" denotes a "drawing away from," and its opposite, "contextual," means "woven together." So when we greet someone and say, "How's things?", we're expressing our interest in them precisely by referring to the stuff that they're attached to, are concerned with and about.[10] Or think of how

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[6] See "Documenting Numbers of Victims of the Holocaust and Nazi Persecution," in *Holocaust Encyclopedia* (Washington: United States Holocaust Memorial Museum, 2020).

[7] See my "Antisemitism and the Aesthetic," *The Philosophical Forum* 52, no. 3 (Fall 2021): 189–210.

[8] See, for example, Demetrius, *A Greek Critic: Demetrius on Style*, trans. G.M.A. Grube (Toronto: University of Toronto Press, 1961), nos. 208–20; and Quintilian, *Institutio Oratoria*, 4 vols., trans. H.E. Butler (Cambridge, MA: Harvard University Press, 1921), bks. IV.2.63–64, VI.2.25–36, VIII.3.61–82.

[9] *An Essay Concerning Human Understanding*, ed. Peter H. Nidditch (Oxford: Oxford University Press, 1979 [1689]), bk. 3, ch. 3, sec. 6.

[10] For more on this sense of "things," see Martin Heidegger, "The Thing," in *Poetry, Language, Thought*, trans. Albert Hofstadter (New York: Harper & Row, 1971).

difficult it is to memorize lists of isolated words when studying a new language: lexical approaches to language acquisition have shown that collocations, patterns of words, are much easier to grasp and retain.[11]

Here's another example: "salt" and "sodium chloride (NaCl)", thick and thin ways, respectively, of referring to the "same" thing. NaCl is definable with a set of necessary and sufficient conditions and so it stands alone, its properties universal rather than relative to context. Salt, however, has a history, or histories, narratives that are integrated with myriad cultural practices: it has served as a form of currency, a means of bringing luck (by throwing it over one's shoulder), a condiment, and so on.[12] That's why salt is so much more meaningful than NaCl, and so why we *care* about it more.

I should emphasize that my complaint about human rights is not with the values they are meant to represent, but with what happens to those values when they're articulated abstractly. Because abstraction, again, disempowers; it detracts from a value's ability to motivate people to uphold it. Hubert L. Dreyfus once made this point: "it is a fundamental and strange characteristic of our lives that insofar as we turn our most personal concerns into objects, which we can study and choose, they no longer have a grip on us."[13] In fact, abstractions can even serve as a defensive mechanism when we need to distance ourselves from suffering. Think of the numbers the Nazis tattooed on concentration camp prisoners in order to identify them without using their names. Or think of the euphemisms in military jargon: "collateral damage" for the deaths of civilians; "incontinent ordnances" for wayward bombs; and "traumatic amputation" for the blowing off of arms and legs. Finally, consider what Boris Pasternak said when he visited the Soviet countryside in the early 1930s and bore witness to the incredible suffering of the peasantry: "There was such inhuman, unimaginable misery, such a terrible disaster, that it began to seem almost abstract . . . [For it] would not fit within the bounds of consciousness."[14]

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[11] See, for example, Michael Lewis, ed., *Teaching Collocation: Further Developments in the Lexical Approach* (Hove, East Sussex: Language Teaching Publications, 2000). Indeed, memory researchers have found that a thing is made memorable precisely when it's associated meaningfully or "encoded" with things one already knows. See Daniel L. Schacter, *Searching for Memory: The Brain, the Mind, and the Past* (New York: HarperCollins, 1996), ch. 2.

[12] For more, see Mark Kurlansky, *Salt: A World History* (New York: Walker and Co., 2002).

[13] Dreyfus, *What Computers* Still *Can't Do: A Critique of Artificial Intelligence* (Cambridge, MA: MIT Press, 1992, 3rd ed.), p. 275.

[14] Quoted in Martin Amis, *Koba the Dread: Laughter and the Twenty Million* (Toronto: Vintage, 2002), p. 128.

The problem with human rights talk, then, is that it takes people out of our consciousness. I'd even say that referring to them as members of a species, "humans" rather than "persons," takes them out of their social context and so, once again, makes us care less about them.[15] Hannah Arendt thus seems to me to have been onto something when she noticed that "a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow man."[16] Michael Ignatieff, however, was wrong to declare that "we are all Shakespeare's 'thing itself': unaccommodated man, the poor, bare forked animal." And it's precisely because this thing itself "has become the subject – and the rationale – for the modern universal human rights culture"[17] that we should recognize how that rationale undermines itself.

We can reach the same conclusion by looking at the kind of equality associated with the idea of human rights. To some, like Richard Rorty, the global diffusion of this idea constitutes progress because it brings "an increase in our ability to see more and more differences among people as morally irrelevant."[18] But this view encourages us to see people as equal because essentially the same, and equality as so understood – equality as uniformity – is the equality of abstractions. No wonder it was so useful to the Marquis de Sade, as Maurice Blanchot describes:

> To consider human beings from the standpoint of quantity kills them more completely than does the physical violence that annihilates them. The criminal unites, perhaps, in an indissoluble way with the man he kills. But even while sacrificing his victim, the libertine, on the other hand, only experiences the need to sacrifice a thousand more. He seems strangely free of any connection to his victim. In his eyes, his victim does not exist for him or herself, his victim is not a distinct being, but a simple component, indefinitely exchangeable, within an enormous

[15] Needless to say, I think those such as the personalist Jacques Maritain, who used the expression "human persons" in order to reject atomist individualism, failed to go far enough, as is evident from their support for the idea of human rights. See Samuel Moyn, *Christian Human Rights* (Philadelphia: University of Pennsylvania Press, 2015), esp. chs. 1–2.

[16] Arendt, *The Origins of Totalitarianism* (New York: Harcourt Brace Jovanovich, 1975, 2nd ed.), p. 300. Not that Arendt would support my claims about human rights. See Peg Birmingham, *Hannah Arendt and Human Rights: The Predicament of Common Responsibility* (Bloomington: Indiana University Press, 2006).

[17] Ignatieff, *The Warrior's Honour: Ethnic War and the Modern Conscience* (Toronto: Penguin, 1998), p. 5.

[18] Rorty, quoted in Michael Ignatieff, "Human Rights as Politics," in Amy Gutmann, ed., *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001), p. 4.

> erotic equation. To read declarations like this one – "Nothing is more enjoyable for me, nothing excites me like a large number of beings" – we better understand why Sade makes use of the idea of equality as support for so much of his argumentation. All men are equal: this means that no creature is worth more than another, every being is interchangeable, each one has only the meaning of one unit within an infinite number. Before the Unique Being, all beings are equal in worthlessness, and the Unique Being, as he reduces them to nothing, only makes this nothingness manifest.[19]

In affirming the uniformity of his victims, then, the Sadean libertine does not so much "dehumanize" as "depersonalize" them, which alone is a step towards their destruction. The target, in other words, is not their membership in a certain species, but their particularity as persons, their ability to constitute unique meanings, to affirm that certain things *matter*.[20]

If evil's aim was only to reveal its victims as, or make them into, animals, then how to account for the Nazis' concern with animal welfare? Hitler was a vegetarian, and Reichsmarschal Göring not only barred vivisection in all scientific work, noting the "unbearable torture and suffering in animal experiments," he also threatened to commit to concentration camps "those who still think they can treat animals as inanimate property."[21] Unlike most clichés, the belief that the Nazis thought Jews weren't human has little basis in truth. Their record of humiliating their victims before killing them suggests, rather, that their racism was a matter of targeting a certain variety of the human species instead of denying their membership.[22] They chose their victims, in other words, because they saw them as persons of a certain type, namely those whose "matterings" blocked the Nazis' "creative" project, the reign of the Third Reich. Here is Joseph Goebbels in 1943:

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[19] Blanchot, "Sade's Reason," in *Lautréamont and Sade*, trans. Stuart and Michelle Kendall (Stanford: Stanford University Press, 2004), pp. 24–22.

[20] See Charles Taylor, "The Concept of a Person," in *Human Agency and Language: Philosophical Papers 1* (Cambridge: Cambridge University Press, 1985).

[21] Göring, quoted in Robert N. Proctor, *The Nazi War on Cancer* (Princeton: Princeton University Press, 1999), p. 129.

[22] *Pace* Avishai Margalit and Gabriel Motzkin, who emphasize the Nazi's dehumanizing form of racism: "The Uniqueness of the Holocaust," *Philosophy and Public Affairs* 25, no. 1 (Winter 1996): 65–83.

> The excuse [lackeys of the Jews] give for their provocative conduct is always the same: the Jews are after all human beings too. We never denied that, just as we never denied the humanity of murderers, child rapists, thieves and pimps…[T]he Jews must be removed from the German community, for they endanger our national unity . . . There is only one effective measure: cut them out.[23]

To combat such evil, it's certainly necessary to assert the dignity of the persecuted, but as persons rather than as human beings; which is to say, in a way that honours their uniqueness, their identities. The Nigerian writer Chinua Achebe points to precisely this way of respecting people when he has one of his fictional characters speak as follows:

> Let me ask a question. How do we salute our fellows when we come in and see them massed in assembly so huge we cannot hope to greet them one by one, to call each man by his title? Do we not say: To everyone his due? Have you thought what a wise practice our fathers fashioned out of those simple words? To every man his own! To each his chosen title! We can all see how that handful of words can save us from the ache of four hundred handshakes and the headache of remembering a like multitude of praise-names. But it does not end there. It is saying to us: Every man has what is his; do not bypass him to enter his compound.[24]

This is a general, but still thick, still contextual, way of referring to people. Both thick and thin, that is, are domains where meaning may range from the specific to the general (e.g. thick: from salt to seasoning; thin: from NaCl to ionic crystal). If we're to appreciate how thick and thin are qualitatively – and not merely quantitatively – different, then, we need to distinguish between "generalizing" and "abstracting."

In so doing, moreover, we should become able to recognize how Rorty contradicts himself when he recommends the power of thick expression to raise concern about oppression and

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[23] Goebbels, "The Jews are Guilty! (1943)," trans. Randall Bytwerk. Hitler refers repeatedly to Jews as a "people" (*Volk*) in his *Mein Kampf*, trans. Ralph Manheim (Boston: Houghton Mifflin Co., 1943), bk. 1, ch. 11. For more on evil destruction, see my "Good, Bad, Great, Evil," in *Patriotic Elaborations*.

[24] Achebe, *Anthills of the Savannah* (London: Heinemann, 1987), p. 123.

suffering while at the same time endorsing human rights culture.[25] To Rorty, it makes sense, when deliberating on justice at the global level, to tell a "relatively abstract and sketchy story," one that invokes "abstract principles."[26] But stories present events together in a context; any truly narrative ethics, then, must remain thick.

So it's because human rights doctrines are invoked to counteract our tendency toward particularistic circles of concern that we should reject them, since it's none other than these circles that motivate us to act ethically. Ralph Waldo Emerson once said, "Do not tell me, as a good man did to-day, of my obligation to put all poor men in good situations. Are they *my* poor? I tell thee, thou foolish philanthropist, that I grudge the dollar, the dime, the cent, I give to such men as do not belong to me and to whom I do not belong."[27] Years later, his compatriot Samantha Power offered a critique of American foreign policy as reflecting the same spirit.[28] But the response cannot be to ask Americans to abolish their particularistic circles of concern in favour of duties to humanitarian assistance, which derive from a set of universal, positive human rights. For they simply will not do it.[29] Nor should we try to convince them to worry about what happens "over there" because it will sooner or later affect those they care about "over here." For that, too, rarely works. No, Americans need to recognize that *their* poor are *also over there* – which is to say that their circle of concern is *already* much wider than they know. That's why they need to be told convincing thick stories, fictional and nonfictional, which empower the global values that we all share. Such stories are only partly effective because they engage our aesthetic sentiments, as Rorty would claim, since their main power lies in their ability to encourage the use of a practical form of reason – one that, much like Aristotle's practical wisdom (*phronēsis*), helps us develop the

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[25] Rorty does the first in "Habermas, Derrida, and the Functions of Philosophy," pp. 322–23; and the second in "Human Rights, Rationality, and Sentimentality," both in *Truth and Progress: Philosophical Papers*, vol. 3 (Cambridge: Cambridge University Press, 1991). Rorty's blurring of the distinction between thick and thin reflects his pragmatist failure to distinguish between the methodologies of the human and the natural sciences, but it would take me too far afield to show how here.

[26] Rorty, "Justice as a Larger Loyalty," in *Philosophy as Cultural Politics: Philosophical Papers*, vol. 4 (Cambridge: Cambridge University Press, 2007), p. 46.

[27] "Self-Reliance (1841)," in *Selected Writings of Ralph Waldo Emerson*, ed. William H. Gilman (New York: Signet, 1965), p. 266.

[28] Power, *A Problem from Hell": America and the Age of Genocide* (New York: HarperCollins, 2002).

[29] Noam Chomsky is among the many who've yet to recognize this: "'Recovering Rights': A Crooked Path," in Matthew J. Gibney, ed., *Globalizing Rights: The Oxford Amnesty Lectures 1999* (Oxford: Oxford University Press, 2003).

dispositions appropriate to given contexts. That is to say, the stories help us arrive at good – which is to say, reasonable – interpretations of those contexts. And what is their basic lesson for people like Emerson? That we are all compatriots.[30]

Teaching this lesson *would* make a difference. I think of my own country, Canada. Even though its constitution contains a Charter of Rights and Freedoms that includes no positive, socio-economic rights, and even though it has ratified the UN Declaration, which does include such rights, the Canadian state redistributes *over ten times* more wealth to the Canadian poor than it does to severely impoverished foreigners.[31] Why is this? Because the former are recognized not as rights-bearers but as fellow citizens, members of a shared civic or political community. This community isn't based on some theory of justice, but on the sense that we Canadians share a particular, historical good in common, one that we have been striving to express in our laws for some time.[32]

Now if I, as a Canadian, can feel an obligation to millions of compatriots, the vast majority of whom I shall never meet, then clearly this is a number without limit. That is to say, it's possible for someone to feel an attachment to billions, and not only millions. However, the presence of the world's civic or political community (which, it goes without saying, contains many other communities within it) has been obscured by all the talk of human rights. Hence its weakness; and hence the stinginess of many when faced with the needs of so many more.

II

The rise of human rights has also served as an ironic tragedy of sorts for the philosophers who have tried to lend it intellectual support. On the whole, these thinkers can be divided into two groups. One attempts to interlock rights in systematically unified theories of justice, thereby fixing the priorities between them. The other rejects such theories as infeasible, and asserts that the best

[30] See my "We Are All Compatriots," in Will Kymlicka and Kathy Walker, eds., *Rooted Cosmopolitanism: Canada and the World* (Vancouver: UBC Press, 2012); and "Patriotism, Local and Global," in Mitja Sardoč, ed., *Handbook of Patriotism* (Berlin: Springer, 2020).

[31] In 2004, for example, it spent $1,241 million on foreign aid and $13,413 million on domestic social assistance. See Statistics Canada.

[32] See my *Shall We Dance? A Patriotic Politics for Canada* (Montreal and Kingston: McGill-Queen's University Press, 2003).

recourse when rights conflict is negotiation, and so compromising or balancing the rights against each other. Both approaches are counterproductive.

Today, cosmopolitan theorists lead the first group. They fail to see, however, that their abstractions not only disempower, but also bring a degree of unreality to their claims. For they end up committing an error parallel to the one Martin Heidegger identified with epistemology since Descartes: just as epistemologists fail to appreciate how their subject-object dualism, and thus their references to "mental representations" (such as beliefs and desires), presupposes a prereflective background of everyday practices, cosmopolitan theorists miss the fact that their ideology, their way of ranking values, cannot be derived from philosophy.[33] This is because the values an ideology affirms can only be fully articulated when they have "shown up" or emerged from our prereflective background of practices in particular historical contexts, and that only happens when they are involved in a conflict. Dragging them out in the abstract leads to either their (sometimes creative) distortion, or to the confusion that comes from making vague and contradictory claims. The problem with cosmopolitan theorists, in other words, is that they fail to *put conflict first*.

Consider Martha C. Nussbaum's Stoic cosmopolitanism. In a well-known essay, she offers a defence of "the person whose allegiance is to the worldwide community of human beings." Her approach is grounded in a certain philosophical anthropology, one that "recognizes in people what is especially fundamental about them, most worthy of respect and acknowledgement: their aspirations to justice and goodness and their capacity for reasoning this connection." This leads to a concern with people's welfare and so with coming to the aid of those suffering from poverty or oppression. Whence Nussbaum's call for Americans to reform their educational system so students can learn about such things as "the problems of hunger and pollution in India, and the implication of these problems for the larger issues of global hunger and global ecology." If we are "above all, citizens of a world of human beings," then focusing on these aspects of Indian experience makes a great deal of sense.[34]

However, Nussbaum isn't clear about what she means by "above all." For example, sometimes it seems that her argument is altogether incompatible with national sentiments, as when she asserts

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[33] See Heidegger, *Being and Time*, trans. John Macquarrie and Edward Robinson (New York: Harper & Row, 1962), sect. 63; and my "Political Philosophies and Political Ideologies," part I.i, in *Patriotic Elaborations*.

[34] Nussbaum, "Patriotism and Cosmopolitanism," in Joshua Cohen, ed., *For Love of Country?* (Boston: Beacon Press, 2002). The quotations in this and the next three paragraphs are all from this essay or from Nussbaum's "Reply" in the same book.

that they constitute but "a colourful idol," or that national boundaries are not "salient" because a person's nationality is "a morally irrelevant characteristic." Such claims then lead her to argue that we should be like the Stoic who affirms "only" reason and love of humanity and, for this reason, willingly enters into a kind of "exile" by refusing "to be defined by his local origins and group memberships." That, Nussbaum tells us, is the cosmopolitan way, and only *it* is "principled," only *its* values are "morally good."

Sometimes, however, Nussbaum's preference for the global over the local appears far less one-sided, as when she says that the world community is, "fundamentally, the source of our moral obligations," and that our "fundamental allegiance" should go to it. Because "fundamental" here could always mean "much more important" and yet not exclusively so. This reading is encouraged by Nussbaum's claim that, although people must "centrally" affirm humanity and world citizenship as "the focus" of civic education, it's acceptable for them to continue to feel attached to their "particular loves." It's even appropriate to give one's own sphere "special care," and to devote "special attention to the history and current situation of [one's] own nation" – as long, that is, as we do so "in addition" to learning about other cultures. For "we should also work to make all human beings part of our community of dialogue and concern, base our political deliberations on that interlocking commonality, and give the circle that defines our humanity special attention and respect."

So Nussbaum is somewhat vague about what it means to give humanity our fundamental allegiance. It could involve bestowing it our sole allegiance, since this alone is moral, or it could mean no more than awarding it priority over more local concerns. Doing the latter could itself consist of trumping those local concerns whenever there's a conflict, or simply outweighing them to some degree, or even that the global and the local should be considered more or less equally weighty depending on the circumstances. Indeed, the issue is made no clearer when Nussbaum writes about what her position would mean in practice. For example, we may agree with her that when we "most seriously consider" the rights of other human beings, it entails accepting "large-scale economic and political consequences," yet she says nothing about what these might be. And when Nussbaum finally does "put conflict first" by posing two specific practical questions – "May I give my daughter an expensive college education, while children all over the world are starving and effective relief agencies exist? May Americans enjoy their currently high standard of living, when there are reasons to think the globe as a whole could not sustain that level of consumption?"

– she goes no further than declaring that "these are hard questions, and there will and should be much debate about the proper answers." So while her call for dialogue is certainly welcome, it's hard to see how it is compatible with her belief that "world citizenship . . . places exacting demands on the imaginings of each of us."[35]

Thomas Pogge is a much more thoroughgoing cosmopolitan theorist, so he partly avoids this contradiction by suggesting that personal questions such as the one Nussbaum poses about the cost of her daughter's education are unnecessary. Pogge follows John Rawls in arguing that political justice is a matter of our having certain responsibilities towards the institutions we participate in, but not as regards other individuals or collective agents.[36] Unlike Rawls, however, Pogge focuses on the global economic order. Moreover, he appears (at least to me) to make a very strong case that this order bears responsibility for severe poverty in the developing world, and that this poverty could be eliminated at very little cost to the developed world.[37] He also goes further, however. Given that, in our day, about one-third of all human deaths (some 50,000 premature deaths daily[38]) have poverty-related causes, Pogge implies that citizens of developed countries can be compared to the Germans who supported the Nazis during the Second World War. For we are "hunger's willing executioners . . . accomplices in a monumental crime against humanity."[39]

Although Pogge doesn't come out and say so, one would think that, if he is right, a Nuremberg-like trial is in order, if only for our leaders (though why stop there?). Regardless, I think the reason Pogge is confident enough in his position to suggest that a crime is being committed is that his cosmopolitanism is – like so many practical positions derived from philosophy – inclined to

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[35] Nussbaum's priorities are made no clearer when, in later articles, she sums up her position as calling for "a complicated dialogue between local attachments and loyalty to humanity," where we're to ask "how much humanity requires of us, and how much we are entitled to give to our own." From Nussbaum, "The Capabilities Approach and Ethical Cosmopolitanism: A Response to Noah Feldman," *Yale Law Journal Pocket Part*, 20 October 2007, p. 125; and "Compassion and Terror," *Daedalus* 132, no. 1 (Winter 2003): 10–27, p. 22. When Nussbaum refrains from asserting priorities in this way, her approach seems to reflect not the monism characteristic of a theory of justice, but an Aristotelian pluralism. See my *From Pluralist to Patriotic Politics: Putting Practice First* (Oxford: Oxford University Press, 2000), pp. 71–72.

[36] See his defence of "institutional cosmopolitanism" in Pogge, "Cosmopolitanism and Sovereignty," in *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press, 2002), pp. 169–77.

[37] See especially Pogge, "General Introduction," "Moral Universalism and Global Economic Justice," and "Eradicating Systemic Poverty: Brief for a Global Resource Dividend," all in *World Poverty and Human Rights*.

[38] See the World Health Organization, *The World Health Report 2003*, Annex Table 2.

[39] Pogge, "General Introduction," p. 24. Pogge is alluding here to Daniel Goldhagen's book, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust* (New York: Vintage, 1997).

legalism. This is simply part of what it means to be a theorist today: to believe that the abstract principles of one's theory are systematically unified is to conceive of them as like the principles of legal justice and so that they should be considered above the conflicts of everyday politics. It's because Pogge thinks that his theory is correct, and thus that his position is not one over which reasonable people could disagree, that he would have us turn to the courts instead of political dialogue.

Indeed, Pogge's theory is also the reason that he thinks personal as distinct from institutional questions are irrelevant. For as he sees it, we simply cannot

> make our ordinary economic decisions in such a way as to avoid aggravating anyone's severe poverty. Endorsing this aim is pointless because we cannot possibly live up to it. In the present world it is completely beyond the capacity of affluent individuals to shape their economic conduct so as to avoid causing any poverty deaths in the poor countries.[40]

But this is just not true. Changing our conduct *even slightly* could make a very real difference to some people. For example, by regularly donating even a fraction of our disposable income to organizations that work to alleviate poverty, real lives could be saved.

Let's be specific. A fine watch, say one valued at US$300, could be sold and the money sent to, say, an OXFAM emergency relief program. Yet many people – including myself, cosmopolitans such as Nussbaum and Pogge, and even egalitarians such as G.A. Cohen[41] – still choose to wear such watches – as well as buy the odd fashionable outfit (equivalent to two lives?), dine out (one life per meal?), and go to the cinema (half a life per film?). My point is not that we must forgo these things.[42] Rather, it's that our choice not to says something about our ethical priorities; namely, that our concern for "humans the world over" is not especially deep. No

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[40] Pogge, "Severe Poverty as a Human Rights Violation," in Pogge, ed., *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?* (Oxford: Oxford University Press, 2007), p. 17. See also Pogge, "Moral Universalism and Global Economic Justice."

[41] See Cohen, "Political Philosophy and Personal Behavior," in *If You're an Egalitarian, How Come You're So Rich?* (Cambridge, MA: Harvard University Press, 2000).

[42] Peter Singer would disagree: "Famine, Affluence, and Morality," *Philosophy and Public Affairs* 1, no. 1 (Spring 1972): 229–43. Given that I believe his argument, which is based on abstract principles, is sound, I obviously question the wisdom of invoking such arguments when it comes to ethics.

surprise, then, that even Nussbaum and Pogge's cosmopolitanisms appear to have room for granting priority to our own needs, or to those with whom we have personal relationships, over the basic needs of all human beings. Only the needs of our country or the other communities of which we may be members seem to be permanently downgraded.

All of which suggests that only a very small number of people can be described as giving priority to the needs of humanity "above all" other considerations. And there's a very simple reason why: heroism is, by definition, exceptional.[43] For what does giving overriding loyalty to an abstraction such as "the needs of all human beings" require if not the greatness of the hero (or saint)? But heroism, it should go without saying, is beyond ideology, indeed beyond politics.[44]

Moreover, since humanity *is* an abstraction, we ought to object to all the loose cosmopolitan talk about the existence of a "community of human beings" – not because there is no global community, but because those who belong to it need to be seen as particular, culture-endowed persons rather than as members of a biological species. Real communities, in other words, are thick, historical entities. The cosmopolitan theorist, however, would have us transcend the particular and affirm the universal, since anything else gives "an accident of history a false air of moral weight and glory."[45] Nussbaum continues:

> The accident of being born a Sri Lankan, or a Jew, or a female, or an African-American, or a poor person, is just that – an accident of birth. It is not and should not be taken to be a determinant of moral worth. Human personhood, by which I mean the

[43] Of course, those who rescued Jews in Nazi Europe, the focus of Kristen Renwick Monroe's study, *The Heart of Altruism: Perceptions of A Common Humanity* (Princeton: Princeton University Press, 1996), were very rare. See also Norman Geras' *Solidarity in the Conversation of Mankind: The Ungroundable Liberalism of Richard Rorty* (London: Verso, 1995), ch. 1, where Geras shows that, *pace* Rorty, those rescuers' sense of obligation to humanity cannot be considered an extension of their ordinary, partial loyalties.

[44] For an amusing account of one man's decision to try to live in this way and the effect it has on him and his family, see Nick Hornby's novel, *How to Be Good* (New York: Riverhead Books, 2001). For an indication that most people don't tend to act altruistically, consider the psychological study which shows that people are more willing to contribute to charity when they see it as part of an exchange, e.g. when they're offered something for their donation, even when that thing holds little appeal. See J.G. Holmes, D.T. Miller, and M.J. Lerner, "Committing Altruism under the Cloak of Self-Interest: The Exchange Fiction," *Journal of Experimental Social Psychology* 38, no. 2 (March 2002): 144–51.

[45] Nussbaum, "Patriotism and Cosmopolitanism," p. 11.

> possession of practical reason and other basic moral capacities, is the source of our moral worth, and this worth is equal.[46]

But surely the fact that one has been born human and not, say, a dog is just as arbitrary.[47] If the reply is that animals should be added to the category of those who deserve recognition as morally equal, then one has only to mention vegetation. Because the moment the life of a vegetable is considered as important as that of a person, it's obvious that something has gone seriously wrong.[48]

III

Above, I said that there is a second group of philosophers who support the language of human rights in a counterproductive way. These are the "value pluralists" led by Isaiah Berlin, Stuart Hampshire, and Bernard Williams.[49] Given that they favour the many over the one, they would have us reject any and all attempts to formulate a universal, systematically unified theory of justice. By asserting an opposite, fragmenting extreme, however, they end up leaving little room for the idea of a global civic or political community. As a result, their support for the values that human rights are intended to uphold is weak at best.

Here's why: value pluralists come to human rights from a belief that there exists a minimal global ethic, one present in all the world's cultures, that stands for such fundamental prohibitions as those against murder, torture, and other forms of gross cruelty.[50] The ethic doesn't express a global common good, however, so much as a small group of values that are often incommensurable with each other and with other values that people from different cultures may hold. And since the former values can be expressed in the language of rights, and since rights are no more than

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[46] Nussbaum, "Reply," p. 133.

[47] Nussbaum has indicated that she is aware of this sort of objection, but she does not (as a cosmopolitan) respond to it. See ibid., p. 151 n. 12.

[48] Unless, of course, one is singing along with the English Canadian comedy trio The Arrogant Worms and their song "Carrot Juice is Murder," in *Russell's Shorts* (Kingston, ON: Arrogant Worms, 2003).

[49] For a recent study, see Edward Hall, *Value, Conflict, and Order: Berlin, Hampshire, Williams, and the Realist Revival in Political Theory* (Chicago: University of Chicago Press, 2021).

[50] See, for example, Berlin, "The Rationality of Value Judgements (1964)," in *Concepts and Categories: Philosophical Essays*, ed. Henry Hardy (Princeton: Princeton University Press, 2013, 2nd ed.); Hampshire, *Innocence and Experience* (London: Penguin Press, 1989), pp. 72–78; and Williams, "Human Rights and Relativism," in *In the Beginning Was the Deed: Realism and Moralism in Political Argument*, ed. Geoffrey Hawthorn (Princeton: Princeton University Press, 2005).

significant moral interests that are open to being compromised,[51] it makes sense to try and negotiate them when they conflict; that is, to make trade-offs and concessions in the hopes of reaching a balanced accommodation. To be sure, the parties remain "natural enemies,"[52] but they may still tolerate one another to some degree. That said, in the absence of a global community we can expect any balances they strike to favour local conceptions of justice. So while there's nothing in principle preventing value pluralists from supporting foreign interventions for humanitarian reasons, say, they will only do so rather tepidly. As Williams remarks, for instance, "the consideration of victims' suffering is likely to determine policy only occasionally. It is hard to imagine a world in which it could be otherwise."[53]

This denial of global patriotism is something that, it must be said, value pluralists share with realpolitik nationalists. Recall Joseph de Maistre's famous quip about having "seen Frenchmen, Italians, Russians, etc.; thanks to Montesquieu, I even know *that one can be Persian*. But as for *man*, I declare that I have never in my life met him."[54] To Maistre, this means that, because talk of a unified humanity is false, we must accept that there will always be conflict between peoples and so, as his intellectual descendant Carl Schmitt famously argued, the world is divided into friends and enemies.[55] Of course, unlike in value pluralism, these enemies are assumed to be incapable of negotiating in good faith; when they do talk, they don't engage in genuine dialogue since they're merely using force by other means. Nevertheless, both value pluralists and those into realpolitik

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[51] This conception of rights has been developed in Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), ch. 7; and William A. Galston, "Practical Philosophy and the Bill of Rights: Reflections on Some Contemporary Issues," in Michael J. Lacey and Knud Haakonssen, eds., *A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law—1791 and 1991* (Cambridge: Cambridge University Press, 1991). For a critique, see my *From Pluralist to Patriotic Politics*, ch. 7.

[52] Hampshire, pp. 72, 74.

[53] Williams, "Humanitarianism and the Right to Intervene," in *In the Beginning Was the Deed*, p. 153. This position shares much with that of Michael Walzer, who has admitted that he "is not even aware that there is a world such that one could be a citizen of it." Walzer, "Spheres of Affection," in Cohen, ed., *For Love of Country*, p. 125. This, I suspect, is why he's willing to go no further than honouring "exceptions" to the norm of non-intervention, and so why he ends up with his own rather tepid position: "Any state capable of stopping the slaughter has a right, at least, to try to do so." Walzer, "The Politics of Rescue," in *Arguing about War* (New Haven: Yale University Press, 2004), p. 81; and *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977), p. 108. Walzer's tepidness forces me to note the irony of the latter book's epigraph, which is taken from the *Yad Va-shem* Holocaust Memorial in Jerusalem.

[54] Maistre, *Considerations on France*, ed. and trans. Richard A. Lebrun (Cambridge: Cambridge University Press, 1994 [1796]), p. 53.

[55] See Schmitt, *The Concept of the Political*, trans. George Schwab (New Brunswick, NJ: Rutgers University Press, 1976).

can be accused of failing to recognize that it's possible to conflict with a friend and, indeed, respond in ways that maintain and perhaps even enhance the friendship. What's required is merely that we treat our friends as "opponents" who are not also "adversaries."[56] And that is why, since opponents can certainly arise across borders, we ought, once again, to do our best to uphold the common good of the global political community; that is, we should see ourselves as citizens of the world who, to varying but never negligible degrees, belong to each other. Perhaps the time has come for the United Nations to issue passports that would represent this world citizenship and the importance of treating everyone as a compatriot.

IV

The arguments above may seem counterintuitive. After all, human rights are the basis of some of the most celebrated campaigns, both practical and intellectual, on the world stage. But while the activists leading them are certainly not lacking in passion for justice, I suspect that this is because they are driven not so much by a wish to fulfil certain practical values in the world, as by motivations that are either aesthetic (at worst) or religious (at best).[57]

However, I want to conclude by noting how the lack of enthusiasm demonstrated by the vast majority of people when challenged to defend human rights in practice has led these activists to favour enforcement mechanisms. The more cosmopolitan among them call for an international legal order that can punish states, while others point to the effectiveness of local constitutional regimes.[58] I believe both sides have gone astray, however. For by telling people how they ought to act while neglecting their motivations, the defenders of human rights have failed to see that the only real guarantee of our liberties and welfare comes from people being willing to stand up for them. It's what's in their hearts or minds that matters.

But oh, replies the human rights advocate, how ugly are those hearts and minds! Think of the millions of Germans who supported the Nazis, or the many Bolsheviks, especially the Stalinists,

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[56] See my "Opponents vs. Adversaries in Plato's *Phaedo*," in *Patriotic Elaborations*.

[57] Recall that, if not for the insistence of sectarian Protestants, there would be no rights in the American constitutional documents of 1776, which means the French Revolution would have been without its chief model for the Declaration of the Rights of Man and the Citizen (1789). This is the thesis of the German constitutional historian and legal philosopher Georg Jellinek (1851–1911). See Hans Joas, "Max Weber and the Origins of Human Rights: A Study of Cultural Innovation," in Charles Camic, Philip S. Gorski, and David M. Trubek, eds., *Max Weber's* Economy and Society: *A Critical Companion* (Stanford: Stanford University Press, 2005).

[58] See, for example, Ignatieff, "Human Rights as Politics," pp. 13–17, 35–36, 45–48.

not to mention the Maoists and everyone else responsible for, or complicit in, mass murder in the past century – it's because of these unspeakable horrors that enforcement is said to be necessary. People are terrible, we cannot trust them, so we need institutional mechanisms that are beyond their reach to protect them from themselves. Whence Ignatieff: "We build on the testimony of fear, rather than on the expectations of hope."[59]

But we simply do not have the luxury to abandon hope. This is not only because, historically, judiciaries have tended to reflect, rather than challenge, prevailing political and economic currents.[60] It's also because judges, in articulating their rulings in terms of rights, do little to convince majorities of their justness; indeed, those rulings often encourage backlashes. And what else should we expect from decisions that are based on either the application of an abstract theory of justice or the attempt to balance whatever rights are said to have clashed in the given case? Neither leaves much room for the conversations necessary for citizens to be truly reconciled to the law. Nor can we forget that rulings are just that – rulings; which is to say, impositions meant to be backed up by the police.

The danger is that, while the docile can be expected to go along, they will also be the first to change direction the moment the wind does. Moreover, we can't assume that people will become reconciled to those rulings in time (as if there ever was enough time); given the deep diversity of contexts and cultures in the world, conflict, not peace, will remain the norm. That's why states, including any future global state, must decide for themselves whether their constitutions should be justiciable or not.[61] And it's why these decisions should be taken in the knowledge that, when people seem not to care enough, the grim reality is that nothing can be done except to try and convince them to care more. Anything else, it seems, only makes them care less.

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[59] Ignatieff, "Human Rights as Idolatry," p. 80.

[60] "In the societies of our world today, judges do not stand out as protectors of liberty, of the rights of man, of the unprivileged, nor have they insisted that holders of great economic power, private or public, should use it with moderation. Their view of the public interest, when it has gone beyond the interest of governments, has not been wide enough to embrace the interests of political, ethnic, social or other minorities. Only occasionally has the power of the supreme judiciary been exercised in the positive assertion of fundamental values. In both democratic and totalitarian societies, the judiciary has naturally served the prevailing political and economic forces. Politically, judges are parasitic." J.A.G. Griffith, *The Politics of the Judiciary* (London: HarperCollins, 1997, 5th ed.), p. 342.

[61] The chief aim here should be for each to strive for a version of what I have called the "civic balance," one between laws just in content and laws just in (democratic) form. See my *From Pluralist to Patriotic Politics*, pp. 195–96.