

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. – Epictetus¹

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. – Coleridge²

I

With the 1948 United Nations Universal Declaration of Human Rights, the idea of human rights came into its own on the world stage. More than anything, the Declaration was a response to the Holocaust, to both its perpetrators and the failure of the rest of the world adequately to come to the aid of its victims. Since that year, however, we have seen many more cases of mass murder. Think of China, Bali, Cambodia, Ethiopia, Guatemala, the former Yugoslavia, Rwanda, and now Darfur. Of course one could always claim that such horrors would have been even more frequent if not for the Declaration. But I want to argue otherwise. Because I believe that human rights have made mass murder more, rather than less, likely.

I begin with a puzzle. Consider the following. First: “The fundamental rights of 6 million human beings were violated due to Nazi persecution.” Second, an excerpt from Jean Améry’s account of his torture at the hands of an SS man:

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

* A slightly revised version of Blattberg, *Patriotic Elaborations: Essays in Practical Philosophy* (Montreal: McGill-Queen’s University Press, 2009), ch. 3. This draft is dated 3 May 2016.

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 [Sept. 1800],” quoted in Northrop Frye, *Words with Power* (Toronto: Penguin, 1990), p. 1.

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 1943.³

Now I ask you: Which of the two has the greater impact? Which stays with you, and might even keep you up at night? Otherwise put: which is the more *powerful*? Surely it's the second. And 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." So now's the time for me to confess to a purposive inaccuracy above. The correct figure for the victims of Nazi persecution is closer to 11 million; 6 million refers to the Jews alone. 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 that of Nazi antisemitism. This is also why Hiroshima and Nagasaki have always been more notable than Dresden, even though the Allied bombing of the latter was long believed to have produced, by

³ 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.

some estimates, 30,000 more civilian deaths. So the lesson should be clear: when it comes to sensitivity about historical events, literacy is more effective than numeracy because the contextual or “thick” is more meaningful, more powerful, than the abstract or “thin.” There’s a reason classical rhetoricians used to refer to vivid, detailed description as *enargeia*.⁴

Human rights talk, however, is thin. It invokes both a biological species as well as 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. This is the reason why rights are often found on lists, as with the various charters, schedules, and declarations. However the effect is only to only isolate them from our concerns as social beings immersed in particular cultural practices. Because as John Locke once put it: “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.”⁵ Hence the problem, because we tend to be interested in things precisely when they exist in a context with others. In fact the very 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 that of its opposite, “contextual,” means “woven together.” This accounts for that everyday question “How’s things?” which expresses our interest in someone just because it refers to the whole nexus of things that they are attached to, are concerned about.⁶ Or think of how difficult it is to memorize lists of isolated words when studying a new language: as lexical approaches to language acquisition have shown, collocations, patterns of words, are much easier to grasp and retain.⁷

Another example: salt and sodium chloride (NaCl), thick and thin ways, respectively, of referring to the “same” thing. NaCl stands alone, definable with a set of necessary and sufficient

⁴ 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.

⁵ *An Essay Concerning Human Understanding*, ed. Peter H. Nidditch (Oxford: Oxford University Press, 1979), bk. 3, ch. 3, sec. 6.

⁶ For more on this sense of “things,” see Martin Heidegger, “The Thing,” in *Poetry, Language, Thought*, trans. Albert Hofstadter (New York: Harper & Row, 1971).

⁷ See, for example, Michael Lewis, ed., *Teaching Collocation: Further Developments in the Lexical Approach* (Howe: Language Teaching Publications, 2000). Indeed memory researchers have found that a thing is made memorable precisely when it is 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.

conditions, its properties being universal rather than relative to context. Salt has a history, however, or rather histories, narratives that are integrated with myriad cultural practices: it has served as a form of currency, as a means of bringing luck (by throwing it over one's shoulder), as a condiment, and so on.⁸ And that is why salt is so much more meaningful than NaCl, hence why we *care* about it more.

I hope it's evident that my complaint about human rights is not at all with the values that they are meant to represent but with what happens to those values when they are articulated abstractly. Because abstraction disempowers, it detracts from a value's ability to motivate people to uphold it. As Hubert L. Dreyfus has written: "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."⁹ In fact abstractions can even serve as a defensive mechanism when we need to distance ourselves from people's suffering. Think of the numbers that the Nazis tattooed on concentration camp prisoners to identify them without having to use their names, or of the euphemisms of military jargon: "collateral damage" for the deaths of civilians; "incontinent ordnances" for wayward bombs; "traumatic amputation" for the blowing off of arms and legs, and so on. Or consider Boris Pasternak's reaction when, visiting the Soviet countryside in the early 1930s, he bore witness to the incredible suffering of the peasantry there: "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."¹⁰

The problem with human rights talk, then, is precisely that it takes people out of our consciousness. Indeed I'd go so far as to say that just referring to them as members of a certain species, as "humans" rather than as "persons," takes them out of their social context and so makes us, once again, care less about them. Here's how Hannah Arendt once put this point: "it seems 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."¹¹ So Michael Ignatieff is wrong to have declared that

⁸ For more, see Mark Kurlansky, *Salt: A World History* (New York: Walker and Co., 2002).

⁹ Dreyfus, *What Computers Still Can't Do: A Critique of Artificial Intelligence* (Cambridge, MA: MIT Press, 1992, 3rd ed.), p. 275.

¹⁰ Quoted in Martin Amis, *Koba the Dread: Laughter and the Twenty Million* (Toronto: Vintage, 2002), p. 128; my emphasis.

¹¹ 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).

“we are all Shakespeare’s ‘thing itself’: unaccommodated man, the poor, bare forked animal.” And it is just because this thing itself “has become the subject – and the rationale – for the modern universal human rights culture”¹² that we need to see how that rationale self-undermines.

We can reach the same conclusion by taking account of the kind of equality associated with the idea of human rights. To those such as Richard Rorty the idea’s global diffusion constitutes progress because it brings “an increase in our ability to see more and more differences among people as morally irrelevant.”¹³ But this encourages us to view these people as equal because essentially the same, and equality as so understood – equality as uniformity – is the equality of abstractions. And that’s why it was so useful to the Marquis de Sade, as Maurice Blanchot points out:

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 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.¹⁴

¹² Ignatieff, *The Warrior’s Honour: Ethnic War and the Modern Conscience* (Toronto: Penguin, 1998), p. 5.

¹³ 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.

¹⁴ Blanchot, “Sade’s Reason,” in *Lautréamont and Sade*, trans. Stuart and Michelle Kendall (Stanford: Stanford University Press, 2004), pp. 24-5.

In affirming the equal uniformity of his victims, the Sadean libertine does not so much “dehumanize” them as “depersonalize” them, which alone is considered an essential step toward 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.¹⁵

If evil’s aim were 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 well-known vegetarian and Reichsmarschal Göring not only barred vivisection in all scientific work, noting the “unbearable torture and suffering in animal experiments,” but he also threatened to commit to concentration camps all “those who still think they can treat animals as inanimate property.”¹⁶ Unlike most clichés, the belief that the Nazis thought Jews were not human has little basis in truth. For the Nazis’ record of humiliating their victims before killing them suggests that their racism was more a matter of targeting a certain variety of the human species than it was of denying membership in that species.¹⁷ They chose their victims, in other words, not because they considered them inhuman but because they saw them as persons of a certain type, namely, those whose “mattering” blocked their “creative” project, the reign of the Third Reich. Here’s Joseph Goebbels in 1943:

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.¹⁸

¹⁵ See Charles Taylor, “The Concept of a Person,” in *Human Agency and Language: Philosophical Papers 1* (Cambridge: Cambridge University Press, 1985).

¹⁶ Göring, quoted in Robert N. Proctor, *The Nazi War on Cancer* (Princeton: Princeton University Press, 1999), p. 129.

¹⁷ 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.

¹⁸ 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*.

To combat such evil we certainly need 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 refers us to precisely this way of respecting people when he has one of his fictional characters say the following:

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.¹⁹

This is a general but still thick, still contextual, way of referring to people. Both thick and thin, that is, are domains in which meaning may range from the specific to the general (e.g. thick: from salt to spice; thin: from NaCl to ionic crystal). In consequence, and unlike Locke's statement above, I think we need to distinguish between abstracting and generalizing and so recognize that, while the former always brings the latter, it's not necessarily so the other way around. Moreover, unlike with Rorty, we need to be careful to uphold the contrast between thick and thin as qualitative. It's because Rorty views them as different only in degree that he contradicts himself when he recommends the power of thick expression to raise the concern about oppression and suffering, on the one hand, and yet endorses human rights culture, on the other.²⁰ This is why, when it comes to deliberating about justice at the global level, he thinks that it makes sense to tell a "relatively abstract and sketchy story," one that invokes "abstract

¹⁹ Achebe, *Anthills of the Savannah* (London: Heinemann, 1987), p. 123.

²⁰ He does the first in Rorty, "Habermas, Derrida, and the Functions of Philosophy," in *Truth and Progress: Philosophical Papers*, vol. 3 (Cambridge: Cambridge University Press, 1991), pp. 322-23; and the second in Rorty, "Human Rights, Rationality, and Sentimentality," in *ibid.* Rorty's blurring of the distinction between thick and thin is a reflection of 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.

principles.”²¹ But surely a story, any story, presents events together in a context and so is the opposite of an abstraction; any truly narrative ethics, in consequence, must remain thoroughly thick.

So it’s just because human rights doctrines emerged, as many have noted, to counteract our tendency toward particularistic circles of concern that we should see them as problematic. Because it’s precisely such circles that motivate us to act ethically. Ralph Waldo Emerson once declared the following: “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.”²² And it seems to me that we can read Samantha Power’s “*A Problem from Hell*”: *America and the Age of Genocide* as an account of that country’s foreign policy which shows it to be guided by the spirit of Emerson’s declaration.²³ How, then, to respond effectively? Surely not by calling on people like Emerson to abolish their particularistic circles of concern in favour of duties to humanitarian assistance, those which derive from some set of positive human rights. Because they simply won’t do it.²⁴ Nor should we be trying to show them that they ought to worry about what happens “over there” simply because it will, sooner or later, impact upon those that they care about “over here.” Because this, too, rarely works (for long). No, what they need to see is that *their* poor are *also over there*, which is to say that their circle of concern is *already* much wider than they are aware. This requires the telling of convincing thick stories, both fictional and nonfictional, that empower the relevant, because global, values, the values that we all share. They are the basis of a global common good, one that supports a genuinely global patriotism – or at least would do so if it were not obscured by all the talk of global justice in terms of human rights.²⁵ Now such stories could be effective not because they engage sentiment over reason, as Rorty would argue, but because they engage a practical rather than theoretical

²¹ Rorty, “Justice as a Larger Loyalty,” in *Philosophy as Cultural Politics: Philosophical Papers*, vol. 4 (Cambridge: Cambridge University Press, 2007), p. 46.

²² “Self-Reliance,” in *Selected Writings of Ralph Waldo Emerson*, ed. William H. Gilman (New York: Signet, 1965 [1841]), p. 266.

²³ (New York: HarperCollins, 2002).

²⁴ Noam Chomsky is among the many who have yet to accept this: “‘Recovering Rights’: A Crooked Path,” in Matthew J. Gibney, ed., *Globalizing Rights: The Oxford Amnesty Lectures 1999* (Oxford: Oxford University Press, 2003).

²⁵ See my “[We Are All Compatriots](#)” and “[Patriotism: Local and Global](#).”

form of reason. It is one that, much like Aristotle's practical wisdom (*phronēsis*), entails having the dispositions appropriate to given contexts by virtue of having good, which is to say reasonable, interpretations of those contexts. The lesson of such stories for people like Emerson? That we are all compatriots.

Teaching it *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, the Canadian state redistributes *over ten times* more wealth to the Canadian poor than it does to severely impoverished foreigners.²⁶ Why is this? Because the former are recognized not as rights-bearers but as fellow citizens, as members of a shared civic or political community. This is a community based, not on some theory of justice, but on the sense that we Canadians share a particular, historical good in common, one that we have for some time now been striving (albeit inadequately) to express in our laws.²⁷

And if I, as a Canadian, can feel an obligation to millions of my compatriots, the vast majority of whom I shall never meet, then it should be obvious that this is a number without limit, which means that it's possible for someone to feel an attachment to billions and not only millions. Yet the presence of the world's civic or political community – one that, 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 so 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 those philosophers who have attempted to lend it intellectual support. On the whole, they may be divided into two groups. One attempts to interlock rights within systematic theories of justice, thus fixing the priorities between them. The other rejects such theories as infeasible and asserts that the best we can do when rights conflict is to negotiate, to compromise or balance them against each other. Either way, they're being counterproductive.

²⁶ In 2004, for example, it spent \$1,241 million on foreign aid and \$13,413 million on domestic social assistance. See [Statistics Canada](#).

²⁷ See my *Shall We Dance? A Patriotic Politics for Canada* (Montreal: McGill-Queen's University Press, 2003).

Today, theoretical cosmopolitans lead the first group. However in so doing they fail to see 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 that Martin Heidegger identified with epistemology since Descartes: just as epistemologists fail to appreciate that their subject-object dualism, and so their talk of “mental representations” such as beliefs and desires, presupposes a prereflective background of everyday practices,²⁸ theoretical cosmopolitans fail to see that they cannot derive their ideology, their way of defining and ranking values, directly from philosophy.²⁹ For the values that an ideology affirms need to be explicitly articulated or prioritized only when they have “shown up” or emerged from our prereflective background of practices in particular historical contexts, a result of their having come into conflict. Dragging them out in the abstract leads either to their (albeit sometimes creative) distortion, or to the confusion that comes from making vague and contradictory claims. The problem with theoretical cosmopolitans, in other words, is that they fail to *put conflict first*.

Consider Martha 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.” One might object that some people are more admirable for other reasons, say for their athletic or artistic abilities. Still, few would disagree that if Nussbaum is right we should be concerned, above all, with people’s welfare, and so with coming to the aid of those suffering from poverty or oppression. Hence her call for Americans to reform their educational system in order that students may 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.” For if people are “above all, citizens of a world of human beings,” then focusing on these specific aspects of Indian experience makes a great deal of sense.³⁰

²⁸ See Heidegger, *Being and Time*, trans. John Macquarrie and Edward Robinson (New York: Harper & Row, 1962), sect. 63.

²⁹ This is an error made by all “neutralist” political philosophers. See my “[Political Philosophies and Political Ideologies](#),” part I.i.

³⁰ Nussbaum, “Patriotism and Cosmopolitanism,” in Joshua Cohen, ed., *For Love of Country: Debating the Limits of Patriotism* (Boston: Beacon Press, 1996), pp. 4, 8, 6, 6.

But Nussbaum isn't very clear about what she means by "above all." For example, sometimes it seems as though her argument is altogether incompatible with national sentiments, as when she asserts that they constitute but "a colourful idol," or that national boundaries are not "morally salient" since a person's nationality is "a morally irrelevant characteristic." This kind of thing leads her to claim that we should be like the Stoic who affirms "only" reason and love of humanity and so who willingly enters into a kind of "exile" by refusing "to be defined by his local origins and group memberships." That, she tells us, is the cosmopolitan way, and only it is "principled," only its values are "morally good."³¹

Sometimes, however, Nussbaum's favouring of the global over the local appears far less one-sided, as when she writes that the world community is the one that is, "fundamentally, the source of our moral obligations" and that our "fundamental allegiance" should go to it. For "fundamental" here could always mean "much more important" and yet not exclusively so. This reading is encouraged by her claim that, although people must "centrally" affirm humanity and world citizenship as "the focus" of civic education, it is acceptable for them to continue to be attached to their "particular loves." It is even appropriate that they give their own sphere "special care" and devote "special attention to the history and current situation of their own nation" – as long, that is, as they 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."³²

So Nussbaum is rather 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 simply awarding it *greater* priority over more local concerns. The latter could itself entail trumping those local concerns when 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 valid depending on the circumstances. Indeed the matter is made no clearer on the few occasions when Nussbaum writes about what her position would mean in practice. For example, to agree with her that we should "most seriously consider" the rights of other human beings is said to mean accepting "large-scale economic and political consequences," but Nussbaum says nothing about what these

³¹ Ibid., pp. 5, 11, 5, 15, 7, 6, 14, 5.

³² Ibid., pp. 7, 8, 9, 11, 9, 13, 6, 6, 9.

might be. And when she 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?” – her reply goes no further than declaring that “these are hard questions, and there will and should be much debate about the proper answers.” It’s difficult to see how all of this is compatible with her belief that “world citizenship...places exacting demands on the imaginings of each of us.”³³

Nevertheless, I think Nussbaum is right to endorse dialogue as the best response to the questions she raises. But if it is to be a truly open dialogue, a conversation aimed at reconciliation, at developing the common good, then she needs to appreciate how this is incompatible with any antecedent, theory-driven call to give priority to some values over others, whether the global over the local or vice versa. For conversation demands that people listen *to each other* rather than to some preconceived doctrine – only this way can they determine what is appropriate to the problem at hand. This is why there’s something contradictory about Nussbaum’s endorsing cosmopolitanism in the abstract, on the basis of theoretical considerations, while at the same time calling for a dialogical response to conflict.³⁴ And the result is that it becomes very difficult to answer the question of what the priorities she asserts really mean.

Thomas Pogge, a much more thoroughgoing theoretical cosmopolitan, partly avoids this contradiction by suggesting that personal questions such as the one Nussbaum poses about her daughter’s expensive education are unnecessary. Pogge is a Rawlsian, and so he claims that his cosmopolitanism entails certain responsibilities toward the institutions we participate in but not

³³ Ibid., pp. 13, 14; and Nussbaum, “Reply,” in Cohen, ed., *For Love of Country*, pp. 136-7, 138. Nussbaum’s priorities are made no clearer when, in later articles, she summarizes her position as calling for “a complicated dialogue between local attachments and loyalty to humanity,” one in which we are to ask “how much humanity requires of us, and how much we are entitled to give to our own.” Nussbaum, “[The Capabilities Approach and Ethical Cosmopolitanism: A Response to Noah Feldman](#),” *Yale Law Journal Pocket Part*, 20 October 2007, p. 125; Nussbaum, “Compassion and Terror,” *Daedalus* 132, no. 1 (Winter 2003): 10-27, p. 22. While evidently aware of the tension between loyalties to the local and those to the human, Nussbaum nevertheless fails to appreciate how the abstractions of the latter *undermine* the former.

³⁴ One source of this contradiction is her sometimes adherence to an Aristotelian pluralism, which I describe in my *From Pluralist to Patriotic Politics: Putting Practice First* (Oxford: Oxford University Press, 2000), pp. 71-72.

as regards our behaviour toward other individuals or collective agents.³⁵ Hence his focus on the global economic order. Now in so doing he makes what seems to me to be a very strong case that it bears responsibility for severe poverty in the developing world and that this poverty could be eliminated at very little cost to the developed world.³⁶ Pogge also goes further, however. Given that, in our day, about one-third of all human deaths (some 50,000 premature deaths daily³⁷) are due to poverty-related causes, he implies that the 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.”³⁸

Although Pogge doesn’t come out and say so, one would think that, if he is right, then some kind of Nuremberg trial is in order, if only for our leaders (although why stop there?). Regardless, I want to suggest that the reason Pogge feels confident enough in his position to suggest that a crime is being committed is that his theoretical cosmopolitanism is, like so many practical positions derived from philosophy, inclined to legalism. Because to be a theorist is to assume that one’s abstract principles are systematically unified and so that, like the relatively uncontroversial statutes of law, they should be considered above the conflicts of everyday politics. It is because Pogge believes that he has a correct theory, hence that the question is not one upon which reasonable people can disagree, that he would have us turn to the courts rather than to political dialogue.

Indeed Pogge’s theory is also behind why he thinks personal as distinct from institutional questions are irrelevant. Because it tells us that 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

³⁵ 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.

³⁶ 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*.

³⁷ See the World Health Organization, *The World Health Report 2003*, Annex Table 2.

³⁸ 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).

affluent individuals to shape their economic conduct so as to avoid causing any poverty deaths in the poor countries.³⁹

But this is just not true: changing that conduct *even slightly* could make a very real difference to some people. For example, by regularly donating but 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\$200, could be sold and the money sent to an OXFAM Emergency Relief Program, which as I write could be used to help bring water to the survivors of the October 2005 earthquake in India and Pakistan. Yet many people, including myself, cosmopolitans such as Nussbaum and Pogge, and even egalitarians such as G.A. Cohen,⁴⁰ still choose to wear such watches, not to mention buy the odd fashionable outfit (equivalent to two lives?), dine out (one life per meal?), or go to the cinema (half a life per film?). My point is not that we absolutely must forgo these things.⁴¹ Rather, it is that our choice not to says something about our ethical priorities, namely, that our concern for humans the world over is not particularly deep. No surprise, then, that even Nussbaum and Pogge's cosmopolitanisms seem 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 of the other communities of which we may be members appear to be permanently downgraded.

But then this helps us to see that only a very small number of people can be described as giving priority "above all" other considerations to the needs of humanity. And there is a very simple reason why this must be so: heroism is, by definition, exceptional.⁴² Because that, I

³⁹ 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."

⁴⁰ 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).

⁴¹ Peter Singer, by contrast, thinks that we must: "Famine, Affluence, and Morality," *Philosophy and Public Affairs* 1, no. 1 (Spring 1972): 229-43. Given that I believe his argument, which is based upon abstract principles, is sound, I obviously question the wisdom of applying such arguments to ethics.

⁴² The rescuers of Jews in Nazi Europe, who are the focus of Kristen Renwick Monroe's study, *The Heart of Altruism: Perceptions of A Common Humanity* (Princeton: Princeton University Press, 1996), were, of course, 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.

believe, is what giving overriding loyalty to an abstraction such as “the needs of all human beings” amounts to: the greatness of the hero (or saint). And heroism is something beyond ideology, indeed beyond politics.⁴³

Moreover, since humanity *is* an abstraction, we ought to object to all of the loose theoretical 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. Otherwise put: real communities are in a fundamental sense thick, historical entities. However the theoretical cosmopolitan would have us transcend the particular and affirm the universal, since anything else is said to give “an accident of history a false air of moral weight and glory.”⁴⁴ To this Nussbaum even adds that “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 possession of practical reason and other basic moral capacities, is the source of our moral worth, and this worth is equal.”⁴⁵ But surely the fact that one has been born human and not, say, a canine is just as arbitrary.⁴⁶ 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 that the life of a vegetable is considered as important as that of a person then it should be evident that something has gone terribly wrong.⁴⁷

I suggested that there’s a second group of philosophers who support the language of human rights in a counterproductive way. I’m referring to value pluralists such as Isaiah Berlin, Stuart Hampshire, and Bernard Williams. Because they favour the many over the one, they reject any

⁴³ 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 the suggestion that most people tend to avoid acting heroically, consider the psychological study which shows that our willingness to contribute to charities is greater when doing so is presented as an exchange rather than as something altruistic, e.g. when we are offered a product for our donation, even when the product itself 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 (Mar. 2002): 144-51.

⁴⁴ Nussbaum, “Patriotism and Cosmopolitanism,” p. 11.

⁴⁵ Nussbaum, “Reply,” p. 133.

⁴⁶ 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.

⁴⁷ Consider the song by the English Canadian comedy trio The Arrogant Worms, “Carrot Juice is Murder,” in *Russell’s Shorts* (Kingston, ON: Arrogant Worms, 2003).

and all attempts at building a universal, systematic theory of justice. They also go further, however, to an opposite, fragmenting extreme, one that leaves little room for a global civic or political community. As a result, their support for the values behind human rights ends up weak at best.

Here's how. Value pluralists come to human rights through their belief that there exists a minimal global ethic, one present in all of the world's cultures, that stands for such fundamental prohibitions as those on murder, torture, and other forms of gross cruelty.⁴⁸ It's values, however, are often incommensurable, both with each other and with any other values that people from different cultures may hold. It's for this reason that, should there be a conflict, reconciliation is impossible. Instead, the parties ought to negotiate, that is, make trade-offs and concessions in the hopes of reaching an accommodation. And it is at these times that they may choose to express their values in the language of rights, since rights are simply significant moral interests that are nevertheless open to being compromised.⁴⁹

The problem with all of this is that, by prioritizing negotiation, value pluralists end up exaggerating the distance between parties, parties that they sometimes even refer to as "natural enemies."⁵⁰ For the implication is that they cannot share a common good, hence that it makes no sense to converse rather than to negotiate, that is, to attempt a reconciliation by arriving at a shared understanding about what justice requires in the given case. More than this, when the parties do negotiate, any balances they strike will be rigged in favour of local conceptions of justice, since there exists no global community whose concerns carry any weight. The tendency, in consequence, is to assume that we ought always to begin with the self-determination of local communities and so with the norm of nonintervention. Given the minimal global ethic, value pluralists are prepared to support interventions for humanitarian reasons, but only rather tepidly.

⁴⁸ 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: Allen Lane The 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).

⁴⁹ 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--1791-1991* (Cambridge: Cambridge University Press, 1991). For a critique, see my *From Pluralist to Patriotic Politics*, ch. 7.

⁵⁰ Hampshire, pp. 72, 74.

Because as Williams puts it: “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.”⁵¹

This denial of the possibilities of a global patriotism is something that, it must be said, value pluralists share with the partisans of realpolitik nationalism. Recall Joseph de Maistre’s famous quip about his having “seen Frenchmen, Italians, Russians etc.; I even know, thanks to Montesquieu, that one can be Persian. But as for ‘man,’ I declare that I have never met him in my life.”⁵² 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 that, as one of his intellectual descendents famously argued, the world is divided into friends and enemies.⁵³ Of course unlike in value pluralism these enemies are assumed to be incapable of negotiating in good faith; when they do talk, they must be using force by other means, not engaging in real dialogue. Nevertheless, both the partisans of realpolitik and value pluralists can be accused of failing to recognize a simple fact: that it’s possible to come into conflict with a friend and indeed respond in a way that strives to maintain and perhaps even enhance the friendship.⁵⁴ All this requires is that we treat our friends as “opponents” who are not also “adversaries.”⁵⁵ And since such opponents can exist across borders we ought, once again, to do our best to uphold the global political community, to recognize that we are all citizens of the world who, to varying but never negligible degrees, *belong* to each other. Perhaps the time has come for the UN to issue passports that would represent this world citizenship and so the importance of treating each other as compatriots.

⁵¹ Williams, “Humanitarianism and the Right to Intervene,” in *In the Beginning Was the Deed*, p. 153. The value pluralist’s position shares much with that of Michael Walzer, who has asserted that he “is not even aware that there is a world such that one could be a citizen of it.” This, I suspect, is why Walzer is willing to go no further than honouring “exceptions” to the norm of nonintervention, hence why he arrives at his own rather tepid conclusion about humanitarian intervention: “Any state capable of stopping the slaughter has a right, at least, to try to do so.” Walzer, “Spheres of Affection,” in Cohen, ed., *For Love of Country*, p. 125; “The Politics of Rescue,” in *Arguing about War* (New Haven, CN: 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.

⁵² Maistre, *Considérations sur la France* (London: Bâle, 1797, 2nd ed.), p. 102; my translation.

⁵³ See Carl Schmitt, *The Concept of the Political*, trans. George Schwab (New Brunswick, NJ: Rutgers University Press, 1976).

⁵⁴ Perhaps the original source of this failure is Aristotle’s conception of friendship. It is because Aristotle believes that friends are like those who share “one soul” that he can say that they “have no need of justice.” Aristotle, *Nicomachean Ethics*, trans. Terence Irwin (Indianapolis: Hackett, 1985), 1168b7-8, 1155a28. But they are not, and they (sometimes) do.

⁵⁵ For more on this distinction, see my “Opponents vs. Adversaries in Plato’s *Phaedo*,” in *Patriotic Elaborations*.

III

The arguments above will, I know, appear counterintuitive to many. After all, human rights have become the basis of some of the most celebrated campaigns, both practical and intellectual, on the world stage. And the activists leading them certainly do not seem to be lacking in passion for justice. My hunch, however, is that this is because they are driven not so much by a desire to fulfil certain empowered values in the world as by motivations that are best characterized as religious.⁵⁶ Regardless, I want to conclude by noting how the lack of enthusiasm that the vast majority of people demonstrate when challenged to defend human rights in practice has led the activists to favour enforcement mechanisms. The more cosmopolitan among them call for an international legal order able to punish states, whereas others point to the effectiveness of local constitutional regimes.⁵⁷ My claim is that both sides in this argument have gone astray, however. Because in being so concerned with telling people how they ought to act to the neglect of their motivations for doing so, the defenders of human rights have failed to recognize that the only real guarantee of our liberties and welfare comes from people being willing to stand up for them. For at the end of the day, it's what's in their hearts or minds that matters.

But oh, replies the human rights advocate, how ugly are those hearts or minds! Think of the millions of Germans who supported the Nazis, or the many Bolsheviks, especially the Stalinists, not to mention the Maoists and all of the others responsible for or complicit in mass murder during the past century – it is just because of such unspeakable and widespread villainy that enforcement seems necessary. People can be horrible, we cannot trust them, and so we need institutional mechanisms which are beyond their reach in order to protect them from themselves. Hence Ignatieff: “We build on the testimony of fear, rather than on the expectations of hope.”⁵⁸

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

⁵⁶ Recall that if not for the insistence of sectarian Protestants there would be no rights in the American constitutional documents of 1776, and so the French Revolution would have been without its chief model for the Declaration of the Rights of Man and the Citizen (1789). So goes the by now essentially confirmed thesis of German constitutional historian and legal philosopher Georg Jellinek (1851-1911). See, for example, 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).

⁵⁷ See, for example, Ignatieff, “Human Rights as Politics,” pp. 13-7, 35-6, 45-8.

⁵⁸ Ignatieff, “Human Rights as Idolatry,” p. 80.

economic currents.⁵⁹ It is also because judges, in articulating their rulings in terms of rights, do little to convince majorities of their justness; indeed, it is just because of this that their rulings often encourage backlashes. What else should we expect from decisions that result from either the application of some supposedly systematic theory of justice or the balancing of whatever rights are said to have clashed in the given case? For neither leaves much room for the conversations required so that citizens may be truly reconciled to the law. Nor should we ever forget that the rulings are just that – rulings – which is to say that they are impositions meant to be backed up by the police.

The danger here is that, while the docile can always be expected to go along, they will also be the first to change direction the moment the wind does. We ought not to assume, moreover, that people will become reconciled to those rulings in time (as if there was ever enough time). Because this requires that they live with them peacefully for more than a generation – a highly unlikely eventuality given the profound diversity of contexts and cultures in the world; so conflict, not peace, will remain the norm. That is why states, including any future global state, need to decide for themselves whether their constitutions should be justiciable or not.⁶⁰ And it is why such decisions ought to be taken in the knowledge that, if one finds oneself worrying that people do not care enough, then the grim reality is that, at the end of the day, there is nothing to do other than to try and convince them to care more. Because anything else, it seems, only makes them care less.

⁵⁹ “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.

⁶⁰ The chief aim here should be for each to strive for their version of what I have called the “civic balance,” an equilibrium between laws just in content and laws just in terms of (democratic) form, i.e. considered legitimate by a majority of citizens. See my *From Pluralist to Patriotic Politics*, pp. 195-6.