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## JUSTICE AS A KIND OF IMPARTIALITY

Kai NIELSEN

*RÉSUMÉ* : Les approches kantienne de la justice conçoivent celle-ci comme impartialité, les approches hobbesiennes la conçoivent comme avantage mutuel. L'article montre que ces conceptions ne sont pas rivales, mais que la justice en est venue à signifier la prise en compte égale des intérêts légitimes de tous : chaque homme étant considéré comme l'égal moral de chaque autre. Tel est l'aboutissement de la justice conçue comme impartialité. Les théories de l'avantage mutuel, en revanche, ne disent pas ce qu'est la justice ou ce qu'elle est devenue, mais fournissent des raisons prudentielles pour agir de manière juste, dans la mesure où une telle conduite est profitable.

*SUMMARY* : Kantian conceptions of justice construe justice as impartiality, Hobbesian ones construe justice as mutual advantage. It is argued that these are not rival conceptions, but that justice has become the equal consideration of the legitimate interests of everyone alike : where all persons are treated as equals, as persons of equal moral standing. That is what justice as impartiality comes to. Mutual advantage theories, by contrast, do not tell us what justice is, or has become, but give us prudential reasons for being just by showing that, generally speaking, doing what just people do pays.

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### I

“Is Justice impartiality or mutual advantage ?” may not be a well-formed question. It may be neither or both. It may instead be fair reciprocity, what would be agreed to in an ideal bargaining situation, how conflicts of interest are adjudicated under conditions of undistorted discourse or something significantly different. The fact of the matter is that justice cannot be reduced to any of these or indeed to anything else for familiar Butlerian-Moorean reasons. But such anti-reductionism does not preclude a central component of justice being one or another of these things. I shall argue that justice is properly viewed as a kind of impartiality, namely, that justice requires the equal consideration of the legitimate interests of everyone alike. And, it could be equally said, as the previous sentence reveals, that justice is a kind of equality.

Justice as mutual advantage by contrast is not a different conception of justice yielding different principles of justice but something — or so I shall argue — that could not be justice at all and justice as fair reciprocity suffers a similar fate for where

it is not so indeterminate as to be problematical it reduces to justice as mutual advantage. Appeals to mutual advantage will not show what justice is or what the principles of justice should be but can at best provide a rational amoralist with a motive for reasoning and acting in accordance with the dictates of justice. Even here rational self-interested people might not be persons of moral principle. Rationality *permits* justice but does not *require* it. Solving the problem of compliance does not show what justice is or what its principles should be. Indeed it should not have the position of importance it now often has in discussions of justice, but should be relegated to a problem of little theoretical normative interest about how children are to be socialized. Properly understood, as W. D. Falk put it years ago, it is a problem of *goading* not of *guiding*.<sup>1</sup> An individual can be rational through and through and still, for all of that, not be a person of moral principle though, without Gyges ring, as Kant agreed with Hobbes in stressing, he will, as things can be expected to stand, have to be, if he is sensible, a man of good morals, though particularly where he is in a situation of very considerable and stable power this will give him lots of *lebensraum*. So much so that he may take himself out of morality altogether, except as something to manipulatively use to serve his own interests, or the interests of his class or clan.

## II

Enough of grand proclaiming and the uttering of dark sayings, I shall now turn to the business of providing arguments placed in something of a narrative. For theories mainly concerned with justice as a property of basic social institutions, there have been two quite different stresses. One stress, as in John Rawls and Brian Barry, to cite its major contemporary representatives, is that the function of justice is to provide a reasonable basis for agreement among people who seek to take due account of *the interests of all*; the other stress, as in neo-Hobbesians such as David Gauthier and James Buchanan, sees the function of justice as the construction of social devices which enable people who are essentially egoists to get along better with one another while doing the best they can for themselves.<sup>2</sup> The first conceives of justice as *impartiality*, the second as *mutual advantage*. Both accounts in their most powerful contemporary formulations are in some sense constructivist accounts not relying on moral realist beliefs of either an intuitionist or naturalist sort in which moral truths are discovered as articulating some antecedent reality not dependent on human construction. Constructivist accounts, as with Gauthier, reject such meta-ethical claims or, as with Rawls, do not rely on such claims (meta-ethical claims rejecting other sorts of

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1. W.D. FALK, *Ought, Reasons, and Morality* (Ithaca, NY: Cornell University Press, 1986), 42-66.
  2. John RAWLS: *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971); "Kantian Constructivism in Moral Theory," *Journal of Philosophy* LXXVII, 9 (Sep 1980), 515-572; "The Basic Liberties and Their Priority" in Sterling M. McMURRIN, ed., *Liberty, Equality and Law* (Cambridge: Cambridge University Press, 1987), 3-87; and "Social Unity and Primary Goods" in Amartya SEN and Bernard WILLIAMS, eds., *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982), 159-186. Brian Barry, *Theories of Justice: A Treatise on Social Justice*, Vol. I (Berkeley, CA: University of California Press, 1989). David GAUTHIER, *Morals by Agreement* (Oxford: Clarendon Press, 1986). David GAUTHIER, *Moral Dealing* (Ithaca, NY: Cornell University Press, 1990). James BUCHANAN, *The Limits of Liberty: Between Anarchy and Leviathan* (Chicago, IL: University of Chicago Press, 1975).

meta-ethical claims) but proceed in a contractarian manner by selecting criteria for the correct principles of justice or for just social practices, that would be agreed on in some suitable hypothetical situation or what would actually be agreed on when reasoning under certain constraints and in conditions of undistorted discourse.<sup>3</sup> Both accounts are contractarian and both constructivist. (A contractarian constructivist is not a redundancy.) What Gauthier rejects Rawls more prudently sets aside as unnecessary for the articulation of a theory of justice. He travels, as he puts it himself, metaphysically, and indeed philosophically, light. (This seems to me, as it has not seemed to some others, is a not inconsiderable virtue.)<sup>4</sup>

Historically speaking, the tradition, conceiving of justice as impartiality, has a broadly Kantian source and that of conceiving of justice as mutual advantage has a Hobbesian source. Brian Barry, Will Kymlicka and Allen Buchanan have recently powerfully argued that these two traditions are in conflict and are in a conflict of such a sort that they cannot be reconciled.<sup>5</sup> Barry and Kymlicka, but not Buchanan, further argue that in much contemporary theorizing about justice, including most importantly that of John Rawls, these two at least seemingly incompatible traditions are mixed together in ways that will not withstand critical scrutiny. We cannot, they argue, have it both ways as Rawls, and Hume as well, in effect believe. These conceptions and traditions are in conflict and they cannot be so juggled as to be coherently combined. The correct move, Barry, Kymlicka and Allen Buchanan all agree, is to reject the Hobbesian mutual advantage tradition. The way to go is to accept and clarify the tradition stressing that justice is the impartial consideration of all the interests of everyone. Here they have as an ally Jeffrey Reiman, though he puts the matter somewhat differently.<sup>6</sup>

Influential formulations of both accounts, as is seen paradigmatically in the work of Rawls and Gauthier, share the belief, a belief also held by Habermas and Reiman, that justice is what everyone could in principle reach a rational agreement on. This, of course, is standardly taken as being partially definitive of social contract theories: whether bargaining-theory contractarianism à la Gauthier or moral contractarianism

3. The phrase "undistorted discourse" is, of course, from Jürgen Habermas. Rawls, with his veil of ignorance and original position, restricts discourse while Habermas's model of undistorted discourse requires full information. But Rawls's account in normative domains aims as well, though in a way quite different from Habermas, at undistorted discourse by eliminating, with the veil of ignorance, morally irrelevant factors that would impede impartial assessment.

4. See centrally here John RAWLS, "Justice as Fairness: Political not Metaphysical," *Philosophy and Public Affairs* 14, 3 (Summer 1985), 223-251. But also see relatedly his "The Idea of an Overlapping Consensus," *Oxford Journal of Legal Studies* 7, 1 (1987), 1-23; his "The Domain of the Political and Overlapping Consensus," *New York University Law Review* 64, 2 (May 1989), 233-255; and his "The Priority of Right and Ideas of Good," *Philosophy and Public Affairs* 17, 4 (Fall 1988), 251-275. Rawls's fundamental approach in these essays is challenged by Jean HAMPTON, "Should Political Philosophy be Done Without Metaphysics?" *Ethics* 99, 4 (1989), 791-814; Joseph RAZ, "Facing Diversity: The Case of Epistemic Abstinence," *Philosophy and Public Affairs* 19, 1 (1990), 3-46; and defended by Kai NIELSEN, "Rawls and the Socratic Ideal," *Analyse & Kritik* 13, 1 (1991), 69-73.

5. BARRY, *Theories of Justice*; Will KYMLICKA, "Two Theories of Justice," *Inquiry* 33 (1990), 99-119; and Allen BUCHANAN, "Justice as Reciprocity versus Subject-Centered Justice," *Philosophy and Public Affairs* 19, 3 (Summer 1990), 227-252.

6. Jeffrey REIMAN, *Justice and Modern Moral Philosophy* (New Haven, CT: Yale University Press, 1990).

à la Rawls, Barry and Reiman. However, the justice as impartiality view and the mutual advantage view have, of course, a different conception of why people are trying to reach agreement. Indeed, when we see what these conceptions are, with their differing rationales, we will recognize that they are set in very different theories. The mutual advantage view says that the motive for justice is the pursuit of individual advantage. People in societies such as ours pursue justice, neo-Hobbesians claim, for mutual advantage. More generally, they will do so in what Hume and Rawls call the circumstances of justice, namely, circumstances of limited material resources, confined generosity, and conflicting interests or goals. In the circumstances of justice, which are the actual conditions of human life or at least most human life, people, the claim goes, can expect to advance their interests most efficiently through cooperating with other members of society, rather than living with them in conditions of conflict. Rational people on such a view will agree on certain constraints — say, the ones Gauthier specifies — as the minimum price that has to be paid in order to obtain the cooperation of others.

By contrast the motive for behaving justly on the justice as impartiality view is not reducible to even a sophisticated and indirect self-interest. Rather, the correct motive for behaving justly, on that view, is the belief that what happens to other people matters in and of itself. This being so people should not look at things from their own point of view *alone* but should seek to find a basis for agreement that is acceptable from all points of view.<sup>7</sup> People, as Rawls puts it in a Kantian vein, are all self-originating sources of valid claims. We accept their claims because we think their interests are as important as our own and indeed that their interests, whoever they are, are all equally important. The life of everyone, no matter how mentally enfeebled, matters and matters equally. We do not just, or perhaps even at all, take their interests into account because we are trying to promote or at least protect our own interests. For the impartiality approach, at least on some of its formulations, justice would be the content of an agreement that would be reached under conditions that *do not allow for bargaining power to be translated into advantage*. By contrast, on the mutual advantage theory, justice can obtain even when people make agreements that are obtained by bargaining under conditions where the bargainers stand in differential power relations and have differential bargaining power. Indeed, where people are so differentially situated, any agreement they come to *for mutual advantage must reflect that fact*. Such an approach is inescapable if appeal to self-interest is the motive for behaving justly. “If,” as Barry puts it in characterizing that position, “the terms of agreement failed to reflect differential bargaining power, those whose power was disproportionate to their share under the agreement would have an incentive to seek to upset it.”<sup>8</sup> They would have no sufficient reason, on that account, for sticking with the agreement. By contrast, the impartiality approach uncouples justice from bargaining power, since it does not require that everyone find it in her advantage to be just. They can have good reasons for being just even when being just is neither in their short run nor their long run advantage. That the powerful have an incentive to

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7. KYMLICKA, “Two Theories of Justice,” 100.

8. BARRY, *Theories of Justice*, 250.

upset agreements they would enter into in such circumstances with the weak is a morally irrelevant reason for their not sticking with their agreements. From the moral point of view it cannot even be considered.

Given this difference in orientation, the kind of agreements that could even count as just agreements for the impartialist do not allow bargaining power to be translated into advantage. Indeed, they specifically prohibit it. Barry, Kymlicka and Allen Buchanan all argue that the mutual advantage approach does not even count as a theory of *justice*. While the mutual advantage approach may generate some basic principles of social cooperation and coordination, these will not always yield just agreements, since they allow as “just agreements” agreements obtained in situations where the power people have is very different, undeserved, and exerted. The resulting system of cooperation with its resulting system of rights and duties lacks one of the basic properties of a moral system, namely, the property of giving equal weight to the interests of all the parties to the agreement. So while it articulates a system of social cooperation it is not a moral theory and thus it is not a theory or an account of justice.

On the mutual advantage account some persons can fall outside the system of rights, at least as normally understood, altogether. In contrast with the Kantian impartiality approach, those without bargaining power will fall beyond the pale of morality. Not every individual will have an inherent moral status. Some, on such an account, can be treated as a means only. This would be true of young children, of the severely retarded, of the utterly powerless, and it would be true of future generations (if they are to be spoken of as persons at all). All these people lack bargaining power for they have no way of retaliating against those people who harm them or fail to take into consideration their well being. They thus on such an account lack moral standing; they can have no rights and we have no duties or obligations to them, though we can rightly treat them kindly *if we so choose*.

Those are the extreme cases but sometimes at least the powerful in our class divided and stratified societies can with impunity treat the weak without moral concern. They can exploit them and push them against the wall. Where the dominant class is very secure, as for a time it sometimes is, it can rationally proceed in this way knowing that the dominated class has no effective means of fighting back. If indeed some gain an irresistible, effectively unchallengeable power, then they have with such power, on Hobbes's account, as well as for contemporary Hobbesians, something which “justifieth all actions really and properly in whomsoever it is found.”<sup>9</sup> But in a world so ordered the constraints of justice would have no place. We could have perhaps (given the circumstances) a rational system of cooperation and coordination. But we would not have a morality. There is no reasoning here in accordance with the moral point of view. Where the strong can and do enslave or exploit the weak to the advantage of the strong we have something which is paradigmatically unjust. Barry puts the point thus :

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9. Thomas Hobbes as quoted in Patrick RILEY, *Will and Political Legitimacy: A Critical Exposition of Social Contract Theories in Hobbes, Locke, Rousseau and Hegel* (Cambridge, MA: Harvard University Press, 1982), 39.

This gives us the defining characteristic of the second approach [the impartiality approach], namely, that justice should be the content of an agreement that would be reached by rational people under conditions that do not allow for bargaining power to be translated into advantage.<sup>10</sup>

Mutual advantage theory perhaps provides a good analysis of what genuinely rational purely self-interested people would do if they were well-informed. If we are going to intelligently engage in amoral *realpolitik* this is perhaps how we should proceed but it does not provide us with anything that even looks like a method of *moral* justification. A cluster of practices which could be correctly characterized as just practices could not be a set of practices which would sustain or even allow those with greater bargaining power to turn it into such an advantageous outcome for them that the weak could be killed, come to die of starvation or live in intolerable conditions of life when that could be avoided. Such practices are paradigmatically unjust practices. If they are not unjust then nothing is.

A mutual advantage theorist might respond that his theory could never allow those things to obtain, for no matter how severe the power differentials, such driving of a hard bargain (as a matter of fact) would never be to the mutual advantage of the parties (neither the weak nor the strong). But to so respond is clearly to rely on a rather chancy empirical claim.<sup>11</sup> Faced, under severe and relatively secure power differentials, with the possibility of starvation, the weak might rationally settle for subsistence wages. Faced with a very marginal subsistence living, families might find it to their advantage (including the children's advantage) to opt for child labor under harsh conditions. With one's back against the wall, one might even find it to one's advantage to sell oneself into slavery or to agree to play a kind of Russian roulette where one might be killed. It is itself a rather chancy empirical claim to say that such uses of power would never be in the advantage of people in positions of power because the likelihood of relying on the weak sticking with such harshly driven bargains would be too risky. That this would be so in all, or perhaps even in most, realistic conditions is far from evident. We can hardly be very confident that positions of power might not for a considerable time be so secure that it would not be to the advantage of the powerful to drive such hard bargains. But whatever is in fact the case here about mutual advantage, we can know, impartiality theorists claim, that such bargains are unjust. Even if they do turn out to be mutually advantageous, given the circumstances people are in, they remain morally unacceptable. If, to summarize, they are not mutually advantageous they are wrong on both accounts. If they turn out, after all, to be mutually advantageous, they are still wrong, mutual advantage theory to the contrary notwithstanding. It allows, as we have seen, as an open moral option, if consistently applied, at least the possibility of things obtaining which are grossly immoral if anything is.

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10. BARRY, *Theories of Justice*, 302.

11. This is reminiscent of utilitarian arguments to ward off reductio arguments against utilitarianism.

## III

Let us now consider impartiality theories. They take several forms but whether or not they require the postulation of an original position or a state of nature or anything of that sort such theories view moral reasoning not as a form of bargaining but as a deliberation concerning what is to be done between agents who share a commitment to impartiality, to the giving of *equal* weight to the interests and needs of all. Put differently, moral agents are people who are deliberating about which principles should be acceptable to all points of view. That, Barry has it, is the basic idea of impartiality. Impartiality theorists such as Rawls, Hare, Nagel, Reiman, Barry, Scanlon and Dworkin disagree over which principles of social justice are to be adopted but they all are egalitarians and argue (*pace* F. H. Hayek) that justice as impartiality requires (where possible) the elimination of or neutralization of morally arbitrary inequalities, namely those inequalities arising from differences in social circumstances or natural talents. How fundamentally such an approach differs from the mutual advantage approach can be seen from the fact that an underlying rationale for appealing to impartial agreement is that it substitutes a *moral equality* for a *physical inequality*. As Kymlicka well puts it, the two views are, morally speaking, a world apart. "From the point of view of everyday morality, mutual advantage is an alternative to justice, not an alternative account of justice."<sup>12</sup>

However, appealing here to everyday morality, and not to something more abstract such as the moral point of view, begs the question with mutual advantage theorists, for they are willing to jettison much of everyday morality for a streamlined morality they regard (correctly or incorrectly) as more rational. There are on Hobbesian accounts no natural duties to others, no real moral difference between right and wrong, which all persons must respect. There is, as well, no moral equality underlying our physical inequality. All these notions are illusions generating bits of moral ideology. To the liberal appeal to moral equality (the life of everyone matters and matters equally) the Hobbesian can ask (as James Buchanan does), "Why care about moral equality?"<sup>13</sup> (I think, as I shall argue in the last section, this comes to asking "Why care about morality?")

Hobbesians, to continue the mutual advantage theorist's counter to impartiality theory, will argue that impartialists do not push questions of justification to a deep enough level. They do not realize that a person only has a reason to do something if the action the person contemplates doing satisfies some desire of that person or answers to her interests, so that if something's being just is to count as a good reason for doing it, justice must be shown to be in the interest of the agent.<sup>14</sup> Keeping this in mind we frame the Hobbesian question: why should people possessing unequal power or intelligence refrain from using it in their own interests?

12. KYMLICKA, "Two Theories of Justice," 103.

13. JAMES BUCHANAN, *The Limits of Liberty: Between Anarchy and Leviathan*, 54. See also David GAUTHIER, *Morals by Agreement*, 55-58.

14. BARRY, *Theories of Justice*, 363.



To this the impartialist can in turn respond in good Kantian fashion that morality needs no external justification. Morality itself provides a sufficient and original source of determination within us that is no more and no less artificial than the Hobbesian self-interested motivation. People can be motivated to act morally simply by coming to appreciate the moral reasons for doing so.

Hobbesians with their instrumentalist conception of rationality will find this impartialist acceptance here artificial and perhaps even evasive. Indeed they may even regard it as irrational. But they in turn must face Barry's claim that to equate rationality with the efficient pursuit of self-interest is a view which rests on pure assertion. Rational egoism is not an inconsistent view. There is (*pace* Alan Gewirth) no showing that to be consistent one must be an impartialist. But there is also no good reason to believe that the very meaning of "rational" is such that if one is rational one must be an egoist or a constrained maximizer. The acceptance of the formal criterion of universalizability together with a recognition that others are fundamentally like us in having needs and goals and indeed in having, generally speaking, some of the same needs and goals, gives us powerful, though not utterly decisive, reasons for accepting the claims of an impartial morality.<sup>15</sup> A person is not being inconsistent if he does not care about the needs and goals of others; he does not violate the criterion of universalizability, but, as Barry puts it, "the virtually unanimous concurrence of the human race in caring about the defensibility of actions in a way that does not simply appeal to power" suggests that this appeal to impartiality and to moral equality is a very deeply embedded considered conviction to some extent held across cultures and over time.<sup>16</sup> It also can be put into wide reflective equilibrium. To say that such persons act irrationally if so acting is not in their individual self-interest is to utilize what is in effect an arbitrary *persuasive* definition of what it is to be rational.

Gauthier *au contraire* assumes that the "prudent pursuit of one's own ends is obviously rational, concern for the impartial justifiability of one's actions is not."<sup>17</sup> But how, if at all, is Gauthier's belief to be established? Some reflective and well-informed persons (Henry Sidgwick among others) think both concerns are rational. How is Gauthier to show that they are mistaken? How can Gauthier, or anyone else, show that *only* a prudent pursuit of one's own ends is rational or even that it is a rational motive for action that always overrides for a rational person other motives for action? Gauthier's view appears at least, as I quoted Barry remarking, to rest on pure assertion. But, given that is all that Gauthier's claim about what is rational and irrational has going for it, it "can therefore fitly be opposed by a counter-assertion, namely, that it is equally rational to care about what can be defended impartially."<sup>18</sup> Barry then goes on to add, though, "I do not know how to prove that the term 'rationality' is appropriately employed in this way; I think that the virtual unanimous

15. *Ibid.*, 273 and 285. To say that something is universalizable is to say that if x is good for y or is something y ought to do, it is something that is good for anyone else or something anyone else ought to do if that someone is relevantly like y and is relevantly similarly situated. "Relevantly" here needs to be cashed in contextually. NIELSEN, "Justice, Equality and Needs," *Dalhousie Review* 69, 2 (Summer 1989), 211-227.

16. BARRY, *Theories of Justice*, 285.

17. *Ibid.*, 285.

18. *Ibid.*

concurrence of the human race in caring about the defensibility of actions in a way that does not appeal to power is a highly relevant supporting consideration.”<sup>19</sup> Perhaps almost all the human race is irrational in believing that, and only a few Hobbesians, identifying rationality with a prudent pursuit of self-interest, have a sane view on such matters, “but until somebody produces more than an argument by definitional fiat for the equation of rationality and self-interest we can safely continue to deny it.”<sup>20</sup>

We, in fine, have no sound argument to justify believing that it is *inconsistent with reason* not to put, in either the short term or the long term, one’s informed self-interest first.<sup>21</sup> A person who puts her own interests first can be acting rationally, but so can the person who acts on principles that can withstand impartial appraisal when the interests of all people affected (including herself) are given equal weight.<sup>22</sup> Reason does not *require* that we act according to principles that all can reasonably accept but in so acting a person’s actions are as much in *accord* with reason as those of a person who acts out of self-interest. A person in acting either way need make no deductive or inductive mistake, need not be conceptually confused, lack a firm grasp of the facts or not have the ability to hold firmly in mind the relevant considerations, including the relevant arguments. The Hobbesian who claims that it is either irrational, or even less than fully rational, to be an impartialist is just arm-waving.

#### IV

All constructivist *contractarian* theories of justice, and of morality more generally, whether mutual advantage theories or impartiality theories, construe justice as those principles and that set of practices on which everyone at least in principle could reach agreement.<sup>23</sup> Barry and Reiman as much as Rawls construes justice as impartiality in terms of agreement. But there are those, myself included, who are justice-as-impartiality advocates but reject construing justice in terms of agreement. Barry gives us a sense of what the stress on agreement would come to.

[T]he function of justice is to provide a rational basis for agreement among people who do not simply look at things from the point of view of their own interests but seek to take due account of the interests of all. Justice, on this conception, is what can be justified to everyone... It is inherent in this conception that there is a distinctively moral motive, namely, the desire to behave in accordance with principles that can be defended to oneself and others in an impartial way.<sup>24</sup>

Following Thomas Scanlon, Barry takes the underlying moral motive to be “the desire to be able to justify one’s actions to others on grounds they could not reasonably

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19. *Ibid.*

20. *Ibid.*

21. *Ibid.*, 303.

22. KYMLICKA, *Liberalism, Community and Culture* (Oxford: Clarendon Press, 1989) and “Two Theories of Justice.”

23. BARRY, *Theories of Justice*, 272.

24. *Ibid.*

reject.”<sup>25</sup> Conceptions of this sort are widely held, but Kymlicka among others thinks that they are, that notwithstanding, fundamentally mistaken.<sup>26</sup> Perhaps such a conception would work if we were only considering moral relations between competent adults. But there are, as well, moral relations between competent adults and children, mental defectives, and other sentient creatures as well. It is senseless to talk about impartial agreement with infants or mental defectives, to say nothing of animals; it is senseless to speak of giving them grounds they could not reasonably reject. Considerations of justice are very stringent between us (assuming we are competent adults) and the severely mentally retarded, but there is no room for talk of justice coming to what they and we could come to an agreement about.

If someone is incapable of being a party to an agreement with us, that certainly does not mean we lack any moral motive for attending to his or her interests? The emphasis on agreement within impartiality seems to create some of the same problems that the emphasis on bargaining power creates within mutual advantage theories: some people will fall beyond the pale of morality, including those who are most in need of moral protection.<sup>27</sup>

It is a mistake to claim, as Scanlon does, that morality only applies to a being if the notion of justification to a being of that kind makes sense.<sup>28</sup>

Scanlon maintains in defense of his thesis that that a being can feel pain shows that that being has a center of consciousness and, because of this, that the notion of justification to such a being makes sense. It is because of this, Scanlon claims, that pain is so often taken as a relevant criterion for moral status. But it is false that if a being can feel pain justification can be addressed to that being and that we can in principle at least attain agreement with him. Agreement requires the being not just be able to feel pain, and to be a center of consciousness, but comprehension as well and while infants, severe mental defectives, and many animals can feel pain they cannot comprehend things so that they could enter into agreements with us such that the notion of justification could even make sense to them. Yet surely they have moral status. That we cannot address justification to a baby does not mean the baby lacks moral status. We give moral status to an infant or to a dog not because we can address justification to it or to its moral trustee. We give moral status to it because it can suffer or flourish, because the lives of such beings “can go better or worse, and because we think their well-being is of intrinsic importance.”<sup>29</sup> Some beings we can address justification to and some we cannot, what “makes them all moral beings is the fact that they have a good, and their well-being matters intrinsically.”<sup>30</sup> But to so argue is to break altogether with the contractarian tradition, including its impartialist versions. But that would seem at least to be required of an adequate account of morality.

25. *Ibid.*, 284.

26. KYMLICKA, “Two Theories of Justice,” 110-112.

27. *Ibid.*, 110.

28. SCANLON, “Contractualism and Utilitarianism,” in A. SEN and B. WILLIAMS, eds., *Utilitarianism and Beyond*, 113-114. Indeed, it is much the same mistake as mutual advantage theorists such as Gauthier make.

29. KYMLICKA, “Two Theories of Justice,” 111.

30. *Ibid.*

Kymlicka argues that we should construe justice as impartiality not in the manner of the contractarian as based on some kind of agreement but that we should simply take impartiality as a criterion that, with or without agreement, gives all interests equal weight. Our *moral* motivation is not in reaching agreement but in responding to legitimate interests. We simply come to recognize, if we are moral beings, that others have legitimate claims to have their interests taken into account. The thing is to try to find or articulate principles of justice that give equal weight to everyone's interests. Agreement, Kymlicka claims, drops out *at the most basic level*.

We have clear obligations to those who are powerless to defend or to represent or sometimes even to understand their own interests. In this vein, and abstracting a little, our clearest obligations are, Kymlicka claims, not to try to reach agreement but will involve taking people's interests into account and to the giving of equal weight to the interests of all human beings. This is the clear claim of justice as impartiality. Our principles of justice are justified when they do that. If they do not give such equal weight to the interests of all, whether we agree about these principles or not, this agreement does not justify them. This commits us to the substantively egalitarian view that the interests of all human beings matter and matter equally. Where that is not our guiding conception, we do not, at least on modern conceptions of justice, have justice. Agreement is, of course, Kymlicka acknowledges, of vital epistemological and political import. But at the foundational level, Kymlicka has it, it does not apply; that is to say, it does not apply where we are saying what justice is and what the foundations of a just society are.<sup>31</sup> "At the deepest level," Kymlicka continues, "justice is about equal consideration of our legitimate interests, and the many virtues of agreement are assessed by reference to that underlying idea, not vice versa."<sup>32</sup>

## V

There is plainly something right about Kymlicka's argument here but there may be something wrong as well which, in some diminished way, gives morals by agreement another inning. What justice as impartiality substantively comes to is giving the interests of all equal weight such that everyone's interests matter and everyone's interests matter equally. Proper names or positions of prestige or power are not relevant in determining whose interests has pride of place when people have conflicting interests and both interests cannot be satisfied. Still, in such a situation we must depart from *simple* equality and it is there where the careful articulation of principles of social justice such as we find in Rawls, Scanlon, Reiman, and Barry becomes vital. But in making such a differential weighting, such as to proceed by benefiting the worst off maximally in ways that are compatible with retaining autonomy (including equal liberty for all) and fair equality of opportunity for all, we should start from a position where we give equal consideration to the interests of all and where we start by giving an initial equal weighting to all interests. It is, as Barry puts it, this baseline of equality

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31. *Ibid.*, 113.

32. *Ibid.*, 112.

from which we must start when we reason morally. However, when we recognize that we are in a circumstance where not all interests can be satisfied equally, we look for impartial and fair ways of departing from simple equality. But these considerations do not gainsay the point that justice is about the equal consideration of our legitimate interests. This obtains whether or not there is anything that everyone competent to make such judgments and bent on being reasonable would agree on. So far things seem at least to continue to cut against contractarians.

However, let us now ask how do we — or do we — know that this is what justice is and that this is what justice requires such that we must act in this way if we would be just and that for there to be just social institutions our social practices must be so structured? It is here where agreement may come in by the back door.

Kymlicka writes as if we could just somehow intuit or directly recognize that this is what justice is: that we could just “see” that these claims are true. But if there are any accounts which are by now widely recognized to be non-starters it is intuitionism (what Rawls calls rational intuitionism) and natural law theories where we in some mysterious way must just have direct access to the truth — indeed, even on some accounts, the certain truth — of some moral propositions. How then does Kymlicka know, and how can we know, that his fundamental substantive moral claims, claims not subject to agreement, are true or justified? Perhaps they are — though Kymlicka does not claim that for them — *conceptual* claims such that we can know that they are true by having a grasp of the concept of justice, where to have a grasp of the concept of justice is to know how to use “justice” or cognate terms correctly. Perhaps the following conceptual chain holds: to be just is to be fair, to be fair is to be impartial and to be impartial is to give equal consideration to the interests of all human beings. If this is so, we could know the truth of Kymlicka’s claims by coming to have a good understanding of the use of “justice.” We would have what Simon Blackburn somewhat ironically calls Oxford Science.<sup>33</sup> But even then there would have to be some agreement to even justifiably make that conceptual claim for there would have to be agreement that that is how we use “justice,” that that is how we play such language-games.<sup>34</sup> But even so, even with such agreement, that may not at all give us a way of meeting mutual advantage theories. Gauthier, for example, perfectly well understands the ordinary use of “just” and “justice” and what it commits us to, if we would stick with it, but he will for his theoretical purposes modify that use until it is compatible with a set of principles which are — or so he believes — rationally sustainable when we reason carefully. We cannot go very far in sustaining substantive claims and substantive principles of justice through being clear about the use of “just” and allied terms. Such considerations may undermine certain absurd claims but they leave many competitors for what is just in the field.

It may, that is, give us something like the first word but it will not carry us very far beyond that. But then how does Kymlicka know that his substantive claims about

33. Simon BLACKBURN, “Can Philosophy Exist?” in Jocelyne COUTURE and Kai NIELSEN, eds., *Metaphilosophie: Reconstructing Philosophy. New Essays on Metaphilosophy* (Calgary, AB: University of Calgary Press, 1994).

34. Kai NIELSEN, “On there being Philosophical Knowledge,” *Theoria* LVI, (1990), 193-225.

justice are justified? He leaves this mysterious. Rawls, Daniels and Nielsen explicitly, and others implicitly, have in such contexts appealed to considered judgments or convictions in wide reflective equilibrium.<sup>35</sup> It has been mistakenly thought that this is a thinly disguised form of intuitionism with all its difficulties plus even more evident worries about ethnocentrism. However, these charges are mistaken given the kind of coherentism involved in the appeal to considered judgments in wide reflective equilibrium. It starts from our firmest considered convictions such as to enslave people is wrong, racial prejudice is evil, religious intolerance is unacceptable, and it tries to set out, if you will, a consistent cluster of such beliefs. But it also seeks to show how such specific considered convictions can be derived from, are explainable by, or at least are in accordance with, more general moral principles, some of which themselves may be considered judgments. "The interests of all human beings are of equal importance" is one such principle which is also such an abstract considered judgment in societies such as ours. We seek by a reciprocal adjusting of many elements, sometimes modifying or abandoning a specific considered judgment or sometimes modifying or even abandoning a more general principle or sometimes by coming to articulate a new one with a powerfully rationalizing power, until we get what we can recognize to be a consistent and coherent cluster of beliefs. We do this by sometimes trimming, sometimes expanding, our cluster of considered judgments and principles, but always adjusting this melange of convictions and beliefs. We do this, repeatedly seeking to maximize coherence, until we have something which we have good reasons to believe form a consistent and coherent cluster. So far we have nothing more than what an ethical intuitionist, though not only an ethical intuitionist, could affirm, though there need be, and indeed should be, no claim to a bizarre epistemic status or to a truth capturing power for the moral beliefs and principles. Indeed we can, and I believe should, following Rawls, avoid making any claim about the logical, epistemic or metaphysical status of our considered judgments, our principles of justice, or our other various moral claims. We should, to repeat, travel philosophically light.<sup>36</sup>

Where wide reflective equilibrium clearly goes beyond ethical intuitionism, which only utilizes a *narrow* reflective equilibrium, is in its stress that other things besides specific moral beliefs and moral principles must be appealed to in gaining the coherent web of belief and conviction that would constitute a wide reflective equilibrium. The consistent set we seek is not only of specific moral convictions and more general principles but of whole theories of morality, conceptions of the function of morality in society, factual beliefs about the structure of society and about human nature, beliefs about social change (including beliefs about how societies will develop or can be made

35. For discussions of reflective equilibrium see RAWLS, *A Theory of Justice*, 19-21, 48-51, 577-587; RAWLS, "The Independence of Moral Theory," *Proceedings and Addresses of the American Philosophical Association* 47 (1974/75), 7-10; Norman DANIELS, "Wide Reflective Equilibrium and Theory Acceptance in Ethics," *Journal of Philosophy* 76 (1979); Kai NIELSEN, "Searching for an Emancipatory Perspective: Wide Reflective Equilibrium and the Hermeneutical Circle" in Evan SIMPSON, ed., *Anti-foundationalism and Practical Reasoning* (Edmonton, AB: Academic Printing and Publishing, 1987); and Kai NIELSEN, "In Defense of Wide Reflective Equilibrium" in Douglas ODEGARD, ed., *Ethics and Justification* (Edmonton, AB: Academic Printing and Publishing, 1988), 19-38, and Kai NIELSEN, "Philosophy Within the Limits of Wide Reflective Equilibrium Alone," *Iyyun* (January 1994).

36. John RAWLS, "Justice as Fairness: Political not Metaphysical," 223-251.

to develop) as well as specific historical and sociological beliefs about what our situation is. The equilibrium we seek is one in which all these elements are put into a coherent whole where the aim remains to maximize coherence. In narrow reflective equilibrium a specific considered conviction might be abandoned because it conflicted with many equally weighty specific considered convictions or a more general moral principle with considerable appeal. But in wide reflective equilibrium such a conviction might be rejected as well, or alternatively, because it was incompatible with some well established empirical facts about society or human beings or about our particular situation or made demands which, given what we know about the world, could not be realized or were beliefs which had moral alternatives which made much more sense in light of some carefully elaborated social or moral theories or theories about the function of morality in society. There are here a considerable range of considerations, including empirical considerations, that are relevant to our decisions about what to do or how to live. We normally start with relatively specific considered convictions but they are correctable by a whole range of empirical and theoretical convictions as well as by moral principles or moral theories, though sometimes, in the case of moral principles and theories, it will go the other way around and the principles or theories will be correctable by the specific considered judgments where just noting certain empirical facts may not be enough to undermine certain moral principles or theories. There is, in such a circumstance, the further consideration whether these non-moral facts (if that isn't pleonastic) are unalterable givens in our situation. There is the question of whether in this respect the world can be changed and whether, if it can, it should be changed. We need also to consider, in the widest sense of "cost," the cost of such a change. Maximizing coherence by means of such considerations yields a *critical* morality that does not have the dogmatism and, as Bertrand Russell noted, what in effect, though not in intention, is the conventionalism and subjectivism of ethical intuitionism. (Dogmatism and subjectivism combined is a really unappealing repast.) Moreover, that critical morality also functions as a guard against ethnocentrism. Some of the specific judgments we start with may be ethnocentric but by the time we have got them into wide reflective equilibrium the ethnocentrism will be winnowed out. This is itself plainly a form of objectivity and all the objectivity, at least in such domains, we need or are likely to be able to get.

So if Kymlicka would avail himself of such a procedure he at least arguably would have a method for arguing for his fundamental claims of justice and he need not just assert them somehow taking them to be natural laws or basic intuitions recoverable on reflection. The method of wide reflective equilibrium could, of course, be used, as well, to argue against an account like Kymlicka's. Its advantage, whichever way it is used, is that we do not with it need to just assert or to rely on intuitions, but can appeal to a method that is very like methods used in science and in other domains. Moreover, it does not wildly depart from how we very often proceed in commonsense contexts when we have our feet planted firmly on the ground.

However, in doing this Kymlicka would be implicitly appealing to some agreement, to some consensus, for it is *our* considered convictions that we seek to get into wide reflective equilibrium. This means we are in effect appealing to the convictions of a

spectrum of related specific peoples living in specific and related communities with their traditions situated in a determinate cultural space and time, though these traditions will also be various subspecies of the wider and long-lived tradition we call the Western tradition. In our specific case, the circumstances would be those of the constitutional democracies under conditions of modernity. We rely on a consensus in such communities though the shared considered convictions need not be, and typically will not be, only the shared convictions — the considered judgments — of those communities. They *might* in some instances be quite pan-human. But for them to be *our* considered judgments they must rest on a rough consensus in our family of communities of constitutional democracies and this, of course, implies some rough agreement at least in those communities. This agreement (consensus) is not *an* agreement, a contract, the sort of thing contractarians talk about. Unanimity is not even expected let alone required. It is just the kind of agreement that goes with, is, I suspect, the same thing as, a rough consensus. Moreover, this is not to assume with Barry that principles of justice are the objects of a collective choice or contract. It steps out, as much as Kymlicka does, of the contractarian tradition entirely. But it does require for moral reasoning even to proceed some rough consensus. As Peirce argued against Descartes, and Wittgenstein could have, if we have no place to start as social creatures with a battery of beliefs, we cannot even start. Put alternatively, we must see things by our own lights — irreducibly social lights — but we can, and indeed should, if we are reasonable, repair the ship at sea. *For starters*, there are no other lights we could see things by. But this does not conceptually imprison us, for we can reflect and think and question our beliefs, and indeed should where there is the real irritation of doubt. Moreover, our repairing the ship at sea will not be holus-bolus but a plank here and a plank there, bit by bit, but almost constantly repairing what will again and again be in need of repair. As Peirce and Dewey saw, it is not in Cartesian doubting, but it is in such circumstances, with such repairing and bootstrapping, where critical intelligence is displayed. Thus (*pace* Kymlicka) agreement (consensus) enters in at a very fundamental level indeed. To show that his impartiality account of justice is justified he must show that its principles and claims can, relying on considered judgments, be placed in wide reflective equilibrium. But still they must be our considered judgments and thus there must be a rough consensus. But this need not mean that it appeals to *an* agreement (a contract) or to the agreement of everyone to whom it is addressed. There is no reason to believe that we can get such an agreement, that we can get such an Archimedean point, but there is also good reason to think that we can avoid both ethnocentrism and authoritarianism here with such a rough consensus and without an Archimedean point. We avoid ethnocentrism by our means of correcting our intuitions; we avoid authoritarianism by the democracy of consensus rooted in impartial and informed deliberation.

Some philosophers appealing to wide reflective equilibrium and in doing so relying very fundamentally on considered convictions — Rawls most prominently — are also constructivists and contractarians and take the method of wide reflective equilibrium and contractarianism to form a coherent mutually reinforcing whole. For Rawls, for example, in deciding on how thick the veil of ignorance is to be or how the original position is to be characterized, we at crucial junctures rely on considered convictions



as we do in deciding on what it is reasonable to accept. But in turn in deciding on whether we have *for a time* achieved a wide reflective equilibrium — there is never anything like a timeless wide reflective equilibrium — we would need a conception of justice which would be acceptable to the parties under certain idealized conditions. So again at a very fundamental justificatory level agreement is appealed to. But, I shall say again, it is not *an* agreement, the contract, hypothetical or otherwise, of a contractarian, Rawls to the contrary notwithstanding, but rough consensus. It isn't that the substantive principles and claims of social justice are not what Kymlicka says they are — that they don't have that content and scope — or that justice is what we can agree on in certain idealized situations, but that, if we are to show that Kymlicka's or anyone else's substantive claims of justice are justified, we must show that there is such agreement (such a rough consensus) about what they are and how they stand together. But this (*pace* Rawls and Barry) does not require or even need contractarianism. And we do not mean by “justice” what we would agree on in such situations and, in addition, this is not what justice is. But we can only be confident that our claims about what justice is are *justified* if they are rooted in such a consensus.

We should note in this context that justice is significantly like truth. Truth is not what researchers investigating under ideal conditions and over a considerable time would agree is the case. But that may be the best *test* for truth. Similarly justice is not what would be agreed to or on in the original position, but that *may* be the best *test* for what is just. We have carefully to distinguish what truth and justice mean and what they are from how we ascertain what is true or just.

## VI

I want now to consider a way, though a rather partial way, in which the impartiality approach to justice and the mutual advantage approach *might* be shown to be compatible, while not being competing, compatible, or even congruently partial *conceptions of justice*. The impartiality approaches show us what justice is, how we have to be to be just persons of moral principle, what just institutions would look like and what principles of justice people, reasoning carefully from the moral point of view, would find during some epoch, and for some determinate culture or cluster of cultures, to be most justified and why. We are asking for moral reasons here which only *per accidens* may sometimes also be reasons of self-interest. Assuming there is something called the moral point of view (one element of which is the impartial consideration of the interests of all) people of moral principle will reason in accordance with it. They will hope, and reasonably expect, that most of the time their interests will not be hurt by doing so, but they will not think they are justified in doing so *only* when doing so answers (directly or indirectly) to their own interests or at least does not go against their interests. Their motive for pursuing justice is not the pursuit of individual advantage or even mutual advantage. What happens to other people matters in and of itself whatever the upshot for mutual advantage. But we can still ask, and they can ask, *why be just*? This question cannot be asked from inside the moral point of view; if we are to be persons of moral principle, and not merely persons of good morals,

we have no alternative but to try to be just. Suppose, however, someone does not *aspire* to be a person of moral principle, does not *care* about rendering justice simply because of what it is. Such an amoralist can still perfectly intelligibly ask if justice pays, if he ought (prudentially ought) to do what just people do in order to improve his prospects or at least to protect his interests? In that way, as a good prudential question, he can ask, stepping out of morality, so to speak, why be just.

Can we give good reasons of a broadly prudential sort which will show why, or even that, a purely self-interested person, if through and through rational, and clear about the facts, will do, though out of self-interest, what a just person will do? Kant, as we have seen, distinguished between a man of good morals (something an egoist could be) and a morally good man (someone genuinely committed to the moral point of view). Can we show that rational, purely self-interested people, if they were also persons of good morals, would, if they were through and through rational, do what just people do, or even do roughly what just people do, though not, of course, for the same reasons? We should recognize in pressing that question, that "Why ought we to be just?", "Why be fair?", "Why ought we to do what is right? or "Why should we be moral?" are questions that we could not coherently ask from a moral point of view. To so ask them from that point of view is like asking "Why ought we do what we ought to do?"<sup>37</sup>

However, as the extended discussion of "Why be moral?" has brought out, we can intelligibly ask: why take the moral point of view at all?<sup>38</sup> From the moral point of view, moral reasons by definition override non-moral reasons, but why take that point of view at all? From the point of view of individual self-interest, from purely class interests or from the point of view of a group of constrained maximizers bent solely on cooperation for mutual advantage, moral reasons are not the overriding reasons, or at most they are only *contingently* overriding.<sup>39</sup> From the moral point of view they are *necessarily* overriding but not from these points of view. But why take the moral point of view? Justice, fairness and morality indeed require it. But so what?

Hobbesian theory can be taken as a powerful attempt to show that we (where "we" is taken collectively) have very strong prudential reasons for being, as the world is and will continue to be, *men of good morals*. We have in terms of long-term self-interest the best of reasons to support the continued existence of some moral constraints, including some just practices. (We could not — logically could not — have moral institutions, at least where the circumstances of justice obtain, that did not include just social practices.) Rational persons, the claim goes, may not be morally good men but they will be men of good morals.

37. Kai NIELSEN, *Why be Moral?* (Buffalo, NY: Prometheus Books, 1989).

38. Kurt BAIER, *The Moral Point of View* (Ithaca, NY: Cornell University Press, 1958); William FRANKENA, *Thinking about Morality* (Ann Arbor, MI: University of Michigan Press, 1980); Kai NIELSEN, *Why be Moral?*; and David GAUTHIER, ed., *Morality and Rational Self-Interest* (Englewood Cliffs, NJ: Prentice-Hall, 1970).

39. Allen W. WOOD: "Marx's Immoralism" in Bernard CHAVANCE, ed., *Marx en Perspective* (Paris: Éditions de l'École des Haute Études en Sciences Sociales, 1985), 681-698; "Justice and Class Interests," *Philosophica* 3, (1984), 9-32.

The impartialist arguments, such as we have seen Barry, Kymlicka and Allen Buchanan articulating, show, I believe, that Hobbesians (pure mutual advantage theorists) cannot get justice out of purely self-interested reasoning, including constrained maximization, which in the end is itself purely self-interested reasoning.<sup>40</sup> Indeed, it is true, as some modern Hobbesians have powerfully argued, that people can expect to advance their interests most effectively by cooperating and in doing this by agreeing to accept certain constraints on their direct individual utility maximization. By moderating their demands and by cooperating with others they will, as the world goes, in the long run do better. David Gauthier makes a powerful case for that. But these forms of cooperation will not give us morality, will not give us a system of justice, where the interests of all count equally, where what happens to other people, no matter how they are placed or how enfeebled, matters in and of itself and where the reasons for action must not just be acceptable from the point of view of the agent doing the reasoning but from all points of view. For a social practice to be just, it must not only answer to the interests of some individual or some class or some elite but it must answer to the interests of all, including those incapable of entering into relations of mutual advantage or of any kind of reciprocal relations. But, as we have seen, there can be all kinds of situations (class differentials, gender differences, caste systems, hierarchical strata, adults and children, mental competents and mental defectives, developed cultures and non-literate ones) where there are differential power structures and where by pursuing mutual advantage intelligently in certain circumstances the powerful would exploit the weak and not for all of that be acting unintelligently. It could, as we have seen, very well in some of these circumstances be in the mutual advantage of everyone involved. But so acting would be unjust all the same. *Justice cannot allow differential bargaining power to be translated into advantage.* People in such circumstances, given their weakness, have reason to cooperate with the strong for otherwise they will be still worse off. And in societies as we know them these circumstances are not infrequent. So, given the differential power situation and the determination of the powerful to do the best they can for themselves, the weak have prudential reasons to cooperate even though they are exploited, indeed even severely exploited. But they are not in such a circumstance being treated justly: the resulting system of cooperation though rational is unjust. Indeed such treatment of people is immoral. We do not get to morality from Hobbesian premises and thus we do not get to justice. The impartialist does not ask why be just but shows what justice is; the Hobbesian asks why be just and tries to show that we should, prudentially speaking, be just because justice pays. What has been shown is (a) that paying does not make something just and (b) that it is not true that *justice always pays*. Some form of social cooperation always pays but the form of social cooperation people engage in, including mutually advantageous social cooperation, may be very different from justice. We may have a society or, at the extreme, a world, where there is mutually advantageous social cooperation which is still a society or even a world which is grossly unjust.

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40. Gauthier remarks "[...] my discussion assumes rational, utility-maximizing individuals who are not mistaken about the nature of morality or, more generally, who recognize that *the sole rationale* for constraint must be ultimately a utility-maximizing one." GAUTHIER, "Morality, Rational Choice and Semantic Representation," *Social Philosophy and Policy* 5, issue 2 (Spring 1988), 182.

The impartialist has not shown that an enlightened egoist or an intelligent and informed constrained maximizer must, to be through and through rational, be just. And the Hobbesian has not shown that we can get justice out of enlightened egoism in the circumstances of justice.

To this the Hobbesian might reply that a good bit of morality is irrational. (Here we return, but now from a different angle, to something we considered earlier.) He may say, as David Gauthier does, that "traditional morality as such may be no more than a ragbag of views lacking any single, coherent rationale."<sup>41</sup> The moral point of view requires the equal consideration of interests but, the Hobbesian would claim, it is irrational for an individual or a group to do so when it isn't in their own interests. What is rational to do is determined by the interests of the *individual* who is acting. Where parts of morality do not so answer to individual interests they should, the Hobbesian can claim, be jettisoned, and what is kept as a system of social cooperation, though considerably less than morality as it has been traditionally conceived, is *the critical rational core* of morality. That is all we should keep of the moral point of view.

This purely instrumentalist conception of rationality, as we saw Barry arguing, rests on pure assertion. That it is just this that rationality comes to is not established through an examination of the use of "rationality." To give equal weight to the interests of all, as I argued, is not irrational. But to say that it is a rational thing to do is no more or no less rooted in the use of "rational" than is the claim that to be rational is always to give self-interested reasons pride of place.<sup>42</sup> We can try to appeal to theoretical considerations to support such a Hobbesian instrumentalist conception of rationality, and its linked reduced form of morality: what in reality is more likely a streamlined *replacement* of morality. But there are other conceptions of rationality answering to different theoretical purposes. Given Hobbesian purposes we can use that Hobbesian conception of rationality, but, given Habermasian or Aristotelian purposes or the purposes of impartialism, we can use instead these quite different conceptions of rationality. There *may* be no good reasons, external to these particular purposes and systems of the organization of things, to accept one of these purposes rather than another. Rather it may be the purposes themselves, and the problem solving activity that goes with their achievement, that determines, and displays, respectively, what is rational to do. There may be no Oxford Science telling us what rationality is. But to say that the Hobbesian ones are the really rational ones is plainly question begging. Moreover, the Hobbesian conception is subject to *reductio* arguments. *If* it fits the interests of one class to enslave another class and work them to the edge of starvation that would, on such a Hobbesian account, not only be what reason *permits*, it would, for them, be what both reason and justice *require*. But a theory of rationality which had that implication would not only be morally repugnant, it would be groundless and thoroughly implausible.

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41. David GAUTHIER, *Moral Dealing*, 270.

42. Kai NIELSEN, "Can there be Justified Philosophical Beliefs?" *Iyyun* 40 (July 1991), 235-70.