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**THIN UNIVERSALISM:
DERIVATION
AND
DEFENCE**

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**Swansea University
Prifysgol Abertawe**

Submitted to the University of Wales in fulfilment of the
requirements for the degree of
Philosophiæ Doctor
Swansea University
2008



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For Nigel

for Jane

for Catherine

and for Nye

My past, present and future

- summary -

This thesis outlines a constructivist account of what has come to be known as ‘thin universalism’. It makes the case for a substantively minimal account of universalism as a response to the facts of pluralism understood in a particular normative way. Following G.A. Cohen, it challenges conventional constructivist arguments about the privileged role of facts in the construction of normative principles and suggests that construction must be aimed not at ‘first principles’, which *cannot* be responsive to factual considerations, but at ‘principles of regulation’, which *can*.

These principles are not fixed transcendental algorithms, but rather contingent and reflexive responses to a rapidly changing world, designed to have an impact upon it. This enables them to repel many of the traditional critiques of universalism and provides grounds for thinking that there is still a space and a need for universalism in the modern world.

The thesis proposes a bicameral construction and considers firstly how such ‘thin universal regulatory principles’ might be constructed, and secondly how a basis of consent to them might also be constructed. Far from being distinct, there is significant overlap between the two constructions. Finally, the thesis suggests that a thin universalism can be expressed in two key political debates, which highlight its significance and assist in the construction process. First, as a more sensitive and yet more powerful human rights doctrine; one which recognises and celebrates pluralism, but which sets clear limits on the kind of society in which humans can exist. And, second, as a conception of toleration with limitations which prevent it from descending into a hollow relativism.

Ultimately, the thesis seeks to establish and justify the plausibility of retaining universal principles which, while substantively thin, still resonate strongly and widely in and, as such, continue to be relevant to a modern plural world.

- declaration / statements -

DECLARATION

This work has not previously been accepted in substance for any degree and is not concurrently being submitted in candidature for any degree

Signed (candidate)

Date 15.05.2009

STATEMENT 1

This thesis is the result of my own independent work/investigation, except where otherwise stated.

Other sources are acknowledged by footnotes giving explicit references. A bibliography is appended.

Signed .. (candidate)

Date 15.05.2009 (candidate)

STATEMENT 2

I hereby give consent for my dissertation, if accepted, to be available for photocopying and for inter-library loan, and for the title and summary to be made available to outside organisations.

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Date 15.05.2009

- acknowledgments -

When one engages in this kind of philosophy it is all too easy to forget that, while in some matters our scope of concern must be genuinely universal, in so many others it is our own *particular* connections and relationships that make our studies possible and our experiences enjoyable.

The undertaking of this project was made possible by the Arts and Humanities Research Board, latterly the Arts and Humanities Research Council. Without their full financial support, I would have been unable to pursue my research. To them, I am deeply indebted.

Of those friends and colleagues who have seen me through the last four years, my thanks firstly go out to my supervisor, Dr Mark Evans, whose impeccable supervision and expert guidance have helped keep my work on track and my faith in the project in check.

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I thank, too, my family for their unwavering support – financially, emotionally and spiritually. Special thanks go to my mum, Jane, who has been a particular source of courage and strength, and to Trevor and Judith Oliver, who provided shelter (!) in my final year. The belief and support of my family has been a tremendous encouragement through the good and the bad alike.

Finally, I must thank my wife Catherine, who truly is my all and whose support has been unflinching in spite of everything that the life of the spouse of a doctoral researcher has thrown at her. She has listened with patience, responded with verve, and always insisted that I clarify, justify and temper my all-too-frequent flights of fancy.

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- introduction -

Pluralism and Universalism

‘Universalism’ has traditionally posited that principles of justice or morality, and the social and political institutions that issue from them, should be valid and applicable *universally*. It posits that there are some valuational judgements – judgements of right or wrong, good or bad – which hold meaning in all times, places and circumstances. By extension, justifications for these principles and the reasons provided for endorsing them should be equally universal, in that they should extend beyond any particular set of political arrangements, social circumstances or cultural norms. The principles by which social life is organised must apply to all, and be justifiable to all.

By contrast, ‘particularism’ has typically posited that principles of justice or morality are only valid within particular social contexts, under localised institutional arrangements, or by reference to contingent historical experiences. Valuational judgements hold meaning *only* within the social contexts in which they arise, and cannot, therefore be ‘universal’ in the sense intended by universalism. Equally, particularism has posited that the reasons given for endorsing those principles will always be, and can only ever be, tied to that context.

Furthermore, universalism has, in the past half a century, had to come to terms with ‘the fact of pluralism’: that there is a wide diversity of cultures, which adhere to a diversity of seemingly incompatible values. The values people hold are

many, pluralised and diverse and, at the same time, appear local, particular and culturally-dependent. Different societies have different principles and this, so the claim goes, is evidence enough to suppose that *no* values are universal and in fact that *all* values are relative. After all, would there be such a widespread plurality of beliefs if there were a single ‘best’ or ‘correct’ belief system?¹ ‘Universalism’ suddenly seems worryingly ethnocentric – tied to and relevant only for a particular time and place and therefore *not* universal at all.² The notion that the underpinnings of, for example, liberal democracy are universal implies, for many, disregard for other cultures. Persistent attempts to justify liberal principles universally, let alone establish (or worse, impose) liberal democratic institutions on others, looks like cultural and moral imperialism – a legacy the West has sought, with varying degrees of success, to leave behind.

But the idea that we ought to renounce *all* claims to universality seems equally worrisome. The idea that all values are relative, that we can say nothing to, or about, the die-hard Nazi, the genocidal maniac, or the sneering rapist, seems obtuse and debilitating. However one seeks to approach the fact of pluralism, the idea that all values are relative and that ‘anything goes’ morally speaking is something few people could readily accept. This leaves deeply contradictory feelings about universalism. Onora O’Neill comments:

Our generation has a love-hate relationship with ethical universalism. On the one hand we want to respect cultural diversity, to allow that different people may rightly hold different ethical views ... On the other hand, our generation

¹ Gilbert Harman, ‘Moral Relativism’ in Gilbert Harman and Judith Jarvis Thompson, *Moral Relativism and Moral Objectivity* (Oxford: Blackwell, 1996), p.8; See also J.L. Mackie, *Ethics: Inventing Rights and Wrong* (London: Penguin, 1977)

² See Steven Lukes, *Liberals and Cannibals: The Implications of Diversity* (London: Verso, 2003), ch.2; Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton: Princeton University Press, 2002), ch.2

takes claims about human rights seriously: we want to insist that all people of whatever background and wherever they are have certain basic rights. ... This position is thoroughly uncomfortable: we are left insisting that there are no universal ethical standards and that there are such standards.³

Concern at the prospect of imposing moral judgements on others is, in part, also a symptom of the Western imperialist inheritance and a desire to see no repeat of past mistakes. Yet the complexities of pluralism raise concerns over the capacity of particularism to make important judgements in a world whose boundaries are increasingly open, porous and whose people are increasingly interconnected and interdependent.

Universalism still looks ill-equipped to deal with the modern world; appearing, at best, naïve and out-dated, and at worst imperialistic, even tyrannical. Particularism looks equally ill-equipped; at best hesitant and self-interested and, at worst, indifferent to, even apologists for cruelty and suffering.

For many commentators, pluralism leaves little within universalism worth salvaging. But for others this is not the case and Steven Lukes has contended that universalism needs defending, but in a way that takes seriously the charges against it.⁴ As a way of doing just that, the idea of a 'thin' universalism is becoming more and more prevalent, most explicitly within Anglo-American political thought, but also within other strands of social scientific and philosophical inquiry. The underlying idea is of a 'principled pluralism':⁵ a way of comprehending cultural diversity that deflects the absolute relativity of values, that regards some actions as

³ Onora O'Neill, 'Kantian Universalism in a Culturally Diverse World', speaking on the BBC World Service in May 1999, *Cambridge University Website* (http://www.phil.cam.ac.uk/u_grads/Triplos/Ethics/course_material/1a_kant_s_ethics_05.pdf November 1st 2004)

⁴ Lukes, *Liberals and Cannibals*, p.12

⁵ See Bruce Haddock, Peri Roberts and Peter Sutch, 'Introduction' in Bruce Haddock, Peri Roberts and Peter Sutch (eds.), *Principles and Political Order: The Challenge of Diversity* (London: Routledge, 2006), p.2

unacceptable or some forms of social organisation as unsuitable for the living of a worthwhile life, and that posits principled and reasoned limits to moral and cultural diversity. If we seek to respect, even promote pluralism, to take seriously charges of ethnocentrism and imperialism, and at the same time resist claims of absolute cultural relativity and retain the capacity to make principled, reasoned, justifiable moral judgements, perhaps a 'thin universalism' is the best way forward.

In most accounts of thin universalism, pluralism is not taken to be a problem requiring a solution. It is not a hurdle that humanity must overcome or a dead-end on the path to 'perfection', 'reason', or 'reality'. It is not something that must be eradicated or fixed, nor is it something that can be; it is even a good in itself.⁶ Pluralism is here to stay. It cannot be ignored, and must be treated carefully and sensitively.

Similarly, many thin universalisms share the idea of a terrain of common ground upon which certain judgements can cross cultural boundaries. That terrain is itself open to contestation, as are the judgements themselves. Whether through cultural convergence, shared experience, universal procedures or political mechanisms, or a diversity of political forms, the derivation, character and justification of thin universal principles is the subject of much dispute. In all instances thin universalisms seek to navigate a pluralised and contested world. Some seek consensus, others dissensus. Some attempt to establish a purely political conception, while others seek a moral or legal path. Some begin from a conception of the particular and seek commonalities. Others begin from some conception of the universal and strive for a principled diversity. Some stand up to scrutiny better than

⁶ See for example the final chapters of Taylor's *Sources of the Self*. See Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge MA: Harvard University Press, 1992)

others. The derivation and defence of a coherent thin universalism is the subject of this thesis.

‘Thin Universalism’: Perspectives and Approaches

Explicit and implicit in their presentation, thin universalisms can be found both within and beyond analytic philosophy. Both ‘thinness’ and ‘universalism’ are old ideas – at least as old as philosophy itself – and have existed in tandem almost as long. Thin universalisms are frequently classified along continuums and within typologies according to how thin they are, which of their characteristics constitute ‘thinness’, their focus of concern, and their conceptual context. Continuums running from thin to thick can be compiled with ‘strong’ relativists, particularists and communitarians at one end and thick universalists, cosmopolitans and absolutists at the other. Similarly, thin universalisms can be categorised according to their *thin* characteristics: whether that is a set of thin or basic moral principles, a set of thin procedures, the minimum content of morality, justice or rights, or how human actions and societies are understood, characterised and interpreted (and the kinds of human action and society condoned or condemned by it).

Thin universalisms can also be categorised according to their *universal* qualities: whether that is universal ‘human’ characteristics, universal capacities, vulnerabilities, dispositions or requirements, access to universal procedures or concepts, or judgements about the moral (perhaps even legal) status of all human beings. Each of the perspectives below posits a thin universalism on some level, though they vary enormously in their focus, content and presuppositions. Reference to thin universalism can denote one or a number of distinct yet intertwined ideas

about the qualities, capacities, needs, requirements, rights and duties of humanity as a whole.

Not all thin universalisms necessarily employ, explicitly or implicitly, thinness in *all* of its dimensions. Many of them connect thin epistemic or cognitive universalisms and thin conceptions of morality; many reject such connections on various grounds. It is claimed by many that one *cannot* defend thin moral universalism without adhering to a thin cognitive universalism, while others suggest that a far thicker, strong cognitive universalism is required to underpin *any* moral universalism, thin or otherwise.

David Hume suggests that ‘mankind are so much the same, in all times and places’⁷ and ‘thin universalism’ may firstly refer to a thin or minimal conception of ‘human nature’. A *thin* conception of human nature may seek only to assert that there is some minimal or limited understanding of what constitutes a human being, or of what it is to be human. That there could be any generally ‘human’ traits remains the source of some universalisms. But the idea of thinness urges that only certain *limited* capacities, capabilities and vulnerabilities can be identified which can genuinely be considered ‘human’. Even thin universalisms premised on radical accounts of socialisation, such as relativism, and strong conceptions of particularism, tend to start from at least a ‘barebones’ conception of human nature.

In his *Discourse on Inequality* Rousseau talks of a distinction between man as created by nature and the parts of man that are the product of circumstance.⁸ Human beings possess a set of culturally encoded norms or mores, as well as tastes, preferences and attitudes that are not the product of ‘human nature’. There are also at least a set of biologically encoded human needs (such as air, food and shelter) and

⁷ David Hume, *An Enquiry Concerning Human Understanding*, Section VIII, Part 1, p.61

⁸ Jean-Jacques Rousseau, ‘A Discourse on Inequality’ in *The Basic Political Writings* (London: Hackett, 1988), p.33

experiences (such as aversion to pain⁹) that human beings also possess, and these characteristics, while being grounded in them, are not defined by cultural and historical boundaries. Such attributes are often referred to as ‘common humanity’.¹⁰

A thin conception of human nature, which recognises the pluralism of modern societies, may seek to *underdetermine* what defines a ‘human being’ in all times and places. From such minimal starting points it may be possible to identify, not a fixed and comprehensive structure of empirically observable human traits and dispositions, but a minimal set of genuine human potentialities, capacities, capabilities and vulnerabilities.¹¹ It may seek only to identify, for example, a *capacity* for rational self-interest, a *potential* for altruism, or a *vulnerability* to harm. These in turn serve to delimit acceptable and legitimate courses of action and modes of social organisation. It may be prudent to deny that all human beings behave in a certain way, but it may still be possible to assert that human beings are capable of certain categories of behaviour that all have access to. The clash of ‘nature versus nurture’ is, on this account, a false dichotomy. Biological and psychological imperatives generate a set of human needs, capacities and capabilities and socialization generates a set of culturally particular values, preferences and attitudes.

Martha Nussbaum, in *Sex and Social Justice*, and later in *Women and Human Development*, forwards a universalism based on what she claims are just such a minimal set of assumptions about universal ‘human’ characteristics.¹² Hers aims to be a thin universalism in the sense that it rejects culturally specific characterisations

⁹ Or being fed in early life through a teat. For a biological account of grounding morality in human nature see Robert A. Hinde, *Why Good is Good: The Sources of Morality* (London: Routledge, 2002)

¹⁰ This notion is adapted, in part, from Lukes, *Liberals and Cannibals*, p.13; and Benhabib, *The Claims of Culture*, p.26

¹¹ To make use of the language employed specifically by Onora O’Neill in *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996) and Martha Nussbaum in *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000)

¹² See Nussbaum, *Women and Human Development* and *Sex and Social Justice*, (Oxford: Oxford University Press, 1999)

of human agents and of women in particular. The thinness she develops is grounded in a set of human requirements which she calls ‘the capabilities approach’:

Certain universal norms of human capability should be central for political purposes in thinking about basic political principles that can provide the underpinning for a set of constitutional guarantees in all nations ... these norms are legitimately used in making comparisons across nations.¹³

In so doing, Nussbaum also recognises an objection to *any* project which pursues ‘basic’ principles. ‘The suspicion’, she claims, ‘uneasily grows that the theorist is imposing something on people who surely have their own ideas of what is right.’¹⁴ In order to avoid this, she pursues only those ‘functional capabilities that are vital for any human life to be regarded as truly human’.¹⁵ Andrea Baumeister identifies Nussbaum’s thin universalism as those core human capabilities required for such regard.¹⁶ The problem within Nussbaum’s work is that the realisation and progression of some of these basic human capabilities may, in practice, be rejected in favour of cultural norms which deny that development.¹⁷ In many cases such approaches are hard to reconcile with a genuine plurality of actually held views without the kind of imposition of values that Nussbaum seeks to avoid. Many end up looking either far too thick or far too thin to possibly fulfil their remit.

There is also a tendency amongst *opponents* of traditional universalisms to grant that these capacities, capabilities and vulnerabilities can rightly be called ‘human’. John Gray, a fervent critic of liberal Enlightenment universalism, offers a

¹³ Nussbaum, *Women and Human Development*, p.35

¹⁴ Nussbaum, *Women and Human Development*, p.35

¹⁵ Andrea Baumeister, ‘Gender Equality and Cultural Justice: How Thin is Nussbaum’s Universalism?’ in Haddock, Roberts and Sutch (eds.), *Principles and Political Order: The Challenge of Diversity*, pp.147, 149

¹⁶ For a full list of Nussbaum’s ‘Central Human Functional Capabilities’ see Baumeister., ‘Gender Equality and Cultural Justice’, p.149; and Nussbaum, *Sex and Social Justice*, pp.41-42

¹⁷ Baumeister., ‘Gender Equality and Cultural Justice’, p.155

minimal and universal conception of human beings grounded on the notion of ‘universal human evils’. Humans, he says, have a stock of needs which do not change much across time and place and which are *not* dependent on particular systems of value or belief. The thwarting of such human needs, and thus the rendering of a worthwhile life unattainable, reveals a *universal evil*. While there is no definitive list of what makes a worthwhile life and hence no definitive list of what prevents the attainment of one, it is possible to imagine a number of scenarios (torture, humiliation, persecution, poverty, the threat of death or genocide) which constitute universal evils, and as such any conception of the good which does not confront them is defective.¹⁸

Richard Rorty, also an Enlightenment critic,¹⁹ rejects a common human nature. He contends that within a pluralistic world it is of no use to take the ‘Kantian’ road and attempt to reconcile moral differences by asking people to relate to each other through shared *human* characteristics. It is clear, he claims, that followers of many moral doctrines would contend that no such characteristics exist.²⁰ Yet Rorty also makes use of a whole series of seemingly ‘human’ commonalities and capacities, from the evils of humiliation and torture, to our responses to poetry and sex, to the importance of identity.²¹ Such a gamut of universal attributes suggests ‘*thin* universalist’ underpinnings to Rorty’s political philosophy.

¹⁸ John Gray, *Two Faces of Liberalism*, (Oxford: Polity, 2000), p.66

¹⁹ And anti-foundationalist and perhaps a provisional moral non-cognitivist. See Mark Evans, ‘Pragmatist Liberalism and the Evasion of Politics’ in Mark Evans (ed.), *The Edinburgh Companion to Contemporary Liberalism* (Edinburgh: Edinburgh University Press, 2001), pp.148-161

²⁰ Richard Rorty, ‘Human Rights, Rationality, and Sentimentality’ in *Truth and Progress: Philosophical Papers Vol.3* (Cambridge: Cambridge University Press, 1998), p.178

²¹ See Lukes, *Liberals and Cannibals*, p.19; See also Norman Geras, *Solidarity in the Conversations of Humankind: the Ungroundable Liberalism of Richard Rorty* (London: Verso, 1995)

Some of the thinnest universalisms are so because of the (lack of) foundations upon which they are premised. Two prominent examples of ‘anti-foundational’ thin universalisms can be found again in the works of Gray and Rorty.

Gray’s approach can be viewed most clearly in his conception of agonistic liberalism and in his advocacy of a politics of *modus vivendi*, which are central to his critique of Enlightenment liberalism.²² *Modus vivendi* is premised on an assertion which is in some way both a universally held value and a universally sought good: that of peace. Gray claims that ‘nearly all ways of life have interests that make peaceful coexistence worth pursuing.’²³ Peace is good for all human beings; all human beings want peace. As such there is at work here *at least* a thin universal imperative to avoid conflict, violence and war. Gray may well be, in part, correct in this assertion.²⁴ But some might equally advise caution on the extent to which peace is heralded as a supreme value. Brian Barry, for example, suggests that ‘peace at *any* cost is a curious universal value’.²⁵ Nonetheless, Gray can maintain that peaceful coexistence is only worth pursuing if it advances human interests.²⁶ His agonistic liberalism rejects concrete foundations for toleration and *modus vivendi* and asserts contingent justifications for moral principles. These justifications are changeable and subject to political conflict and value incommensurability, irresistible features of modern life.²⁷ We have reason to seek *modus vivendi* in order to secure the conditions to peacefully pursue our own contingent goals.

²² That is Gray’s current critique. His perspective has shifted across his intellectual development. John Gray, *Two Faces of Liberalism* (Oxford: Polity, 2000), and *Enlightenment’s Wake: Politics and Culture at the Close of the Modern Age* (London: Routledge, 1995), ch.6

²³ Gray, however, does not commit himself to the assertion that all ways of life *explicitly* seek peace. See Gray, *Two Faces of Liberalism*, p.135

²⁴ Testament to this might be seen in the increasing hostility to the war in Iraq shown by the British public between 2003 and 2008. The full repercussions have yet to be seen, but this aversion may well impact all future conflicts, as well as the structure and role of the armed forces.

²⁵ See Brian Barry, *Culture and Equality* (Cambridge: Polity, 2003), p.135 [Emphasis added]

²⁶ Gray, *Two Faces of Liberalism*, p.135

²⁷ See Gray, *Enlightenment’s Wake*, ch.6

Problematically, and perhaps counter to Gray's objectives, the establishment of *modus vivendi* may well require a minimal universal consensus concerning shared goals, institutions and even values. We must all value peace over expansion and power. In order to demonstrate to those who do not accept peaceful coexistence as a value worth pursuing, it must be shown that such a scenario is in itself valuable and advantageous.

Rorty meanwhile also asserts, separately from his claim of minimal shared human capacities, a second thin universalism grounded in his anti-foundationalism. He asserts both the historical contingency of our culture of human rights *and* the need to extend that culture internationally. Its validity is therefore not dependent on a foundation of superior moral knowledge. Without foundations the task of political philosophy becomes to develop more convincing arguments for, not to seek endlessly to justify the underlying principles of, our practical commitments. The task at hand becomes developing new ways of drawing more people into the category of people with whom we associate.²⁸ This has led to scepticism, primarily because Rorty's approach is *so* thin. Bruce Haddock has commented that Rorty celebrates the *de facto* extension of a human rights culture globally, without supplying arguments that might justify that enthusiasm.²⁹ Lukes also levels this criticism, claiming that Rorty defends the human rights culture on the basis of extending the 'we' of human rights advocates to wider acceptance. But this expansion of solidarity, to paraphrase Norman Geras, either stops somewhere or it doesn't. If it does, then human rights are not things which we wish to apply to all human beings, they are not universal and

²⁸ Rorty, 'Human Rights, Rationality and Sentimentality', pp.170-171

²⁹ Bruce Haddock, 'Practical Reason and Identity' in Bruce Haddock and Peter Sutch (eds.), *Multiculturalism, Identity and Rights* (London: Routledge, 2003), pp.10-24 at pp.21-22

they do not represent the kind of commitment to all human kind that human rights are intended to be; they are, Geras suggests, ‘*strange human rights*’.³⁰

Because of this, Rorty has been called a ‘framework relativist’ by Seyla Benhabib,³¹ a position which is also implicitly premised on its own extremely thin universalism. Cultural relativism is premised on the (descriptive) notion that moral evaluations are relative to the cultural background out of which they arise and the (prescriptive) notion of respect for diverse systems of value. The descriptive statement is premised on an absolute description that all descriptions are relative, while the prescriptive statement is premised a universal value judgement of respect. Relativism, then, is in fact *premised* on a thin universalism, and may even be foundational in its justifications.

This is also true of communitarianism. The explicit thin universalism developed by Michael Walzer in *Thick and Thin*,³² is derived from critiques of the arguments of the earlier *Spheres of Justice*.³³ Concern was that Walzer was simply advocating moral relativism disguised as justice, pluralism and equality. While Walzer’s primary concern was to advocate a strong politics of difference, *Spheres of Justice* can be shown to be premised on a thin universalism of sorts, and need not advocate absolute relativism. ‘Justice’, Walzer argues in his concluding chapters, ‘is relative to social meanings’ and, relatedly, ‘every substantive account of distributive justice is a local account.’³⁴ And yet, Walzer also claims that ‘we are, (all of us), culture producing creatures; we make and inhabit meaningful worlds.’ He seems to

³⁰ Lukes, *Liberals and Cannibals*, p.19 (emphasis added)

³¹ See Benhabib, *The Claims of Culture*, pp.31-33

³² To which I turn shortly. See Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame: University of Notre Dame Press, 1994)

³³ See Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge MA: Harvard University Press, 1985),p.129; Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (New York: Basic Books, 1983)

³⁴ Walzer, *Spheres of Justice*, p.312-4.

be proposing a thin 'human' characteristic in acknowledging that the activity of cultural creation is common to all. In a footnote he comments that 'it may be the case that certain internal principles ... are reiterated in many, perhaps in all human societies'. This, he maintains, is an empirical, not a philosophical matter.³⁵ From this he derives in turn at least one 'universal' predicate:

We do justice to actual men and women by respecting their particular creations ... Justice is rooted in the distinct understandings of places, honours, jobs, things of all sorts, that constitute a shared way of life. To override these understandings is (always) to act unjustly.³⁶

The 'universalism' of Walzer here is perhaps the thinnest of the universalisms I identify that is directly concerned with justification. A universal principle of respect for the cultural creations of others is thin indeed, and thinner than Walzer's later examination of thin universalism.

In *Thick and Thin*, Walzer asserts that thin, or minimal, moral terms are inherently embedded in thick, or maximal, moral descriptions; they share the same means of expression and the same cultural orientation. Walzer is critical of what he calls *procedural* minimalism, a *thin*, shared morality, a small number of ideas, which supplies the generative rules of engagement for different maximal moralities.³⁷

Walzer identifies two key problems with the procedural minimum. Firstly, the minimum is seldom minimal. The thin morality tends to reflect a particular set of values, leaving little open to debate and interpretation. Thin procedural morality is simply abstracted from democratic culture, and not abstracted terribly far. Secondly,

³⁵ Walzer, *Spheres of Justice*, See note p.314. This reiteration comes to feature in Walzer's universalism strongly later on.

³⁶ Walzer, *Spheres of Justice*, p.314

³⁷ Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame: University of Notre Dame Press, 1994), p.11. Walzer is, I believe, thinking of Rawls' political liberalism in particular here, but also perhaps of Stuart Hampshire's procedural justice.

by extension, minimalism *precedes* maximalism. Walzer argues that it is rather maximalism that precedes minimalism and that no one maximal morality is the source of the moral minimum. There is no neutral starting point from which a variety of moral cultures can emerge and there is therefore no procedure that can yield them.³⁸ This means that a thick morality is not worked out from a set of core universal principles; our particular thick moralities are thick from the beginning, we do not build them up out of thin principles. Justification is not the same as genesis.

Walzer, by contrast, forwards a thin universalism that is not 'everyone's morality because it is no-one's in particular; [where] subjective interest and cultural expression have been cut away', but is particularist and bound up with the moralities of cultures and societies. Instead of locating commonalities on the way to difference, he suggests that we first acknowledge diversity and then seek overlapping outcomes.³⁹ Pluralism, as a condition of society, is a motivating feature of a thin universal morality and pluralism, as an attitude towards institutional arrangements, will inevitably be an outcome.

Minimalism, for Walzer, *only* appears independently of maximalism in times of personal, social or political upheaval and in such cases particular expressions may take on wider, even universally accessible meanings that generate 'common' responses. In these circumstances the expressions used by those affected have common resonance *across* cultures. Without this resonance, a shared response would fail.⁴⁰ Minimalism, Walzer stresses, is 'morality close to the bone'. While thickness is linked to disagreement, discourse and compromise, thinness is linked to

³⁸ Walzer, *Thick and Thin*, pp.13-14. Such starting points, the constructivist would argue, do exist, they simply need to be identified correctly and suitably abstracted.

³⁹ Walzer, *Thick and Thin*, pp.7, 15

⁴⁰ Walzer uses the example of pro-democracy demonstrators in Prague in 1989, who carried banners demanding 'justice' and 'truth', and others such as 'freedom' and 'life' for example. See Walzer, *Thick and Thin*, pp.2-3, 16

intensity.⁴¹ The commonality of occasion and response may yield a set of standards to which all societies can be held – against murder, torture, oppression and tyranny and which for Western societies may well be expressed in the language of rights. A language Walzer supposes must be, on some level, translatable. Any morality that cannot allow for such responses to the pain and suffering of others is deficient, and this provides his thin universalism with a critical perspective.

His minimalism is not a ‘full-blooded’ universal doctrine, a prominence, he believes, only our maximal moralities can possess. It is not about persuading others of our point of view, but about mutual recognition and commonality of response by protagonists of different moral cultures. Minimalism, he says, is not foundational; it is *not* about different groups of people who all find they have the same set of ultimate values. It is not the foundation for the maximum; it is merely a piece of it.

The notion of ‘contextualist universalism’ is given shape by two further thinkers: Shane O’Neill and Thomas Pogge. O’Neill’s aim is to utilise the positive aspects of liberal impartiality found in Rawls, given a domestic plurality of comprehensive conceptions of the good, and marry it to a Walzerian communitarian contextualism grounded in an international plurality of legally recognised states. This he calls ‘impartiality in context’.⁴² He shares this space with Thomas Pogge, whose *World Poverty and Human Rights* outlines his ‘contextualist moral universalism’.⁴³ He rejects monistic universalisms (positing single or sets of transcendent universal principles) and ‘dogmatic contextualism’ (rejecting the justification of diverse principles) in favour of a rights-based approach that takes its lead from both the *Universal Declaration of Human Rights*, and from a thin conception of human

⁴¹ Walzer, *Thick and Thin*, p.6.

⁴² See Shane O’Neill, *Impartiality in Context: Grounding Justice in a Plural World* (New York: State University of New York Press, 1997), Introduction

⁴³ Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Oxford: Polity, 2002), p.107

flourishing. This in itself is grounded in ‘the minimal requirements needed for the just and even handed treatment of persons within the same context.’ By way of example, Pogge contrasts his general account of human flourishing with more specific accounts that emphasise positive goods such as pleasure. He underdetermines ‘human flourishing’ to achieve this thinness and generality.⁴⁴

Thin universalisms can also be determined according to conceptions of reason and reasoning. These reflect two distinct considerations: the first refers to the universality of the human *capacity* for reason and rationality; the second refers to the *procedural* notion of a good reason being a formally universal concept. Proponents assert that the focus and scope of reasoning can be universal. Reasoning, they maintain, is attainable by all and its procedures of inquiry, evidence and questioning are universally valid, and therefore need not be relative to context or culture.⁴⁵

Opponents have sought to reject the universality of reason in moral deliberation on the grounds that moral judgements are based solely on acculturated customs or personal preference. From this they draw one of two further conclusions: first that reason either plays no part, or has only a secondary or minor role in ethical thinking, or, second, that reasons themselves can only ever be local and contingent. This leads to a rejection of universal reason in favour of relativism or emotivism. But those who engage in this critique often find themselves deploying procedures of rational persuasion, inquiry and justification which they intend others to be receptive to. Such procedures assume or require minimal levels of logical consistency and rational comprehension to be intelligible, leading many to comment that reasons against reasoning is a contradiction-in-terms.

⁴⁴ Peter Sutch, ‘Thin Universalism: Moral Authority and Contemporary Political Theory’ in Haddock, Roberts and Sutch (eds.), *Principles and Political Order: The Challenge of Diversity*, pp.47-48

⁴⁵ Lukes, *Liberals and Cannibals*, p.13; Benhabib, *The Claims of Culture*, p.27

Several 'Kantian' universalists have sought to address the universal validity of reason in light of pluralism and have moved towards 'thinness', and the idea of multi-layered moral commitments. Onora O'Neill's focus on practical reasoning highlights this:

Different stretches of (practical) reasoning may be aimed at or relevant for distinct and differing audiences, who may find different principles of thought or action followable. This is part of the thought behind, and part of the appeal of, particularist reasoning. The failings of the particularist conception of (practical) reasoning lie ... in their assumption that reasoning need be followable only by a restricted audience who already share quite specific norms or practices⁴⁶

O'Neill agrees that 'some stretches of practical reasoning have a restricted scope, in the sense that they are taken to be followable only by a restricted and homogeneous audience.' But 'in reasoning, in justifying what we do, in criticising what others do, we constantly appeal to a wider group, of whose boundaries we lack any very definite conception.' Such boundaries, she suggests, 'must be capacious in a world of multiple and diverse audiences ... linked by porous state and regional boundaries, global telecommunications and interlinking and overlapping practices and polities.'⁴⁷ Hence, in some cases the features of 'finite and connected' others mean that they cannot be excluded from our ethical consideration, making *some* stretches of practical reasoning 'more-or less cosmopolitan' in the sense intended by the Stoics.⁴⁸

Here the line between notions of universal human capabilities or predispositions and what are often referred to as thin conceptions of 'moral universalism' become blurred. The latter conveys the idea that

⁴⁶ O'Neill, *Towards Justice and Virtue*, pp.52-53

⁴⁷ O'Neill, *Towards Justice and Virtue*, p.53-54

⁴⁸ O'Neill, *Towards Justice and Virtue*, p.113

all human beings, regardless of race, gender, sexual preference, ethnic, cultural, linguistic or religious background are to be considered moral equals and are therefore to be treated as equally entitled to moral respect.⁴⁹

Such views, it has been claimed, can be detached from notions of human nature, human capacities, or reason, however thin. Thin universalism, they go on, is best understood as a minimal moral egalitarianism which treats all human beings, and not just those of immediate moral concern, as morally relevant. Thin moral universalism is also prescriptive and has implications for all manner of principles. The extent to which this kind of thin moral universalism can be detached from accounts of human nature or requirements is deeply contentious, and many moral universalisms are grounded in conceptions of basic needs, dignity, or the like.⁵⁰ And indeed, it makes implicit claims about the conditions of human well-being and about the ideal or good society.

Thin moral universalisms tend to be comprised of a thin or minimal set of action-guiding principles. These principles might be captured in an ethic of basic rights or duties, in the minimal actions and dispositions that constitute a virtuous life or in what actions generate the best outcome for an agent or group.⁵¹ Perhaps the most easily envisaged thin moral universalism, or thin moral *cosmopolitanism*, is a minimalist human rights ethic, where only the most basic and fundamental rights are defended, but for all human beings without qualification. How the principles of a thin moral universalism cohere, and how they are justified is of course an important part

⁴⁹ Benhabib, *The Claims of Culture*, p.27

⁵⁰ See, for example, Alison Dundes Renteln, *International Human Rights: Universalism versus Relativism* (London: Sage, 1990), p.49

⁵¹ One could, for example, imagine thin Kantian systems of ethics, thin consequentialisms, or minimal Aristotelian ethics.

of their viability, but for now it is enough to make the distinction between several varieties of moral universalism.

Firstly, *liberal* thought over the past twenty-five years has been concerned with ‘thinning’ down ‘comprehensive’ or ‘Enlightenment’ liberal doctrine, motivated specifically by acknowledgement of the ‘fact of pluralism’⁵² within and between societies. Pluralism leads liberal universalism towards greater sensitivity towards culture and difference, accepting and at times celebrating pluralism’s permanence and depth. The ‘thinness’ of an explicitly thin universalism is therefore reflected in the underdetermination of any form of human life, including liberal forms of life, by any moral principles that a universal morality might posit.

John Rawls is the paradigmatic liberal who has sought to ‘thin’ his universalism as a response to pluralism. *Political Liberalism* saw Rawls attempt to recast ‘justice as fairness’, first outlined in *A Theory of Justice*, as a ‘political conception of justice’.⁵³ The most significant development between the two works is Rawls’ acknowledgement of a plurality of numerous, incompatible, yet reasonable, comprehensive moral, religious and philosophical doctrines. Rawls calls this ‘the fact of reasonable pluralism’,⁵⁴ which is the outcome of public reason over time in modern democratic societies.⁵⁵ ‘Political Liberalism attempts to work out a conception of justice for a constitutional democratic regime that a plurality of reasonable comprehensive doctrines, religious and non-religious, liberal and non-

⁵² The ‘fact’ of pluralism, used in various forms by Kantian liberals such as Rawls, has often been derisively identified by communitarian, Aristotelian and quasi-Nietzschean thinkers as simply the reason identified by liberals for their failure to answer the questions of the enlightenment. See Alasdair MacIntyre, *After Virtue* Second Edition (London: Duckworth, 1985), ch.5 and 6 in particular.

⁵³ See John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971); *Political Liberalism* (New York: Columbia University Press, 1993); and, for a rare insight into the development of the latter position, see his *Collected Papers* (Cambridge MA: Harvard University Press, 1999)

⁵⁴ Rawls, *Political Liberalism* pp. xix, 36 (emphasis added)

⁵⁵ In *A Theory of Justice* Rawls envisaged the outcome of public reason as the adoption of two core principles of justice by every rational individual, which he refers to as a ‘comprehensive philosophical doctrine’. See *A Theory of Justice* p. 60

liberal, may endorse for the right reasons'.⁵⁶ The 'thinness' of Political Liberalism relies on the establishment of a consensus regarding only the basic structure of society. It asserts that, while citizens of a democratic polity are unlikely to agree on a conception of the good, they *will* be able to agree on a set of principles that establish their main political, social and economic institutions. Political Liberalism requires citizens to regard themselves as part of an overlapping consensus; as both adherents of a particular religious, philosophical or moral doctrine, and as citizens of a political community which exists through time.

Following *Political Liberalism* Rawls' attention turned to international politics in *The Law of Peoples*, which is also 'thin universalist' in several respects.⁵⁷ It does not seek to establish a global or cosmopolitan state, nor does it take as its primary focus human beings, individuated and de-contextualised, nor does it seek to comprehensively account for political organisation in its domain of concern. It does not envisage global prerogative over all matters considered in *Political Liberalism* and *A Theory of Justice*. Rather, from the outset Rawls takes the Law of Peoples to refer to 'a particular political conception of right and justice that applies to the principles and norms of international law and practice'.⁵⁸ Further 'thinness' is glimpsed in receptivity to the diversity of valid interpretations of the eight – and there are only eight – principles of the Law of Peoples. As Haddock, Roberts and Sutch suggest, 'rather than specify a single form of political organisation it legitimates a wide diversity of political forms.'⁵⁹ The aim of the Law of Peoples is framed in part by parties (now being the representatives of well-ordered peoples who are free and equal) choosing *different interpretations* of the eight principles.

⁵⁶ Rawls, *Political Liberalism*, xli

⁵⁷ John Rawls, *The Law of Peoples* (Cambridge MA: Harvard University Press, 1999)

⁵⁸ Rawls, *The Law of Peoples*, p.3

⁵⁹ Haddock, Roberts and Sutch, 'Introduction' to Haddock, Roberts and Sutch (eds.), *Principles and Political Order: The Challenge of Diversity*, p.2

Recognition of differing interpretations is in the spirit of the idea of thinness that underpins a number of the other projects outlined here.⁶⁰

Like Rawls, Stuart Hampshire offers a procedurally grounded thin universalism.⁶¹ Because conflict is the likely outcome of reasoned discourse both ‘within the city and within the soul,’ ‘justice cannot consist in any kind of harmony or consensus’ without coercion. For Hampshire, fairness in *procedures* for resolving conflicts is the fundamental kind of fairness. This fundamental fairness that must be upheld is a value that is ‘acknowledged in most cultures, places and times: fairness in procedure is an invariable value; a constant in human nature’. While justice in substantial matters varies according to culture, the justice and fairness associated with procedures does not. This, he claims ‘is the place of common rationality of method that holds together both the divided and disruptive self and the divided and disrupted state.’⁶² Thus, Hampshire’s ‘procedural universalism’ reflects both a thin empirical claim about actually held values in a plurality of cultures and societies *and* a thin normative claim about how one ought to address problems that arise from that plurality.

Seyla Benhabib offers a different account which remains grounded *outside* of the realm of substantive issues. Benhabib’s universalism is also minimalist, grounded in what she calls the ‘weak transcendental conditions’ of unforced agreement. She refers to

norms of universal respect and egalitarian reciprocity ... [which] are in a minimal sense necessary for us to distinguish a consensus, rationally and

⁶⁰ See Rawls, *The Law of Peoples*, p.86. The principles of the Law of Peoples include observation of treaties, respect for human rights, as well as other rights and duties including a right to self defence and a duty of non-intervention. See ch.4, though the 8 principles are laid out on p.37.

⁶¹ See Stuart Hampshire, *Justice is Conflict* (London: Duckworth, 1999); and *Innocence and Experience* (London: Penguin, 1989), pp.54-62

⁶² Stuart Hampshire, *Justice is Conflict* (London: Duckworth, 1999), pp.18-19

freely attained among participants, from other forms of agreement that may be based on power and violence. ... The minimal norms of universal respect for each other as conversation partners, and the fairness and equality of procedures for reaching agreement ... are bound up with the pragmatics as well as semantics of what we understand by free and rational agreement.⁶³

‘Weak transcendental conditions’ are necessary for the practices of reaching reasoned agreement. A ‘weak transcendental argument’, for example, would establish that ‘without an equal distribution of the rights to speak, interrogate, and propose alterations, we would find it hard to call the agreement reached at the end of a conversation fair, rational or free.’ The ‘Habermasian’ orientation of her required conditions is in fact comparatively ‘thick’ and is potentially rebutted by a ‘Rawlsian’ argument concerning the plausibility of their acceptance by all reasonable people.

Secondly, distinct from these procedural forms, and alongside the development of ideas of pluralism, the notion of a *moral minimalism*, or a ‘moral bottom line’, underpinning most value systems, and underpinning pluralism, has grown in popularity. H.L.A. Hart makes reference to ‘the minimum content of natural law’⁶⁴:

Law and morals should include a specific content. The general form of the argument is simply that without such a content laws and morals could not forward the minimum purpose of survival which men have in associating with each other. ... unless certain physical, psychological or economic conditions are satisfied, e.g. unless young children are fed and nurtured in certain ways within the family, no system of laws or code of morals can be established.⁶⁵

⁶³ Benhabib, *The Claims of Culture*, pp.37-8

⁶⁴ H.L.A. Hart, *The Concept of Law*, Second Edition, (Oxford: Oxford University Press, 1994), pp.193-200

⁶⁵ Hart, *The Concept of Law*, pp.193-4

Hart outlines several ‘truisms’ regarding these minimum conditions. He asks ‘If there were not these rules what point could there be for beings such as ourselves in having rules of *any* other kind?’ They include ‘human vulnerability’, pertaining to prohibitions against bodily harm and forming the basis of all other legal or moral rules. Hart also suggests that human beings are ‘approximately equal’ in terms of overall capacities, highlighting the need for cooperation and forbearance. He posits a limited human capacity for altruism: ‘Men are not devils ... neither are they angels.’⁶⁶ And, because of basic human need combined with limited access to resources, some institution and rules of respect for property is required.⁶⁷ Finally, human beings have limited strength of will, and often fail to comprehend the long-term consequences of their actions.

Hart does not seek to detach his moral minimalism from a thin cognitive universalism, and his truisms underpin a set of basic moral prohibitions that must underpin all legal systems. They are of *natural necessity*, if the minimal protections of the body, property and promises (indispensable features of municipal law) are to be maintained.⁶⁸

This notion of a moral minimum is also taken up by Isaiah Berlin and William Galston, both of whom address the idea of a moral minimum in relation to conceptions of ‘value pluralism’.⁶⁹ In his discussion of ‘value incommensurability’ – the rational incompatibility and agonism of values – that underlies pluralism, Berlin asserts that ‘Relativism is not the only alternative to universalism ... nor does

⁶⁶ Hart, *The Concept of Law*, p.196

⁶⁷ Though Hart makes no reference to distribution, or degree of private ownership.

⁶⁸ Hart, *The Concept of Law*, p.199

⁶⁹ See Isaiah Berlin, *The Crooked Timber of Humanity* (Princeton: Princeton University Press, 1990), pp.70-90; William Galston, ‘Value Pluralism and Liberal Political Theory’ in *The American Political Science Review*, Vol.93(4), 1999, pp.769-778. Value pluralism, I will demonstrate in chapter two, is quite distinct from the kind social pluralism that I have thus far been describing.

incommensurability entail relativism.’⁷⁰ Galston agrees, stating that pluralism is not to be equated with relativism, being premised on a ‘floor of basic moral decency’.⁷¹ While the sources of value are many, for Berlin and Galston and other proponents of value pluralism, some things simply are *not valuable*. There are limits to those actions and social configurations that are actually possessive of value. Within value pluralism, then, is an in-built thin universalism in the form of a moral minimum. Critically though, there is little mention, of how this minimum is ascertained, leaving an important gap for justificatory strategies looking to make use of it.

John Gray’s work is, as I have shown, replete with ‘thin universalisms’. Here, Gray utilises Hart’s and Berlin’s conceptions of the minimum content of morality to delimit the liberal agon set out in *Enlightenment’s Wake*.⁷² He concedes, as Berlin suggests, a ‘minimum universal content to morality’, a fundamental set of moral values existing across cultures, which stave off moral relativism.⁷³ A reliance on ‘the reality of goods and evils that are not culture-specific but generally human’, serves adequately to deflect such accusations.⁷⁴ He also refers, in *Two Faces of Liberalism*, to ‘a benchmark of minimal legitimacy for societies whose values are different.’⁷⁵ This benchmark he broadly associates with human rights.

The third strand within moral universalism is what Lukes refers to explicitly as ‘moral cosmopolitanism’. This systematic standardisation and theoretical embodiment of this kind of moral universalism can be traced from the Greek Stoics, through Kantian Enlightenment ethics to the modern, globalised, era.⁷⁶ The Stoics proposed a moral cosmopolitanism in which local and universal aspirations could

⁷⁰ See Isaiah Berlin, *The Crooked Timber of Humanity* (London: Fontana, 1990), p.85

⁷¹ Galston, ‘Value Pluralism and Liberal Political Theory’, p.770

⁷² See John Gray ‘Agonistic Liberalism’ in his *Enlightenment’s Wake*, ch.6

⁷³ Gray, *Enlightenment’s Wake* p.81

⁷⁴ Gray, *Enlightenment’s Wake*, p.80

⁷⁵ John Gray, *Two Faces of Liberalism* (Cambridge: Polity, 2000), p.22

⁷⁶ Lukes, *Liberals and Cannibals*, p.14

exist side by side. Where, Martha Nussbaum notes, ‘each of us dwells, in effect, in two communities – the local community of our birth and the community of human argument and aspiration that “is truly great and truly common.”’⁷⁷ This ‘duality’ is echoed by Bikhu Parekh:

Common humanity is the basis of moral universality and cultural diversity of moral plurality. ... A coherent account of moral life must recognise both moral universality and moral plurality and explore their complex relationship.⁷⁸

Cosmopolitanism emphasises membership of a fundamental and essential global moral community; membership which is not decided by chance, as membership of a national community is, but by simple virtue of being born human. It is this community, the Stoics argue, which is the primary source of our moral obligation to others.⁷⁹ They hold that ‘we should give our first allegiance ... to the moral community made up by the humanity of all human beings.’⁸⁰ For this reason Stoic cosmopolitanism is rather thick, as *thin* universalisms go, requiring allegiance to humanity as a whole is a particularly thick concept to require others to take on board. Nonetheless, Stoic cosmopolitanism emphasises both facets of a universalism of human nature and thin moral universalism and, as such, the Stoics were perhaps the first to capture the essence of a thin universalism.

Moral universalism had taken on many guises and is represented in a great many moral, social and political cultures, in conceptions of religion, race, class and

⁷⁷ Martha Nussbaum, ‘Patriotism and Cosmopolitanism’ in Martha Nussbaum and Jean Cohen (eds.), *For Love of Country: Debating the Limits of Patriotism* (Boston MA, Beacon, 1996), pp.3-17 at p.6

⁷⁸ Bikhu Parekh, ‘Pluralist Universalism and Human Rights’ in Rhona K.M. Smith and Christien van den Anker (eds.) *The Essentials of Human Rights* (London: Hodeder Arnold, 2005), p.285

⁷⁹ Nigel Dower, *An Introduction to Global Citizenship* (Edinburgh: Edinburgh University Press, 2003), p.22; Nussbaum, ‘Patriotism and Cosmopolitanism’, p.7

⁸⁰ Nussbaum, ‘Patriotism and Cosmopolitanism’, p.7

gender. The modern, Western understanding of *thin* moral universalism can be glimpsed in aspects of human rights discourse, which tend to be Western, liberal expressions of moral universalism.

Human rights debates have become prominent since the inception of the United Nations *Universal Declaration of Human Rights* in 1948. Accusations of strong cultural bias, including presuppositions about economic structure, property and family life led to questions over which rights are genuinely ‘human’ rights and which embody the norms of particular cultures.⁸¹ Recent debates have examined questions of human rights alongside notions of moral minimalism. Michael Ignatieff recently proposed human rights be pared back in order to preserve the ones that we care most about protecting; a position coined as ‘human rights minimalism’.⁸² In this sense the issue of thin universalism can be seen in terms of a dilemma about human rights: ‘we can be tolerant of fundamentally different outlooks on life, or we can be ambitious in our understanding of what human rights demand, but we cannot ... be both tolerant and ambitious.’⁸³ Ignatieff argues that we must be minimal in our human rights claims in order to ensure the most fundamental negative liberties – life, liberty and bodily security – can be secured through consensus. More expansive lists of economic or social rights may require a less tolerant approach, hampering consolidation of more fundamental rights.⁸⁴

Alison Renteln makes a similar case. Beginning from consideration of human rights relativism she argues that only *some* evaluations are relative to the moral framework from which they are derived. What Renteln advocates is a ‘thinning’, this

⁸¹ See United Nations Office of Public Information, *Universal Declaration of Human Rights* (New York, United Nations, 1980), Articles 16, 17 and 23

⁸² See Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001)

⁸³ Joshua Cohen, ‘Minimalism about Human Rights: The Most we can Hope for?’ in *Journal of Political Philosophy*, Vol.12 (2), 2004, p.192

⁸⁴ Ignatieff, *Human Rights as Politics and Idolatry*, p.173

time of relativism, to incorporate what she calls ‘cross-cultural universal standards’. Relativism does not prevent the identification of transcultural moral viewpoints that are not necessarily universal, but are shared by a wide enough variety of cultures to be considered *almost* universal. Even if relativism implies no limits to tolerance there is nothing inherent therein which denies that frameworks can converge. These have often been called ‘cross-cultural universals’, which could, as Walzer has suggested, be uncovered through sociological and anthropological research. They may be minimal, or relate only to *general* principles based on human needs or the like,⁸⁵ but they may in turn provide the *relativist* with the resources required to uphold their position whilst also defending human rights.

John Gray also employs minimal human rights language. He cautions against assuming that it must be liberal human rights that provide the benchmark of legitimacy mentioned earlier.⁸⁶ And yet the resounding tone of Gray’s analysis is that a ‘worldwide regime of rights is a legitimate project’, hinting strongly at a human rights universalism which recognises the limits of liberalism.⁸⁷ This is a more minimal approach to human rights than those contained within, for example, the *Universal Declaration*. He suggests that some of the rights contained therein protect fundamental human interests while others are inherently bound by time and place. As human needs and interests change, so too must human rights.⁸⁸

Many advocates of a thin moral universalism, and of ‘thin’ human rights, also claim that the idea can be expanded into the stronger assertion that all human beings are entitled to certain basic *legally recognised* rights, including perhaps, minimally the rights to life, liberty, security, due process before the law, freedom of speech and

⁸⁵ Alison Dundes Renteln *International Human Rights: Universalism Versus Relativism* (London, Sage, 1990), pp.68-79

⁸⁶ Gray, *Two Faces of Liberalism*, pp.21-22

⁸⁷ Gray, *Two Faces of Liberalism*, p.115

⁸⁸ Gray, *Two Faces of Liberalism*, pp.110-114

association, including freedom of religion and conscience which are, or ought to be, accorded universal respect by all legal systems.⁸⁹ This stronger, legal aspect of thin universalism, were it to be properly implemented, might constitute nothing more than the codification or standardisation of its moral position.

Very few thin universalisms are thin in one respect only. Very few simply take, for example, a thinned down conception of human nature, or a minimal account of human needs without also developing specifically thin prescriptive arguments out of them. Similarly most accounts of moral universalism that profess to be thin are reliant on at least some thin assumptions about human beings. None of the examples outlined here fully detach the two.

The thin universalist disposition can be characterised as a ‘commitment to the idea that there is a minimal but nevertheless determinate morality with a universal domain of applicability’.⁹⁰ It represents the idea that at least some of our moral principles ought to take regard of the universal category of ‘human being’. At least some of our moral commitments, or our practical reasoning, or our deliberative procedures, or our understanding of people, should contain some universal, cosmopolitan or common components. Thin universalism recognises the differences in people, cultures and societies, but also that those different people, cultures and societies must confront one another in the global age. It therefore recognises the need not for a rejection of the local, but for a universal perspective that can justifiably accompany it.

In short, thin universalism has taken many forms, all of which aim short of a fully comprehensive conception of the good life. Their functions vary enormously, but all seek some context-transcending element that could still be called ‘universal’.

⁸⁹ Benhabib, *The Claims of Culture*, p.27-28

⁹⁰ See Mark Evans, ‘Thin Universalism and the “Limits” of Justification’ in Haddock, Roberts and Sutch (eds.), *Principles and Political Order: The Challenge of Diversity*, pp.76-96 at p.76

The various 'tasks' of thin universalisms can be seen in the extension of the language of minimalism and thinness to more tangible concepts such as multiculturalism, human rights and toleration. This universalism, while it still lacks the circulation it warrants in contemporary theory, is a concept that is here to stay.

A Universal Imperative?

Many of the above accounts make the case for *inclusive universal principles* grounded in a conception of persons which attributes to them certain characteristics that determine the conditions of conduct towards them. Universalism appeals to criteria, standards or principles that are intended to hold for *all* like cases across all situations in a given domain. This formal claim is often combined with the assertion that the principal domain for those standards is *cosmopolitan*, encompassing all of humanity.⁹¹ Universalism in Western moral and political thought finds its roots in the Platonic account of the universal and objective Good. It can be traced through the history of Judaeo-Christian ethics, the Natural Law tradition, the Enlightenment project of Kant's categorical imperative, Bentham and Mill's principle of general utility and Marx's account of alienation, finding its contemporary point of reference in liberal ideas of democracy and human rights.

Western liberal democracies have thus sought to premise the legitimacy (and occasionally the supremacy) of their modes of social organisation on such universal standards. This stems from the classical demand to provide an objective basis for making comparative value judgements about human endeavours. This took the form of the Good (as in Plato), God (as in Christianity), and Natural Law (as in Aquinas). Since the Enlightenment, it has come from more humanistic, though, it is argued, no

⁹¹ See O'Neill, *Towards Justice and Virtue*, p.11

less objective sources. These include reason (as in Kant), the social contract (as in Rousseau) and human rights (as in the *Universal Declaration*). Motivations behind this emphasis on objectivity range from suspicion of the legitimacy of a wholly context-dependent basis for judgement, to a burdensome psychological paternity complex reflecting a perpetual need for a God- or father-figure. Yet, the displacement of the religious, metaphysical and rationalist certainties that formerly oriented Western universalism has, as Alasdair MacIntyre observed, left behind a moral system comprised primarily of disjointed fragments of a predecessor morality which lacks foundations.⁹² Universalism remains, but seemingly without justification or warrant.

And yet, at the same time, the universal impulse seems to stem in no small part from the experiences of real people living real lives. We might consider the accounts of survivors of the Holocaust, the Stalinist purges, the two World Wars, those who experienced totalitarianism in the form of communism and fascism, those displaced by guerrilla warfare, terrorism, and ongoing civil wars which have led to millions of refugees worldwide, the victims of biological, chemical and nuclear weapons, and, of course those who have fallen victim to genocide in Rwanda, Sudan and Kosovo. It is not hard to see why Eric Hobsbawm referred to the twentieth century as an ‘age of extremes’.⁹³ Nor is it hard to see why there might be an imperative to find a perspective capable of comprehending, addressing, and attending to these moral issues and empowering people against them. When confronted by the ‘moral experience of humanity’, a strong and often emotional response is provoked⁹⁴,

⁹² See Alasdair MacIntyre, *After Virtue* Second Edition (London, Duckworth, 1985). See particularly chapters 4-6 on the Enlightenment Project and its predecessor culture.

⁹³ See Eric Hobsbawm, *Age of Extremes: The Short Twentieth Century 1914-1991* (London: Abacus, 1995)

⁹⁴ See Jonathan Glover, *Humanity: A Moral History of the Twentieth Century* (London: Pimlico, 2001)

and universalist arguments retain a resonance because of this. Take, as an example, the retelling of an incident involving the treatment of a 19 year old Kuwaiti boy, before his parents, at the hands of Iraqi occupying troops. Upon hearing of his impending release

[t]hey were overjoyed, cooked wonderful things, and when they heard cars approaching went to the door. When Ahmad was taken out of the car, they saw that his ears, his nose and his genitalia had been cut off. He was coming out of the car with his eyes in his hands. Then the Iraqis shot him, once in the stomach and once in the head, and told his mother to be sure not to move the body for three days.⁹⁵

The sense of injustice and cruelty in this account is deeply evocative. One's initial and lingering reaction is that such actions are simply wrong, and that *nothing* could justify such malice and cruelty.⁹⁶ Underpinning this reaction is a commitment which may take any number of forms, but which has universal characteristics. It is felt that *without* universal standards or principles we may lack the capacity to account for our social landscape. Without the ability to appeal to the kind of wider audience sought by universal justifications we risk blinding ourselves to the realities of the twenty-first century.⁹⁷ It is, however, these realities that most deeply problematise those universal principles.

⁹⁵ Glover, *Humanity*, p.32. The incident is taken from a report by Julie Flint in the *Observer* from the 3rd of March 1991.

⁹⁶ Kant's consideration of the question of truth-telling is brought sharply to mind. One might, perhaps, suggest that if ever certain actions, such as torture perhaps, were to occur, then at the very most they could only ever be described as the lesser of two evils – never as a good – and yet we may even be repulsed by the idea of this suggestion. See Immanuel Kant 'On a Supposed Right to Lie because of Philanthropic Concerns' in Immanuel Kant, *Grounding for the Metaphysics of Morals* (Cambridge: Hackett, 1993), pp.63-67.

⁹⁷ O'Neill, *Towards Justice and Virtue*, p.20

The Fact of Pluralism

Members of different cultures and societies often have very different beliefs about a great many things; among them are different beliefs about what is right, good and valuable. These differences result in further differences in patterns of behaviour and principles of acceptable conduct. More importantly, these differences occur not just *between* cultures and societies, but *within* cultures and societies. Within most societies over a certain size, population movement, religious upheaval and secularisation, cultural diversification, fitful increases in literacy and education, fluctuating affluence and economic interdependence, persecution, war, climate change and any number of other factors have unsystematically thrown members of different socio-cultural groups into the same context. Domestic and international society are now characterised by a plurality of national, ethnic, religious, political, social, economic, cultural and intellectual groups. Pluralism and its causes are not new; this is an old story which stretches back as far as recorded history, but which has never been so acute.

What is also acute is the extent to which diversity is now observable, some might say obvious, even omnipresent. Forms of mass media and communication, aided by new technologies present to us this array of cultures and the various ways in which they conflict. One need only open a newspaper, turn on a television or a computer, attend a play or read a book to experience something of it. Furthermore, the increasing porous nature of national boundaries through globalisation, mass travel, migration and population displacement, make far more prevalent first-hand interaction with and experience of those differences. In opening one's front door one experiences diversity at work.

Pluralism need not be a deep, timeless truth about the fabric of reality. To take on board these claims requires no huge leap of faith, no traumatic reversal of how one views the world, no challenge to one's entrenched notions of reality, or right and wrong. It is rather an observable fact, one which is perhaps unreasonable to deny. To do so would be to reject the vast evidence to the contrary and to make a reductionist claim about human beings and how they behave. Take, for example, the diverse structures governing the entire gamut of human behavioural patterns, ranging from the etiquette of the meal-table to the deeply entrenched social conventions of marriage and property. Many are observations to which access is universal. They do not require acceptance of tenuous starting points, they require no inference, and they make no normative or evaluative assumptions. People simply differ as a matter of fact.

This 'fact of pluralism' does not just encompass particular aspects of life and the specific practices therein, such as mealtimes, relationships, property relations and the like; it can encompass entire lifestyles and identities, whole ways of life, and complete modes of existence. Saudi Arabia and the United Kingdom have diverse approaches to the institution of marriage, but if one looks more closely it becomes clear that this reflects further diversity concerning the role of religion in public life, the concept of private property, approaches to work, hygiene, old age, children and the outside world. Steven Lukes and Martin Hollis ask us to consider the implication of the aphorism 'liberalism for the liberals; cannibalism for the cannibals' and indeed, it would all too often seem that it is not just specific practices but entire cultures and societies that diverge from our own.⁹⁸ But we must all share the same space to a certain extent. After all, we live on a bounded sphere, limited in terms of

⁹⁸ Martin Hollis, 'Is Universalism Ethnocentric?', in Christian Joppke and Steven Lukes, *Multicultural Questions* (Oxford: Oxford University Press, 1999), pp.27-43 at p.36; Lukes, *Liberals and Cannibals*, ch.3.

space and resources and divided by more and more porous boundaries. And such contrasts, while perhaps rarely so extreme as that of 'liberals' and 'cannibals', are even more pertinent when two cultures must coexist in the *same* society, interacting daily. Recent history teems with examples of such contrasts.

Pluralism is everywhere and it is comprehensive and it is largely undeniable. Far from being *recent* and *temporary*, it has been around for thousands of years and we have no good reason to suspect that it will not be around for thousands more. Given this, two further sets of questions emerge which, when taken together, lead this preliminary discussion into the main subject-matter of the thesis. Firstly, how are we to explain, account for, or make sense of the pluralism, or moral diversity, of the societies and of the world in which we live? Is diversity to be explained by difference in situation or circumstance, or difference in belief about non-moral facts, or differing extents to which information is available, or some moral error theory?

Secondly, how are we to react or respond to it, what type of principles and courses of action does it lead us towards and, to follow Lukes, what theoretical and practical conclusions should we draw from it? Can and should we have any universal standards at all? Should we abandon any universal impulses, should we give up on ideas such as moral objectivity? Is there any way to bridge the gap between diverse cultures, can we ever transcend our own point of view? Is, perhaps, scepticism the best response, or at least the most reasonable inference we can derive from pluralism? If some of these latter questions concern us, do we need some kind of 'cure' for pluralism; should its root causes be identified and eliminated?

Thesis Structure

The thesis will proceed as follows. In chapters one to three I outline the core theoretical arguments concerning a thin universalism. In this introduction I outlined an account of the ‘fact of pluralism’, which establishes the problem addressed by a thin universalism: In a world marked by an observable plurality of views, is it possible to establish grounds for thin yet determinate universal moral principles?

In chapter one I consider the theory of moral constructivism in light of G.A. Cohen’s evaluation of the relationship between facts and principles. I do this in order to establish and frame the thin universalist project; to identify precisely what that project is and how I understand it. This, I claim, places the project not amongst accounts of morality, but rather amongst mechanisms for resolving conflict; not amongst totalising conceptions of human conduct but amongst their regulatory frameworks. Thin universalism cannot be an all-encompassing account of right and wrong or good and evil, nor can it offer guidance in all situations and circumstances. It is, I argue, not possible to make such demands of thin universal principles, given its factual considerations and normative motivations, it can only provide a framework of regulatory principles which are intended to bear upon a particular set of the interactions of a plurality of differently situated human agents.

I go on to outline what a procedure of constructing regulatory principles might look like. Including from where such a procedure might begin, how it might go about the process of construction and what the outcome of that construction might look like. I also argue that the preoccupation of most constructivists with acceptance of principles of justice by all to whom the principles are to apply hampers the successful construction of regulatory principles.

This established, I attempt in chapter two to expand my account of pluralism into an account of what I call 'complex pluralism'. I first draw a strong distinction between the 'fact of pluralism', and the 'truth of value pluralism' and posit that the latter is the inappropriate point of departure for the thin universalist project. I go on to elaborate the complexity of pluralism, including its many layers, dimensions and concomitant pluralities. Ultimately I argue that justificatory priority should not be placed upon pluralism itself, but on the violent conflict that often ensues from it.

In chapter three I suggest that this evaluation of pluralism commits me to certain first principles which, upon closer inspection, can be justified as non-arbitrary and reasoned starting points for the construction of thin universal regulatory principles. The chapter therefore offers an account of the 'first principles' of a constructivist thin universalism and of their justification suggesting that it is not non-reducibility, but rather fact-independence that denotes a first principle.

In chapters four and five I set about characterising my thin universalism itself. In chapter four I draw together the theoretical considerations of the first three chapters in order to develop more fully the character of thin universal regulatory principles. Where chapter one considered the concept of construction, and chapters two and three considered the materials of construction, chapter four seeks to construct regulatory principles through consideration of the facts of complex pluralism in conjunction with first principles. I suggest that the outcome of construction is heuristic, *political*, regulatory principles which are universal in scope, but thin in content. These principles are capable of deflecting the most common criticisms against them because of the characteristics they exhibit as a result of construction. Finally, I establish the construction of principles as the first of *two*

interconnected constructions which must be weighted equally in validating regulatory principles.

In chapter five, therefore, I consider the construction of consent to constructed thin universal regulatory principles. Consent, I argue, must also be constructed on the basis of facts and principles and is equally important in validating regulatory principles. I go on to suggest that constructivism has, as part of its focus on the construction of first principles, rather than on the construction of regulatory principles, come to be overly preoccupied with the conditions of ‘acceptability’ when faced with complex pluralism. Consent, then, can be achieved through a critical reassessment of procedures such as bootstrapping, redescription and what I refer to as ‘patchworking’, all of which, I suggest, must engage sufficiently critically with those with whom they engaged in discourse. The purpose of construction, I suggest, is not solely to have people agree, but also ensure that certain basic moral standards are met.

Chapters six and seven consider two contemporary debates in which thin universalism can participate. Chapter six considers human rights as a platform for the expression and instantiation of thin universal regulatory principles. It suggests that, if we come to regard human rights as expressions of constructed, fact-dependent principles which are thin and universal in character, they are firstly immune to accusations that they are lofty principles with other worldly qualities inapplicable to the ‘real world’. They can secondly be used to reassess many contemporary human rights doctrines which, I suggest, fail to live up to the first principles in light of which we examine pluralism. I distinguish between these truly human *rights* and less pressing human *aspirations*, which, while universal, lack the deep moral significance

of thin universal principles. As a consequence, I close the chapter by considering the debate over the status of democracy as a human right.

Finally, in chapter seven, I assert that there is more to ‘morality’ than simply a list of thin universal human rights and it in fact incorporates space for a number of moral and ethical dispositions. These dispositions will include a conception of toleration. This I do alongside a consideration of the legitimate and reasonable limits of toleration and the relationship those limits have with the notion of a thin universalism. The second half of the chapter is concerned with the relationship between this thin universal conception of toleration and rival conceptions of how to view the ethical space it occupies. On the one hand more traditional liberal conceptions, I argue, are excessively critical and pessimistic about the virtue of toleration. Other conceptions, specifically Charles Taylor’s ‘politics of recognition’ and William Connolly’s ‘ethos of pluralisation’ are actually too thick to demand of people universally, and are too thick to form a part of the practices of a thin universalism.

The primary aim of this thesis is to explore the derivation – the origins, sources and motivations – and the defence – the clarification, justification and fortification – of the idea of a thin universalism, understood as a set of minimal political principles with a universal domain of applicability. The chapters, then, consider how one arrives at a thin universalism, what shape that thin universalism can or must take, how it might be defended, both philosophically and politically, and how it might be applied in practice. Ultimately, I aim to demonstrate that universalism, understood thinly, can still offer guidance within the context of complex pluralism.

Constructivism and the Role of Facts and Principles

The world in which we live is, as a matter of fact, marked by a plurality of social, cultural, ethnic, religious and national groups. The prevailing consideration confronting the thin universalist project is that this pluralism engenders a number of problems – both for individuals and groups living their lives and for pluralism itself – but is fundamentally valuable and in need of preservation. Securing the conditions in which pluralism can thrive is the task that the thin universalist project sets itself. That task is firstly to preserve as completely as possible the diversity which pluralism affords, and secondly to ensure that pluralism is not threatened by those within who would seek to destroy it or who would use it to rationalise, justify and excuse the destruction of others.

Given the recent ascendancy of pluralism as an academic concern, the response in Anglo-American philosophy has tended to reflect a greater sensitivity to that pluralism, to *real world* conditions, to *facts*. This sensitivity is particularly evident in the political tradition that has arisen in the wake of John Rawls' *A Theory of Justice* and has come to be known as 'constructivism'.¹ In this chapter I consider constructivism as means of retaining universal moral principles in a world characterised by complex pluralism. I suggest, however, that objections raised by its

¹ See John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971). Onora O'Neill, herself a prominent 'constructivist', identifies Rawls as the originator of this contemporary use of the term 'constructivism' in *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996), p.44

critics, led by G.A. Cohen, are indicative of serious problems in constructivist thought, at least while the object of construction remains the very notion of ‘morality’ or ‘justice’. I will suggest how, given these objections, one might maintain a modified yet fundamentally ‘constructive’ position, which can still secure universal moral principles which properly respect, and secure, pluralism.

Constructivism in Moral Theory

I begin by characterising constructivism, identifying its theoretical antecedents and establishing why it is worth taking seriously. Constructivism is, at its core, a metaethical theory which is typically situated in opposition to moral realism, which itself still occupies a hegemonic position at this level of debate.²

‘Realisms’³ broadly state that moral concepts, principles or propositions constitute moral *facts* which exist independently of our understanding of them. Moral claims are therefore to be taken literally and the moral properties of people and of actions can be described in factual terms. These moral facts are ‘out there’, waiting to be discovered in the world through moral, even scientific, inquiry. They are ‘mind-independent’ in that they are metaphysically, and/or conceptually independent of those beliefs or propositions that constitute our evidence for them. Moral facts are therefore genuinely objective, even true, and our descriptions of them parallel descriptions of scientific facts or truths.⁴ David Brink presents moral realism thus: ‘(1) There are moral facts or truths, and (2) these facts or truths are independent of the evidence for them.’⁵ Christine Korsgaard agrees: ‘Moral realism is the view that

² It is considered by many to be a reaction to and a rejection of that tradition. Although, while it may be both, it need not be either, and this is an important factor in its rhetorical appeal.

³ There are several accounts of realism, and it is prudent to talk of them in the plural.

⁴ David O. Brink, *Moral Realism and the Foundations of Ethics* (Cambridge: Cambridge University Press, 1989), pp.5, 7, 9, 14-15

⁵ Brink, *Moral Realism and the Foundations of Ethics*, p.17

propositions employing moral concepts may have truth values because moral concepts describe or refer to normative entities or facts that exist independently of those concepts themselves.⁶ Realism is appealing, even compelling: if we wish to remain committed to a notion of ‘morality’, realism seems most likely to secure it against nihilism, relativism and emotivism.

If, however, we take the claims of pluralism seriously, and recognise *different* moral claims, there is cause to ask whether moral propositions do in fact correspond to independent facts. And if, at the same time, we do not wish to reject the very notion of morality, we may have cause to seek an alternative which retains a sense of the moral but which recognises that there is more to the function of moral concepts than simply describing reality. Various moral constructivisms have sought to attend to these concerns. They question nihilism, relativism and emotivism, but also realism and its reliance on an independent order of moral facts. While constructivism asserts that it need not dispute that moral principles or propositions may possess truth values, it diverges from realism on several fronts. The first is in its rejection of the objective existence of moral facts waiting ‘out there’ to be discovered. As the name suggests, morality is in some sense ‘constructed’, perhaps ‘built’, rather than ‘discovered’. Moral concepts *can* take on characteristics of objectivity, and can *be* objective, but this objectivity is set by those who construct and is therefore not mind-independent. As Brink suggests, ‘constructivism agrees with moral realism that there can be moral facts and true moral propositions but disagrees with realism about the status and nature of these moral facts and truths.’⁷ While realists and constructivists can (though they need not) agree that moral propositions may have truth values, they

⁶ Christine M. Korsgaard, ‘Realism and Constructivism in Twentieth Century Moral Philosophy’ in *Philosophy in America at the Turn of the Century*, special supplement to *The Journal of Philosophical Research* (Centennial Edition), 2003, pp. 99-122 at p. 100

⁷ Brink, *Moral Realism and the Foundations of Ethics*, pp. 19-20

disagree about *how* and *why* moral propositions may have truth values. If moral philosophy is not the search for knowledge about the world, Korsgaard asserts, it can be a part of the practical task of moral problem solving, often associated with the social contract tradition.⁸

In its modern form, 'construction' is one of a number of concepts to emerge from the work of John Rawls and any moral theory that does more than simply provide a plurality of unranked principles, Rawls calls 'constructive'.⁹ But it is the notion of construction as a mechanism for problem solving upon which I wish to focus. Korsgaard suggests that practical philosophy's task is to solve problems (of justice or morality) 'by constructing an account of the problem reflected in the concept that will point the way to a conception that solves the problem'.¹⁰ For Immanuel Kant that problem is one of negative freedom: what am I to do given that I have free agency insofar as nothing determines my actions? For Rawls the problem 'is what we might call the distribution problem: people join together in a cooperative scheme because it will be better for all of them, but they must decide how the benefits and burdens are to be distributed'.¹¹ The 'problem of justice' is addressed and reflective equilibrium reached only 'after a person has weighed various proposed conceptions and he has either revised his judgements to accord with one of them or held fast to his initial convictions'.¹² The problem to which the thin universalist is addressed is perhaps: can we secure a basis for boundary-transcending moral

⁸ Korsgaard, 'Realism and Constructivism', pp.100, 112, 115

⁹ As Onora O'Neill notes, on these terms many theories offer 'constructive' criteria for morality, including Rawls' primary target, utilitarianism. See O'Neill, *Towards Justice and Virtue*, pp.44-45. See also Rawls, *A Theory of Justice*, pp. 39-40. The trajectory of Rawlsian constructivism was set in place and can be seen from as far back as his 1951 article 'Outline for a Decision Procedure in Ethics', in *The Philosophical Review*, Vol.60(2), 1951, pp.177-197.

¹⁰ Korsgaard, 'Realism and Constructivism', p.116

¹¹ These examples are put succinctly by Korsgaard in her discussion of these issues. See Korsgaard, 'Realism and Constructivism', pp.115-116

¹² Rawls, *A Theory of Justice*, p.48

judgement in a plural world? For the constructivist, practical philosophy is all about building a social world, a political society, even an identity.

This outline of what it is to ‘be constructive’ might appear to be insufficient or at best insubstantial and a number of the important questions remain unanswered unless a more substantive account of constructivism is developed. The key motivations, characteristics and suppositions of constructivism need to be established.

Rawls offers a more substantive account of constructivism in his later work, and particularly in *Political Liberalism*.¹³ Therein he addresses the reframed problem of how fair terms of social cooperation can be determined within modern democratic societies.¹⁴ Should such terms be laid down by an external authority, such as God? Or should they be established by an undertaking among the persons themselves? Given conditions of pluralism, what Rawls calls ‘the fact of reasonable pluralism,’¹⁵ people or groups are unlikely to agree on a single source of authority or on which values ought to take precedence in a given situation. It is only by adopting constructivism, Rawls believes, that citizens can hope to find principles which all can adopt.¹⁶ The idea behind ‘being constructive’, then, is the notion of a decision-making procedure amongst citizens, the outcome of which is a set of genuinely shared moral principles, or principles of justice. A whole subset of subsequent work in Anglophone moral and political philosophy – deemed to be in the Rawlsian tradition – has come also to be referred to, and has come to refer to itself, as

¹³ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993). His most comprehensive account can be found in his ‘Kantian Constructivism in Moral Theory’, in *The Journal of Philosophy*, Vol.77(9), 1980, pp.515-572

¹⁴ For present purposes ‘fair terms of social cooperation’ can be equated to ‘principles of justice or morality’. This thesis will concern moral principles, or a particular kind of politically enforceable moral principles, rather than ‘principles of justice’, or ‘fair terms of social cooperation’.

¹⁵ The ‘fact of reasonable pluralism’, identified by Rawls as the central motivation for his revisions of *A Theory of Justice*, is perhaps a little problematic when considered in detail, but serves as an adequate illustrative point for present purposes. See Rawls, *Political Liberalism*, p.xvii

¹⁶ Rawls, *Political Liberalism*, pp.97-98

‘constructivist’.¹⁷ Its most prominent proponents aside from Rawls are Onora O’Neill and T.M. Scanlon, and Christine Korsgaard.¹⁸

Both Scanlon and O’Neill make use of a ‘basic standard’ of constructive justification. O’Neill’s is a constructivism which begins from a critique of Rawls and is oriented around an account of practical reasoning. It is modal in character, but universal in scope, and rooted in a rejection of strenuous metaphysical justificatory claims, demanding instead that ‘anything that is to count as reasoning must be followable by all relevant others’.¹⁹ She asserts that ‘actions, policies and characters’ are deemed to be reasoned by showing that ‘they embody certain types or principles of action’. She goes on,

for anything to count as practical reasoning it should, presumably, meet at least certain quite simple standards. It should, in particular, at least aim to be followable by others for whom it is to count as reasoning. ... Those who organise action and thinking about action in ways which they take not to be followable by some of those who are to follow, even be convinced by, their claims offer those others no reasons.²⁰

That a principle is reasoned *only* if it aims to be followable by those to whom it is to apply reflects this ‘basic standard’. It is only by following this standard that we can, in Rawls’ words, ‘find principles which all can adopt’. For O’Neill, construction must reject answering hypothetical questions about the principles agents *would*

¹⁷ And, in spite of the reverence for Rawls within the Anglo-American tradition, constructivism does not yet enjoy particularly wide recognition and, indeed, the entry for ‘Constructivism in Ethics’ has only recently appeared in the 2005 edition of Ted Honderich (ed.), *The Oxford Companion to Philosophy* (Oxford: Oxford University Press, 2005)

¹⁸ See O’Neill, *Towards Justice and Virtue*; T.M. Scanlon, *What we Owe to Each Other* (Cambridge MA: Harvard, Belknap, 1998); Christine Korsgaard, *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996)

¹⁹ O’Neill, *Towards Justice and Virtue*, p.3

²⁰ O’Neill, *Towards Justice and Virtue*, p.51

accept, and must instead look to what they *could* accept.²¹ Her account fixes the domain of ethical consideration using the assumptions agents make about the agency and the subjecthood of others with whom their lives are connected. It takes pluralism as part of the background conditions to a series of practical problems to which solutions are constructed.

While O'Neill's constructivism is very much an exercise in vindicating an account of practical reasoning, Scanlon's constructivism is more explicitly grounded in the social contract. Scanlon formulates a form of 'contractualism' which is premised on the notion that 'an act is wrong if its performance under the circumstances would be disallowed by a system of rules for the general regulation of behaviour which *no-one could reasonably reject* as the basis for informed, unforced general agreement.'²² For Scanlon justification is grounded in consent rather than reason and is more explicitly political than O'Neill's ethical account.

What is immediately noticeable in these accounts is a common set of grounding concepts evident in them all. In the first instance, each asserts a moral theory that addresses itself, as Korsgaard suggests, to a practical problem. That problem is, broadly understood, the one to which I address myself: how to establish general principles for a pluralistic world, when it is unclear what consideration we owe and to whom we owe it. Each acknowledges a background of moral, cultural and doctrinal pluralism, Rawls most explicitly of all. *Political Liberalism* opens by noting that the idea of a well-ordered society in *A Theory of Justice* is unrealistic and that a plurality of incompatible yet reasonable comprehensive doctrines is an

²¹ Onora O'Neill, 'Constructivism in Ethics' in *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge: Cambridge University Press, 1989), pp.212-213

²² T.M. Scanlon 'Contractualism and Utilitarianism' in *The Difficulty of Tolerance: Essays in Political Philosophy* (Cambridge: Cambridge University Press, 2003), pp.132-133 (emphasis added)

essential characteristic.²³ Scanlon stresses ‘the plurality of values that morality in the broader sense can include’, to which he adds texture by identifying the diverse nature of morality and the importance of reasons.²⁴ O’Neill, too, acknowledges ‘a world of multiple and diverse audiences who are linked rather than separated by porous state and regional boundaries, global telecommunications and interlocking and overlapping policies and practices’.²⁵

It is the conditions of pluralism and the uncertainty of moral obligations that urges the affirmation of a basic standard. While they assert different grounds for doing so, Rawls, Scanlon and O’Neill place importance on the validity of the reasons and justifications offered to others. Each emphasises qualities of ‘followability’, ‘acceptability’ or ‘non-rejectability’, which ought minimally to be present in the principles we can reasonably expect others to respond to. They proceed from some conception of, as Rawls states, ‘what *can* be held in common’²⁶; from the idea that, be it for pragmatic or moral reasons, we owe each a basic standard of justification.

Emphasis, then, falls upon the significance of pluralism for justificatory moral philosophy. If we take pluralism as an ‘ontic’ fact, we might feel that there are strong grounds for seeking a moral position that can comprehend it. Constructivism seemingly makes sense of pluralism, and directly responds to it; it places ‘the facts’ centrally. We are asked by Rawls, Scanlon and O’Neill to consider what principles would be followable by actual people in actual circumstances.

Not everything is constructed; we must have some material, as it were, from which to begin. In a more literal sense, only the substantive principles specifying content of political right and justice are constructed. The

²³ See Rawls, *Political Liberalism*, p.xvi

²⁴ Scanlon, *What We Owe to Each Other*, pp.9-13, and ch.4

²⁵ O’Neill, *Towards Justice and Virtue*, p.53

²⁶ Rawls, *Political Liberalism*, pp.99-101 (emphasis added)

procedure itself is simply laid out using as starting points the basic conception of society and the person, the principles of practical reason, and the public role of a political conception of justice.²⁷

A conception of justice is built upon facts about the person, about society and about reasons. The motivation to ‘be constructive’ in this way is a common one in analytic thought and has particular prevalence in the social contract tradition. Consider the opening of Rousseau’s *The Social Contract*: ‘My purpose is to consider if, in political society, there can be any legitimate and sure principle of government, *taking men as they are* and laws as they might be’.²⁸ Drawing and expanding upon this, Rawls comments:

Following Rousseau’s opening thought in *The Social Contract* ..., I shall assume that his phrase ‘men as they are’ refers to persons’ moral and psychological natures and how that nature works within the framework of political and social institutions.²⁹

Joseph Raz notes that liberals in the Rawlsian tradition are attracted to the idea that ‘political principles must be accessible to people *as they are*’.³⁰ The ‘moral and psychological nature of persons’ is permeated throughout contractarian thought from Hobbes onwards and indeed, the very idea of a ‘contract’ (right down to its legalistic label) seems to imply the need to solve a problem of the kind I have been

²⁷ Rawls, *Political Liberalism*, p.104

²⁸ Jean-Jacques Rousseau, *The Social Contract* (Oxford: Oxford University Press, 1994), Book 1, p.45 (emphasis added)

²⁹ John Rawls, *The Law of Peoples* (Cambridge MA: Harvard University Press, 1999), p.7

³⁰ Joseph Raz, ‘Facing Diversity: The Case of Epistemic Abstinence’ in *Philosophy and Public Affairs* Vol.19 (1), 1990, pp.3-46, at p.46 (emphasis added)

considering; one which is the product of the human psyche and society as they currently are.³¹

It is unsurprising that characterisation of the facts features prominently in constructivism, given its distinctly moral yet equally practical concerns. Its attempt to retain a moral point of view (against the *necessity* of relativism and emotivism) which is grounded in the actual conditions of human life orientates the moral dimension. At the same time, the more pragmatic aspiration to secure agreement to that moral point of view underscores the drive to minimise controversial justification. As a result constructivism tends to pursue uncontested terrain upon which to premise its arguments and tends therefore to emphasize the *uncontroversial* nature of the points from which it begins its procedures of construction. ‘A convincing conception of practical reasoning’, states O’Neill, ‘must start from the gritty realities of human life’.³² It must do so precisely in order to make the kind of morally legitimate and pragmatically uncontroversial assertions that it seeks to make. Indeed, what could be more uncontroversial than ‘the facts’? They are, after all, acknowledged constants, truths even, that simply cannot reasonably be denied.³³ An appeal to the ‘gritty realities of human life’ – the realities of pluralism if you will – is intended to be akin to an appeal to the laws of gravity or to the Pythagorean Theorem. We might turn again to O’Neill for a grasp of what it is to construct:

³¹ Hobbes, for example - in Book 2, Chapter 17 of *Leviathan* - outlines how the commonwealth is firstly formed as an inevitable product of our human nature and our desire to escape the state of war, and secondly as the solution to the problem of the state of nature (where life is ‘solitary, poor, nasty, brutish and short’, as described in Book 1, Chapter 13). See Thomas Hobbes, *Leviathan* (Cambridge: Cambridge University Press, 1991), pp.86-90, 117-121

³² O’Neill, *Towards Justice and Virtue*, p.61

³³ Entry 4.a. under ‘fact’ in the Oxford English Dictionary defines a fact as follows:
fact, *n.* 4. a. Something that has really occurred or is actually the case; something certainly known to be of this character; hence, a particular truth known by actual observation or authentic testimony, as opposed to what is merely inferred, or to a conjecture or fiction; a datum of experience, as distinguished from the conclusions that may be based upon it.

To construct is only to reason with all possible solidity from *available* beginnings, using *available* and *followable* methods to reach *attainable* and *sustainable* conclusions. ... It may be thought of rather prosaically as starting from available materials ... assuming only an abstract account of others' capacities, capabilities and vulnerabilities that is appropriate ... taking account of the degree of coordination possible between 'builders', and working towards 'buildings' which all in the relevant domains can help 'build' and 'inhabit'.³⁴

Rawls sums up the constructivist outlook in the now well-used statement that 'conceptions of justice must be justified by the conditions of our life as we know it or not at all'.³⁵ This rejects metaphysically demanding foundationalisms which, constructivists argue, struggle to justify the foundational first principles on which their conceptions of morality are premised.³⁶ Many of them appear to be, so say the constructivists, 'reasonably rejectable' by some, or 'not acceptable' to all of their intended recipients.³⁷

The constructive approach may have broad rhetorical appeal both to realists and to relativists, but there remain many ambiguities which must be clarified before constructivism can be rendered fit for purpose. If constructivism is to live up to its self-appointed task of moral 'problem solver', some clarification and revision is required. Is starting from a concept grounded in 'the facts' quite as unproblematic as constructivists believe? There seems to be some degree of ambiguity as to whether the facts are the starting point, or whether some normative orientation is where construction actually begins. Can the need for some form of basic, first or

³⁴ O'Neill, *Towards Justice and Virtue*, p.64

³⁵ Rawls, *A Theory of Justice*, p.454. This line is taken by both the Rawlsians and their opponents. Importantly, it provides the context for G.A. Cohen's critique and as such forms the basis for what is to follow.

³⁶ In this way constructivism emerges as a key theory in *both* those debates in metaethics concerning moral realism and its contenders, and those debates in justificatory moral philosophy concerning foundationalism and its alternatives (namely, coherentism, and the constructivism at work here).

³⁷ See Scanlon, *What we Owe to Each Other*, ch.5; and O'Neill, *Towards justice and Virtue*, pp.51-52

foundational principles be done away with all together? Can those principles be constructed? Can one construct a conception of morality that is sturdy and, to quote O'Neill, 'inhabitable' *without* any normative foundations? Can one instead construct from the facts alone? That one can construct, from those facts alone, 'morality' or 'justice' in their entirety seems problematic. It is to a more thorough problematisation of these questions that I now turn.

Facts and Principles

In a 2003 issue of *Philosophy and Public Affairs* G.A. Cohen published an article entitled 'Facts and Principles'.³⁸ Therein Cohen lays out the thesis that, contrary to the common view in Anglo-American philosophy, facts do *not* play a role in grounding normative principles. If correct, Cohen's thesis has a significant impact on the validity of the constructivist position as I have set it out – as starting from uncontroversial facts about the world. If it is not the case that conceptions of justice or morality 'must be justified by the conditions of our life as we know it', where does this leave constructivism? If morality does not rest on appreciation of the facts of pluralism, where does this leave the thin universalist project? What I suggest is that Cohen's argument holds enormous practical significance, but that this significance is felt by constructivism *only* if it maintains that the object of construction is the concept of justice or morality itself. Once this error has been dispelled, I argue, a constructivist thin universalism emerges as a valid means of addressing the questions posed by pluralism.

³⁸ See G.A. Cohen, 'Facts and Principles' in *Philosophy and Public Affairs* Vol.31 (2003), pp.211-245. Cohen has since amended his thesis in certain areas and as such I am working from the somewhat revised version available online at The UCL Politics Department website at http://www.ucl.ac.uk/spp/download/seminars/0304/Facts_and_Principles.pdf. Because the revised edition does not correspond exactly to the original pagination of the article I shall apply all references both to the section of the revised thesis which corresponds to my reference and to the *Philosophy and Public Affairs* page number, where appropriate.

Cohen, then, puts forward the argument that, contra constructivism, it cannot be true that *all* principles are sensitive to or dependent upon fact. His thesis itself states simply that ‘a principle can reflect or respond to a fact only because it is also a response to a principle that is not a response to fact’. In other words, principles that are described as fact-sensitive are in fact *only* fact-sensitive because of other, higher fact-*insensitive* principles.³⁹ The structure of his arguments can be shown as follows:

1. Let F equal a factual claim
2. On the basis of F , I affirm principle P
3. It is then reasonable to ask: Why does F affirm P ?
4. Any answer to why F affirms P will include the affirmation of a more ultimate principle P_1
5. P_1 holds regardless of whether P holds
6. P_1 also holds regardless of whether F is true
7. P_1 is therefore *insensitive* to F
8. P_1 may, however, be sensitive to *other* facts, hence
9. P_1 may be sensitive to factual claim F_1
10. But F_1 only supports P_1 in light of more ultimate principle P_2
11. P_2 may not be grounded by fact
12. If it is, the process recedes until a more ultimate principle than all that precede it is revealed, be it P_3 , P_4 or P_{10} .⁴⁰

Let me illustrate Cohen’s point with the broad example drawn from the subject-matter under examination here. Let F equal the factual claim that the world is marked by a plurality of human agents (individuals and groups), whose moral or regulatory systems are diverse and who will tend generally to disagree on overarching moral or regulating principles. Call this the ‘fact of pluralism’. On the basis of the fact of pluralism, affirm notion P , namely that only a limited number of principles should be

³⁹ Cohen, ‘Facts and Principles’, (d), p.214

⁴⁰ Cohen, ‘Facts and Principles’, (e), pp.215-6

‘universal’ in scope. Call this the ‘principle of thinness’. Now we ask: why does the fact of pluralism affirm the principle of thinness? Why does the fact that the world is marked by a plurality of human agents affirm the need to be thin with regard to our universal principles? Any answer to why the fact of complex pluralism (F) affirms the principle of thinness (P) will include the affirmation of a more ultimate principle P_1 , namely that we ought to respect the diversity of human cultures and societies and therefore only a limited number of practical principles that uphold that respect should be deemed ‘universal’ and apply to them all. The notion that we ought to respect human cultures and societies (P_1) holds regardless of whether the principle of thinness (P) holds. The notion that we ought to respect human cultures and societies (P_1) also holds regardless of whether the fact of pluralism (F) is true. The notion that we ought to respect human cultures and societies (P_1) is therefore *insensitive* to the fact of pluralism (F).⁴¹ The notion that we ought to respect human cultures and societies is not sensitive to the existence of a plurality of human agents.

The notion that we ought to respect human cultures and societies (P_1) may, however, be sensitive to *other* facts. For example, the notion that we ought to respect human cultures and societies (P_1) may be sensitive to the factual claim F_1 that ‘culture’ is an integral part of human identity and a vessel through which human beings express themselves and understand one another. But the integral value of ‘culture’ for human identity (F_1) only supports the notion that we ought to respect human cultures and societies (P_1) in light of the more ultimate principle P_2 that we should respect and cultivate human identities. The notion that we should respect and

⁴¹ It is what Cohen calls ‘fact-insensitive’ in that it is not dependent upon, a response to, grounded by or justified by the facts. See Cohen, ‘Facts and principles’, (c) and (e), pp.213, 215. This terminological variance presents what Robert Guay describes as ‘a muddle’, which in itself raises issues that I shall not go into here. See Robert Guay, ‘On Being Constrained by the Facts: Cohen on Facts and Principles’, *Columbia University Website* (<http://www.columbia.edu/~reg28/cfp.pdf> January 31st 2005), forthcoming.

cultivate human identities (P_2) may not be grounded by fact. If it is, the process simply recedes until a principle, more ultimate than all that precede, is revealed, be it P_3 , P_4 or P_{10} .⁴²

Cohen is therefore asserting that ‘constructed’ principles are themselves the product of *other* principles, which do *not* reflect fact. Those principles that do not reflect fact can be equated to ‘first principles’, or Amartya Sen’s ‘basic principles’,⁴³ in that they inform our more substantive choices whilst remaining unaltered in light of changing empirical circumstance.⁴⁴ What this suggests is that it is *not* only through consideration of the conditions of pluralism that we might construct a thin universalism, in fact it is not through a consideration of pluralism, or facts of any kind that we arrive at *any* particular conception of morality. These considerations have a profound impact on constructivism, and on the status of the principles of a thin universalism.

Firstly, focus must be on how pluralism is normatively evaluated, not simply on the ‘fact of pluralism’ itself. We might assert that we are drawn to ‘thin’ moral principles because of the plural world we inhabit. But, if Cohen’s thesis is correct, it is not ‘pluralism’ that draws us towards thin or universal conclusions but rather a prior normative commitment, the upshot of which is a specific normative evaluation of pluralism. On close reflection it becomes clear that it is recognition of pluralism in combination with a ‘higher’ or more basic commitment that leads to thinness. There is insufficient normative material to begin a procedure of construction from the facts alone. The principles that issue from construction are thus ‘normatively dependent’.

⁴² Cohen, ‘Facts and Principles’, (e), pp.215-6

⁴³ As in Amartya Sen, *Collective Choice and Social Welfare* (San-Francisco: Holden-Day, 1970), p.59; See Cohen, ‘Facts and Principles’, (d), p.214, fn.5. Rawls too refers to them both as ‘first principles’ and as ‘fundamental principles’. See *A Theory of Justice*, pp.158-159

⁴⁴ How we arrive at those principles (for example, whether they are the product of pure reasoning about belief), how we select them, and what justifies our selection, are matters that I will consider later on.

Without more basic commitments, sensitivity to pluralism within thin universalism is meaningless and lacks the capacity to inform the kind of principles we construct.⁴⁵

This leads to a second and more significant consideration. The idea that one can construct ‘morality’⁴⁶ is misplaced; the object of construction is not morality itself in its entirety; it is not a set of first principles. In the first instance ‘morality’ is *not* simply a set of constructed fact-dependent principles at the end of the procedure of practical reasoning. Rather, some notion of morality is already at work within the underlying fact-independent principles from which those principles and that procedure are derived. These two considerations are connected. One does not begin construction from the facts precisely because there are, already at work, a whole set of prior moral principles which must be applied to those facts to give them normative leverage. Some aspect of ‘morality’ is therefore *not* constructed. Viewed holistically, morality is not and can never be a set of principles constructed on the basis of the facts of pluralism.

Cohen is of course *not* claiming that what people come to believe is not in some way the result of their experience of (the *facts* of) everyday life. Rather, he is claiming that these experiences include and depend upon principles that are independent of anything they believe about facts.⁴⁷ If Cohen is correct, it is the principles by which pluralism is evaluated that provide the starting points for construction of a thin universalism, not the facts of pluralism alone. Those principles therefore cannot be the ‘object of construction’ which I now examine more closely.

⁴⁵ For a brief elucidation of ‘normatively dependent concepts’ see Rainer Forst, ‘Toleration’ in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, Winter 2003 Edition, (<http://plato.stanford.edu/entries/toleration/> June 30th 2007)

⁴⁶ Or ‘justice’ for that matter. Many constructivists refer to ‘justice’, but the focus of the thin universalist project is ‘morality’, rather than ‘justice’.

⁴⁷ Cohen, ‘Facts and Principles’, (o), p.231

What is Being Constructed?

If the claim that ‘principles which reflect facts also reflect principles which don’t reflect facts’⁴⁸ fundamentally undermines constructivist projects, where might *this* project go from here? Is it possible to proceed along constructivist lines towards a thin universalism any longer if, to ‘be constructive’, one must rely on potentially more controversial premises than simple ‘facts’? In accepting Cohen’s thesis must we commit to a form of realism or foundationalism, or resign ourselves to relativism or emotivism? Can we still be constructive and if so, how?

Construction can still yield ‘problem solving’ outcomes. A constructive thin universalism can be understood as one or more of several philosophical projects. The project one pursues will be determined both by its moral content and its practical applicability but these depend on how one understands the object of construction – on *what is being constructed*. There are three ways to understand what is being constructed:

1. The object of construction may be basic, first moral principles themselves.
2. The object of construction may be a set of ‘principles of regulation’, established specifically to regulate our affairs.
3. Alternatively, the object of construction may not be ‘moral’ principles at all, but rather *consent*, either to a set of first principles, or to a set of principles of regulation.

Each requires some consideration. One may, firstly, pursue a project that aims to establish thin universalism as a set of moral ‘first principles’. The object of construction in such projects is the very principles of morality we hold. These are the principles that Cohen regards as ‘ultimate’, ‘basic’ or ‘fundamental’. They are

⁴⁸ Cohen, ‘Facts and Principles’, (t), p.242

essentially independent and non-derivative. It is within metaethical projects of this kind that constructivism is juxtaposed with realism and antirealism and that thin universalism is sought as a 'meta-theory' of morality.⁴⁹

There are several 'constructivist' approaches to such a thin universal meta-theory. The first may take the form of a project designed to establish morality itself, including characteristics of 'thinness' of content and 'universality' of scope. Rather than 'discovering' morality out there in the world, the constructivist may want to suggest that even the very *concept* of morality must on some level be constructed.⁵⁰ It must be based on uncontroversial, factual premises; for thin universalism these are the facts of pluralism. Hence the concept of morality is constructed as a higher or basic commitment, as a direct response to those facts, and thin universalism is morality itself in its entirety.⁵¹ But these metaethical approaches need not be so holistic. One might pursue a second project designed to construct first principles, but perhaps not *all* first principles, merely a specific set intended for a specific purpose. What is constructed is more substantive than the 'concept' of morality; but which remains thin universal, and which is constructed from the facts of pluralism.

Meta-projects, which take as their object of construction some notion of basic or first principles, can be contrasted with projects that aim at the construction of what Cohen calls 'principles of regulation'. These are principles which represent 'a certain type of social instrument to be legislated and implemented, whether by a government itself or within social consciousness and practice.'⁵² While first principles might be

⁴⁹ Cohen uses the term 'meta-theory of *justice*' [my emphasis] but the distinction is of limited consequence for our present purposes. See Cohen, 'Facts and Principles', (t), p.243. Projects of this kind seek to make claims as to what morality *is*. See Brink, *Moral Realism and the Foundations of Ethics*, p.1

⁵⁰ See again Korsgaard, 'Realism and Constructivism', pp.115-116

⁵¹ In that, according to this account, thin universalism presumably encompasses all judgements deemed to be moral. Those that fall outside could not properly be called moral judgements, but might instead be relegated to matters of courtesy, or preference, or prudence.

⁵² Cohen, 'Facts and Principles', (s), p.241

centred upon questions such as ‘what is morality?’ and ‘what principles formulate our fundamental convictions?’ principles of regulation address the question ‘what principles should we adopt to regulate our affairs?’⁵³ Because principles of regulation do not profess to be basic, they can be responsive both to the facts of pluralism and to more ultimate first principles.⁵⁴ Facts are used to ‘help to constrain the possibilities of implementation and determine defensible trade-offs at the level of implementation.’⁵⁵ Constructed thin universal principles of regulation are still *moral* principles, but they are more pragmatic, and because we may want them implemented and enforced, importantly *political* also.

While both are ‘constructive’, there are important differences between constructing a set of thin universal first principles and a set of thin universal principles of regulation. There has been a tendency within the constructivist camp to talk explicitly of constructing first principles. But the distinction is central to the further progress of the thin universalist project and I argue that a thin universalism can *only* be constructed at the level of principles of regulation, and that this is so for two important and interrelated reasons.

Before that, however, I want briefly to discuss the final answer to the question of what it is that is being constructed. In contrast to the above approaches, the object of construction here is a basis of *consent* for a set of thin universal principles. The construction of the principles themselves, closely interrelated to their *philosophical* justification in the first two approaches, is here more distinct. Construction is here closely related to *public* justification – to constructing a public basis of consent through discourse, debate and argumentation. This project, perhaps more explicitly political than the others, utilises facts because pluralism leads to

⁵³ Cohen, ‘Facts and Principles’, (s), p.241

⁵⁴ Cohen, ‘Facts and Principles’, (s), pp.241-3

⁵⁵ Cohen, ‘Facts and Principles’, (t), p.244

scepticism about the viability of ‘consensus politics’. Construction consists in argumentative strategies designed to build on the views already held by people, with the intention of showing that a plurality of people can endorse the same set of principles by ‘arguing them up’ to a shared view.⁵⁶ Principles themselves are not necessarily at stake in constructivist projects of this kind and the construction of consent can presumably be focussed on first principles or principles of regulation, though such projects will differ.

Which of these constructions is at work in any given project is important to clarify, as the aims, objectives, justification, and plausibility of any such project rests on recognising *what* is being constructed.

First Principles and Principles of Regulation

The object of construction within thin universalism is a set of ‘principles of regulation’ and it is therefore a constructivist project of the *second* kind outlined above. However, there is also a need to pursue a basis for agreement to those principles. The object of construction must also be consent and it is therefore also a project of the *third* kind. The thin universalist project will therefore demonstrate two interconnected constructions. The first construction concerns principles of regulation and *not* first principles. This is so, as I mentioned earlier, for two interrelated reasons, which are best highlighted by outlining more carefully the distinction between first principles and principles of regulation. This distinction is key to understanding the relationship between facts and principles, between construction and justification, and ultimately between pluralism and thin universalism.

⁵⁶ As such, argumentative strategies such as ‘bootstrapping’ may be part of a constructive approach. See Barbara Herman, ‘Bootstrapping’ in Sarah Buss and Lee Overton (eds.), *Contours of Agency: Essays on Themes from Harry Frankfurt* (Cambridge MA: The MIT Press, 2002), pp.253-274. I will consider this in more detail later on.

Cohen asserts that Rawls fails to distinguish between first principles and principles of regulation. First principles amount to basic value judgements, fundamental convictions that every person who makes statements of value holds. These are, crucially, *fact-independent*: Cohen describes them as fact-free, altogether fact-insensitive, fact-independent and ‘not a response to the facts of the human condition’.⁵⁷ Essentially, first principles are not ‘devices for achieving effects’, they are not principles that we can adopt in our lives in order to get things done, they are not responses to problems, and most importantly they are not constructed. Rather, they are simply ‘statements’ of our higher convictions; one does not choose to adopt one’s first principles.⁵⁸ The basic, fact-independence of first principles can be shown through the inferential justificatory procedures outlined above and I will not return to them again.

Principles of regulation, rather than being statements of basic belief, describe the rules we adopt in order to regulate our affairs. They are adopted through choice and therefore reflect *both* the first principles that we might hold and those facts that have been deemed sufficiently relevant to feature in moral deliberation. A principle of regulation is a ‘device for having certain effects’, which we adopt, or not, after evaluating its likely effects and, therefore, in light of an evaluation of the facts.⁵⁹ Because they are not ‘basic’ or ‘ultimate’ in the way that first principles are, they can therefore be sensitive to (responsive to, or dependent upon) the facts and, moreover, they *can* be the product of construction – they *can* be constructed.

Cohen does not deny that facts play a crucial role in moral deliberation. He agrees that facts are indispensable to the justification of principles of regulation,

⁵⁷ Cohen, ‘Facts and Principles’, (d), p.214, (e), pp.215-216, (q), p234-235, (t), p.244

⁵⁸ Cohen, ‘Facts and Principles’, (s), p.241

⁵⁹ Cohen, ‘Facts and Principles’, (s), p.241

constraining possibilities and determining defensible trade-offs.⁶⁰ The facts help, in part, to decide which principles to adopt and, moreover, which principles we judge others could adopt.

The object of construction within a thin universalism is a set of thin universal principles of regulation for two interrelated reasons. Firstly, using analysis of Cohen, a procedure of construction *cannot* begin from fact alone. To get such a procedure off the ground it must have some normative points of reference which orient analysis of the facts and provide leverage for construction. A constructivist thin universalism cannot start with the facts of complex pluralism alone; it will begin with basic commitments evaluated in light of the facts of pluralism. Secondly, and consequently, the object of construction *cannot* be a set of fundamental, basic moral first principles. First principles *cannot* be constructed from the facts because there will *always* be an underlying higher principle, and ultimately a genuine *first* principle, already at work to provide normative orientation for the analysis of the facts and the purchase required to begin construction. Construction therefore involves developing and choosing principles of regulation on the basis of more basic, higher, first commitments in light of the facts. Thin universalism is therefore a set of regulatory moral principles that display certain characteristics (thinness and universality) based on the facts pluralism.

Cohen's key critique of Rawls is that he expressly states that fundamental principles of justice are those principles chosen, in light of certain facts, to regulate society. The critique of constructivism proceeds from its amalgamation of fundamental first principles and adopted principles of regulation. Because constructivism conflates the two, it claims that both, rather than only the latter, are

⁶⁰ Cohen, 'Facts and Principles', (t), p.244

grounded in fact and as such constructed. In the original position, Rawls claims, it is fundamental principles of justice that are chosen. However, what emerge are *not* fundamental first principles but principles of regulation.⁶¹ The constructivist might be tempted to assert that thin universal principles are first principles chosen in light of the facts of complex pluralism. The amalgamation of first principles and principles of regulation leads to confusion as to the role of the facts of complex pluralism in the procedure of construction. Thin universal first principles are *not* principles we can adopt after surveying the facts of pluralism.

Taking Cohen's thesis as correct, the constructive meta-theory cannot be right in insisting that first principles are constructed responses to 'practical problems' or to factual conditions. If this were the case, there would be something 'higher' than *first* principles, which informs how we determine the solutions to the problems to which they are attached. This is clearly not the case; such higher principles would themselves be first principles. But if there is *no* normative content prior to construction, this further implies that what is constructed in thin universalism is 'morality' in its entirety.

But should we be so ready to conclude that the whole of morality consists only of thin universal principles? We may be concerned that a whole class, perhaps even the majority of moral judgements would not be classifiable as 'moral', if they were not deemed to be universal and fundamental to human needs. Genuinely moral matters are often very much context-dependent (such as marital practices, including same-sex marriage, polygamy etc.), or highly subjective (concern for our own children will always naturally outweigh concern for other people's children) and hence would not be considered 'universal'. Still others are of only minor significance

⁶¹ Cohen, 'Facts and Principles', (s), p.243

(etiquette, for example), while others might be moral but judged not to be politically enforceable (such as adultery) and would certainly fall outside of the ‘minimum standards’ on which a thin universalism is premised. There are many significant and important moral judgements that would not fall within a thin universalism.

The idea that we ought to conceive of morality in minimal terms due to the observable fact of pluralism contains an implicit commitment to respect that plurality of human social, cultural and political creations. This implicit commitment grounds the commitment to minimalism, not to mention the commitment to engage in justificatory arguments in defence of our propositions. We would not concern ourselves with such matters as justification and argument if we did not implicitly endorse something akin to respect for those who disagreed with us. If thin universal principles amount to ‘morality’ as a whole, there is no scope for such prior commitments and the idea of ‘constructing morality’ collapses into incoherence. Thin universalism is one *aspect* of morality; it is an aspect that is constructed and adopted. Both our fact-independent first principles and the principles of regulation we adopt in light of the facts of complex pluralism are parts of ‘morality’. Only a part of it is constructed, and it is that part to which a thin universalism is addressed: those principles designed to regulate societies.⁶² What is constructed, then, is a set of *fact-dependent regulatory principles*, and a basis of consent to them. I now offer an overview of the procedure of construction.

Conditions of Construction

The chapters that follow will be concerned with the question of what establishes as valid the constructed principles of regulation which are the outcome of this

⁶² It is perhaps pertinent to note that the conception of morality of which thin universalism is a part (the ‘regulatory’ part) is itself *pluralized*. Moral judgments are not all of the same kind – they do not all have the same scope, or form, or content.

procedure. It is answered through a discussion of the *procedure of construction* by which those principles emerge. That procedure will unfold over subsequent chapters, ‘building’ carefully on what is established before it. Construction therefore falls into the categories of ‘justificatory philosophy’ and ‘critical expository philosophy’. Initially, the requirements of satisfactory justification will have to be met. What establishes as valid certain first principles as starting points for construction? What establishes as valid the facts construction takes as ‘given’ and from which it proceeds? What validates them as materials to be used in constructing regulatory principles? But ‘justificatory philosophy’ refers both to the justification of first principles and to the justification of their consequences. Hence, once first principles are established, construction concerns what follows from them in light of relevant facts about the world. This is the critical expository element, it is a form of constructive critical exposition.⁶³ Regulatory principles, therefore, are justified in light of those procedures – the conditions of construction – by which they are reached.

The process is one of constructing from a basis of appropriate starting points, a theme repeated across key constructivist positions. For Rawls, for example, construction proceeds through ‘practical reason in conjunction with conceptions of society and the person’.⁶⁴ What are missing from this account, as I have argued, are the normative standards by which those conceptions of society and the person are considered. Constructivism is reasoning towards principles of morality from the facts *only* in light of our higher moral convictions. A careful modelling and examination of the ‘conditions of construction’ can help to establish, characterise and validate the thin universal regulatory principles that are the outcome of this constructive

⁶³ In contrast to the form of reflective critical exposition by which our first principles are illuminated, and which I considered earlier.

⁶⁴ Rawls, *Political Liberalism*, p.93-94

procedure. But, how exactly does one go *from* these considerations *to* thin universal principles? *How* do we construct? The ‘conditions of construction’ can be separated out thus:

1. Starting points. Those features of the modern world, and of our first principles that can legitimately be considered relevant to a procedure of moral inquiry. These are the *materials* of construction.
2. Procedures. Those processes by which materials are developed into outcomes which reflect the implications of the materials. This is the *procedure* of construction.
3. Outcomes. Those principles of regulation which are the end product of valid processes that have proceeded from valid starting points and which fulfil criteria established by the materials and procedures. This is the end product – the *structure*.

This revised constructivism asserts that justified, reasoned or valid regulatory principles are the outcome of a procedure of construction. In other words, those principles that emerge from a consideration of the facts in light of considered first principles and which are developed by the procedures of construction into principles that fulfil the criteria implied by the procedure itself. O’Neill states that ‘the metaphor of *construction* may seem appropriate enough for an account of the way in which ethical principles might be built on the basis of a certain conception of practical reason.’⁶⁵ I proceed from an account which models a constructive argument as one that works specifically to *reform* already-held beliefs⁶⁶; one that applies new criteria, or newly illuminated facts, to beliefs that already exist in order to develop them into more substantive, more particular, or substantively new beliefs. A constructive argument ‘builds’ principles out of a set of available ‘materials’. But,

⁶⁵ O’Neill, *Towards Justice and Virtue*, pp.59-60

⁶⁶ See Evans, ‘Thin Universalism and the “Limits” of Justification’, p.83

while the ‘gritty realities of human life’ provide many of those materials, they lack the normative content required to get a constructive account off the ground.

Materials of Construction

Constructed thin universal regulatory principles are thin and universal because they are sensitive to certain considerations about the world. Construction begins with ‘materials’, which must provide *sound* starting points in order to secure legitimate outcomes. Materials of construction will be the subject matter of chapters two and three and the constructivisms thus far critiqued can still offer guidance here. Materials include understandings about the world and the people that inhabit it, including the facts of pluralism, and the first principles or considered judgements about the world, without which there exists nothing to animate consideration of those facts. The facts must be consistent with available evidence about the world. Peri Roberts suggests that ‘our reasoning, if it is to be practical, must avoid inconsistency with available information about the world however that is presented to us ... As such we are required to offer reasons that are *at least possible*’. He goes on to suggest that reasons function ‘within particular environments and so reasoning could not be practical if it proceeded from assumptions or expectations of these environments that were untrue of them.’⁶⁷ While a constructivist account of moral principles cannot proceed solely from the ‘conditions of our life as we know it’,⁶⁸ the construction must proceed from an accurate model of ‘the world’.⁶⁹

The world is pluralistic and, in order to construct from an accurate model of the world, construction must include a characterisation of pluralism. It is a

⁶⁷ See Peri Roberts, ‘Why Thin Universalism Needs Conceptions of Society and Person’ in Haddock, Roberts and Sutch (eds.), *Principles and Political Order*, p.113-4

⁶⁸ See Rawls, *A Theory of Justice*, p.454

⁶⁹ Roberts, ‘Why Thin Universalism Needs Conceptions of Society and Person’, p.113-4. And in this sense it is worth noting how ‘Humean’ constructivism can sometimes appear to be.

background feature which must be recognised in order to yield valid conclusions. The modern state is not ‘easily identified with a single nation, tribe, ethnic, cultural or political grouping’.⁷⁰ We cannot assume social or cultural homogeneity, and we must recognise the radical hybridity and diversity of most cultures.⁷¹ Construction must begin from *where we are* and Roberts states that, ‘faced with plural environments we can start only with the resources available to us, our convictions or intuitions or basic judgements’.⁷² Our considered judgements help to point us towards our first principles, which must be shown to be valid. Only then do they constitute our *available* and justifiable starting points.

For Rawls, beginning from ‘the facts’ and ‘where we are’ takes the form of conceptions of the person and of society.⁷³ Both Rawls and O’Neill suggest that assumptions ‘about what people are like and what societies are for’⁷⁴ are already at work in our thinking about politics, justice and morality. Procedures of construction already contain assumptions about a plurality of others, the societies they inhabit and the capacities, capabilities and vulnerabilities that they possess. For O’Neill, this account of people and their social organisations is necessarily abstract or ‘limited’ in its intended reach. She suggests that we can only assume very general ‘capacities, capabilities and vulnerabilities’ about any given domain of human agents. The kinds of considerations that moral principles respond to only arise when, to quote O’Neill we are connected to a plurality of finite others.⁷⁵ *Because* we can recognise a plurality of finite others, and other societies, to whom we are connected we have

⁷⁰ Roberts, ‘Why Thin Universalism Needs Conceptions of Society and Person’, p.114

⁷¹ Seyla Benhabib, *The Claims of Culture* (Princeton: Princeton University Press, 2002), pp.25-26

⁷² Roberts, ‘Why Thin Universalism Needs Conceptions of Society and Person’, p.115. For Rawls this is our ‘considered convictions’. See Rawls, *A Theory of Justice*, p.19

⁷³ The former Rawls describes as possessive of the two moral powers (of justice and the good) and more, and the latter as ‘a fair system of social cooperation over time’. See Rawls, *Political Liberalism*, pp.93-94

⁷⁴ Roberts, ‘Why Thin Universalism Needs Conceptions of Society and Person’, p.119

⁷⁵ See O’Neill, *Towards justice and Virtue*, p.100-106

cause to take them into the scope of our moral consideration. This provides us with reason to account for some domain of moral thought which incorporates that entire plurality as a universal or cosmopolitan domain. Where there is no plurality or where we have no connection to others, questions of politics and morality lie dormant. Pluralism occupies a privileged position in construction for this reason.

Within an account of 'where we are' must also be contained a set of necessary facts about others, illuminated by considering Rawls and Rousseau and the idea of 'taking people as they are'.⁷⁶ This idea has four distinct dimensions, which serve to delimit possible outcomes of construction. It firstly refers to the proper role of 'fact' and its representation in moral deliberation. If the intention is to construct principles in part from the facts, then it is important that those statements presented as fact represent (with as much intellectual honesty as possible) demonstrable features of the external world or the genuine human condition, which will invariably feature factual claims about people 'as they are'.

Second, 'taking people as they are' refers to the plausibility of establishing any regulatory principles to govern a plurality of individuals or groups. Rousseau suggests of the 'legislator' that 'the wise creator of institutions will not begin by drafting laws good in themselves, but will first consider whether the people for whom they are intended is capable of receiving them'.⁷⁷ Taking people as they are, therefore, necessitates those basic standards of justification and 'followability', captured by previous constructivisms,⁷⁸ in any principles intended for a plurality of agents.

⁷⁶ Rousseau, *The Social Contract*, p.45; Rawls, *The Law of Peoples*, p.7

⁷⁷ Rousseau, *The Social Contract*, p.79-80

⁷⁸ See, again, Rawls, *Political Liberalism*, pp.97-98; O'Neill, *Towards Justice and Virtue*, p.51; Scanlon, 'Contractualism and Utilitarianism', pp.132-133.

The third, related, sense is that taking people as they are is connected to and has implications for questions concerning *who* is to be incorporated into procedures of construction. For Joseph Raz, 'it is not enough ... that those who are totally rational ... will be persuaded.'⁷⁹ What are we to make of those groups who would reject, or are incapable of accepting, the principles we might ask them to?⁸⁰ If we are committed to 'taking people as they are' we must decide upon who is to be included in the process of construction. However, just as importantly, we must be cautious not to exclude those groups whose views are not to be incorporated from the category of 'people'.

Fourthly, 'taking people as they are' also implies that moral arguments should 'not confront those it seeks to persuade with arguments which they could only accept by abandoning their own religious, cultural and ethical convictions'.⁸¹ This, in turn, suggests questions concerning the nature of thin universal principles of regulation that we are to adopt. Must they be 'neutral', 'impartial' or 'objective'? How do they relate to claims to moral truth and must we, within principles of regulation, abstain from such claims? Is 'taking people as they are' best responded to with a form of 'epistemic abstinence'?⁸²

These dimensions will be explored as my thin universalism develops. That principles can be thin affirms respect for the plurality of human societies and social arrangements. That principles can be universal recognises respect for individual and collective well-being. Both must reflect facts about people and societies 'as they are'. Thin universal principles, in being both thin and universal, are not inseparable but

⁷⁹ See Joseph Raz, 'Facing Diversity: The Case of Epistemic Abstinence' in *Philosophy and Public Affairs*, Vol.19(1), 1990, pp.3-46

⁸⁰ These are often referred to as the irrational, unreasonable, amoral, immoral, fanatical and mad.

⁸¹ Colin Bird, 'Mutual Respect and Neutral Justification' in *Ethics* Vol.107(1), 1996, pp.62-69

⁸² See here Rawls, *Political Liberalism* pp.xx, 94, Thomas Nagel, 'Moral Conflict and Political Legitimacy' in *Philosophy and Public Affairs*, Vol.16(3), 1987, pp.215-240

are, in this context, inherently intertwined. Thin universalism makes the most sense not as two separate notions, but as two aspects of the same set of normative considerations. One cannot have truly ‘thin universal’ first principles because thinness and universality are partly grounded in the facts of pluralism. Thin universal principles are adopted principles to guide us in organising our affairs. They are principles of regulation which can and ought to *incorporate* aspects of the ‘conditions of our life as we know it’.⁸³ Facts reflect considerations of people as they are, which impacts the kind of principles that can be based on fact, how those principles are presented, the agents or groups who are party to their construction, and what we ask of those agents. It is clear both that the facts inform the moral and the pragmatic concerns of the constructivist project and that the facts themselves make use of strong value judgements.

Dimensions of Construction

While the object of construction must be a set of thin universal principles of regulation to meet the moral and practical demands of the project, those demands can *only* be met if consent to those principles is constructed also. There are then two distinct dimensions to construction at work here. The first concerns certain kinds of moral principle, about how they are constructed, what they are for, and why; the second is about how those principles can be justified, about how consent to them can be constructed, and why consent is practically and morally important.

Because the project is not metaethical, and does not profess to construct ‘morality’, operating rather at the level of moral philosophy, it is capable of deflecting the most damaging critiques of emotivism and relativism without needing

⁸³ Rawls, *A Theory of Justice*, p.454

to reject them. Constructivism does not contradict our moral experience and it does not run uncomfortably counter to many fundamental moral judgements.⁸⁴ Nor is the thin universalist project about constructing eternal, transcendental truths. Its concern with the facts of pluralism, starting from and taking people as they are, means that it is not fixated with an unchanging human nature or a static conception of human needs. It is not determined to impose rigid uniformity on the human race through unbending algorithmic moral directives.

The thin universalist project, in so doing, is motivated by the need to be responsive to a changing world. This does not weaken the principles that are constructed; an emphasis on contingency and on recognition and celebration of pluralism do not threaten their validity. 'Principles', writes Berlin, 'are no less sacred because their duration cannot be guaranteed'.⁸⁵ These sensitivities are simply part of what shapes the thin universalist response to ever-changing real-world conditions. If the aim of the thin universalist project is to establish, through construction, shared principles of regulation and, in turn, consent for those principles, these concerns are best described as *both* moral and pragmatic. This pragmatism is important because, under the conditions of complex pluralism, an approach pragmatically sensitive to historical contingency is more likely to be successful, in circumstances where moral issues are often pressing, sometimes urgent.

Pluralism means that people adhere to numerous, varied and often incommensurable moral codes, regulatory practices, linguistic constructions and situational limitations. People are therefore unlikely to agree on any *single* set of substantive regulatory principles, which most of the time is not a problem. Convergence of regulatory principles on many moral issues is simply not required,

⁸⁴ In the way that, perhaps, certain forms of utilitarianism do.

⁸⁵ Isaiah Berlin, 'Two Concepts of Liberty' in his *Four Essays on Liberty*, (Oxford: Oxford University Press, 1969), p.172

because the practices involved are restricted in scope or applicability, or because the degree of severity or locality does not demand broader involvement. There remains cause to make value judgements from time to time about events, situations, courses of action and principles which are governed by regulatory principles which are not our own.⁸⁶

The thin universalist's sensitivity to pluralism in taking people as they are is reflected first and foremost through engagement in argument, justification and discourse. In order to secure pluralism, it is likely that a common set of principles of regulation are needed which are applicable in those cases where broader judgement is required. Construction of thin universal regulatory principles provides adherents of differing moral, philosophical and political frameworks grounds for shared standards, that they may or may not already possess, and allow certain judgements to hold validity across those frameworks. But, in order to accord proper respect to human beings and their cultural creations they must come to any moral framework through *consent*, which will always be sought and for which 'construction' can be employed.

Thin universalism, then, involves *two* interconnected yet distinct constructions. There is firstly a stage of initial theorising which is a broadly philosophical task, in which hypotheses are scrutinised, problematised, justified, defended and perhaps altered in light of new facts, new arguments and new objections. But the procedure of construction is also a dialogical task, which takes place between actual human agents,⁸⁷ in the forum of public debate, where ideas are contested and trade-offs negotiated. The first concerns critical reflection – the examination of reasons and justifications in favour of and against a particular

⁸⁶ In cases of, for example, cruelty, torture, genocide and the like, such as those highlighted by Jonathon Glover in *Humanity: A Moral History of the Twentieth Century* (London: Pimlico, 2001)

⁸⁷ Be they individual people, cultural units, races, nations, states, religions or any faction or fragment thereof.

principle. It is here that relevant materials and considerations are identified, clarified and justified. It is also here that the content for those principles is worked out with the aim of making it morally acceptable, logically coherent and structurally sound. It establishes how and why a thin universalism is both thin and universal in the relevant senses. The second dimension concerns public justification, of making regulatory principles morally and politically appealing, and of working towards the construction of consent to those principles. The two stages are inseparable; the reasons and justifications offered in the initial construction are coloured by the necessity of public justifiability. Similarly, public justification reflects heavily the commitments that are brought to bear in the monological construction.

Constructing Fact-Dependent Regulatory Principles

The outcome of construction is a set of *moral principles* that are situated in order to address one dimension of our moral and political discourse. Thin universalism asserts, however, that the principles that it constructs, being the product of particularly powerful considerations, are not only *moral* principles, but *political* principles also. Here, political principles are understood to be those moral principles that are deemed to be enforceable by the state, or relevant coercive body. The distinction is important because principles which are the outcome of the thin universalist project are perhaps those that ought, potentially, to be *imposed* upon others, and are consequently *political* in the above sense. Moral principles, on the other hand, we may be more reluctant to act upon, especially given our moral sensitivity to pluralism. Thin universal principles are as such political principles.

The principles that issue from construction are fact-dependent. They are not basic, ultimate or first principles, but rather they are principles of regulation. They

are not considered judgements about the world, illuminated and codified after an examination of concrete instances; rather they are specifically intended to have certain effects.⁸⁸ They are in short intended to regulate human affairs, given the facts of the world in which we live and the way in which we evaluate it. They are, as such, adopted. They are chosen or selected on the basis of evidence and argument, rather than arrived at, stumbled upon, discovered or handed down from a higher authority.

They are a set of moral principles. They are not morality in its grand and complex entirety – everything that we call ‘moral’ is not made up of constructed principles. Just as one might expect, moral judgements are not limited to those that are universally applicable, or only those so important as to be included in a minimal, moral ‘bottom line’. As O’Neill comments, there are many stretches of practical reasoning, some of which will be universal and some of which will be of a more restricted domain.⁸⁹ The Stoics, too, saw human beings as walking both in the society of their birth, *and* in the universal domain of all human beings.⁹⁰ So, while constructed principles are fundamentally moral, they do not encompass the entire moral realm.

Principles, then, are the ‘structure’ that is the outcome of a procedure of construction and its form and content will depend substantially upon the materials and procedures used. A structure based on an account of the facts, and which has responded to them suitably is more likely to be sound and therefore able to withstand the elements. Such a structure, notes O’Neill, must be inhabitable; the builders must be able to ‘live with what they have built’.⁹¹ We must be able to live with the

⁸⁸ See Cohen, ‘Facts and Principles’, (s), p.241 (He is here paraphrasing Robert Nozick.)

⁸⁹ O’Neill, *Towards Justice and Virtue*, p.57

⁹⁰ See Martha Nussbaum, ‘Patriotism and Cosmopolitanism’ in Martha Nussbaum and Jean Cohen (eds.), *For Love of Country: Debating the Limits of Patriotism* (Boston MA, Beacon, 1996), pp.3-17 at p.7

⁹¹ O’Neill, *Towards Justice and Virtue*, p.62

principles we construct which means considering carefully the genuine capacities, capabilities and limitations of real people and the genuine conditions of political society. What we are to do with these principles, what role they fulfil or purposes they can serve – whether they are intended to resolve conflicts, to generate social cohesion and longevity or simply to guide human beings in certain interactions – will unfold as the thesis progresses.

Constructing Consent

The strong link between careful consideration of the intended recipients of the constructive argument with the formulation of the argument itself is central to a proper understanding of the moral commitments that underpin construction, how the construction itself works, and what it is to make a regulatory principle ‘justifiable’. The intended recipients of constructivist arguments have therefore been central in constructivist accounts of justice and morality.

Rawls, for example, stresses the criteria of acceptability or followability of the principles that are generated by construction. Indeed, a crucial consideration for constructive justifications is the ability of the constructed principles to gain support from their intended audience. Similarly, he insists that any fundamental ideas must be ‘familiar and intelligible.’⁹² This might include the relationship between facts and principles, or the recognition of pluralism. In fact, Rawls’ political constructivism goes further aiming *specifically* not to oppose *any* reasonable comprehensive doctrine. From within any given comprehensive view (such as a religion, or other moral doctrine), endorsement of the constructed principles is possible. A Rawlsian thin universalism aims towards the backing of the values of each comprehensive

⁹² See Rawls, *Political Liberalism*, pp.14, 143

view.⁹³ As such, Rawls' later constructivism uses an idea of 'the reasonable' and remains silent on the notion of 'truth' which accords to an independent order of moral values. The motivation behind this is pragmatic, in order to generate wider acceptance with a diverse audience.

Scanlon also stresses this dimension of construction. Scanlon's contractualism⁹⁴ is premised on basic 'justifiability'. An act, for Scanlon, is right only if it can be justified to others and valid principles are ones that no one, if suitably motivated, could reasonably reject. Implicit herein are the require steps of acceptability or non-rejectability which in turn place emphasis on the audience once more. For Scanlon, this is also the source of moral concern for others: because we must find principles that others could not reasonably reject, we are prompted to consider perspectives other than our own.⁹⁵ O'Neill, too, insists on the conditions of followability, suggesting that action could be viewed as reasoned merely by virtue of being based on principles that are followable by others. For her, fundamental questions of justification revolve around what it is for a principle grounded in practical reasoning to be followable.⁹⁶

The result is a pragmatic dimension to construction; a pragmatism evident not only in the commitment to all dimensions of taking people as they are, but also in the commitment to construction of consent to the principles at stake. The concern of thin universalism is not only with principles themselves, but also with how principles can be justified, philosophically and publicly. Where the construction of consent is the aim, questions of the truth of moral judgements can for the most part be separated

⁹³ Rawls, *Political Liberalism*, p.95

⁹⁴ Scanlon refers to his variety of constructivism as 'contractualism'. See Scanlon, 'Contractualism and Utilitarianism' and *What We Owe to Each Other*. For a contention as to the distinction between them, and to the status of Scanlon's contractualism as contrasted with Rawlsian constructivism see Onora O'Neill, 'Constructivism Vs. Contractualism' in *Ratio* Vol.16 (4), 2003, pp.319-331.

⁹⁵ Scanlon, *What We Owe To Each Other*, pp.189-191

⁹⁶ O'Neill, *Towards Justice and Virtue*, p.52, 57

from questions of how justifiable they are.⁹⁷ Colin Bird suggests that citizens ‘are not presumed to endorse a particular public morality because they think that it is true: the question of the truth or falsity of moral judgements ... becomes irrelevant to the question of whether citizens should accept it or not.’⁹⁸ To make such an assertion is not to deny that such an epistemically abstinent theory can be correct, even true, but in taking people as they are a thin universalist argument need not confront those it seeks to persuade with arguments which they could only accept by abandoning their own religious, cultural and ethical convictions.⁹⁹ This separates out, as Rawls does, plausible claims of acceptance and acceptability, from the claim that something is true ‘of an independent metaphysical or moral order.’¹⁰⁰ If a constructed thin universalism is intended to be authoritative in a given moral domain, it must be premised partly on the grounds that it *can* command consent from those who dwell in that domain.¹⁰¹ None of this, of course, detracts from the requirements of public debate over all such moral questions, it simply asserts that there is still a basis for agreement, even if adherence to ‘truths’ is pluralised. Moral problems, to retrieve Korsgaard’s point, remain practical at root.¹⁰²

The practical motivations of the constructivist project echo Alexander Wendt in his assertion that ‘anarchy is what states make of it’, suggesting that pluralism is simply what agents make of it.¹⁰³ To be constructive is simply to assert that we are

⁹⁷ To quote Gaus, ‘although we can put aside disputes as to whether ethical judgements are true or refer to moral facts, I suppose they can be justifiable, fitting, appropriate, mistaken and so on’. See Gerald F. Gaus, *Justificatory Liberalism* (Oxford: Oxford University Press, 1996), p.7. See also John Rawls, ‘Justice as Fairness: Political Not Metaphysical’ in *Philosophy and Public Affairs* Vol.14, 1985, pp.223-251 at p.230; Charles Larmore, ‘Political Liberalism’ in *Political Theory* Vol.18, 1990, pp.339-360 at pp.354-355.

⁹⁸ Colin Bird, ‘Mutual Respect and Neutral Justification’ in *Ethics* Vol.107(1), 1996, pp.62-96, at p.69

⁹⁹ Bird, ‘Mutual Respect and Neutral Justification’ pp.62-69

¹⁰⁰ Larmore, ‘Political Liberalism’, p.354

¹⁰¹ See Raz, ‘Facing Diversity: The Case of Epistemic Abstinance’, pp.9-10

¹⁰² See Korsgaard, ‘Realism and Constructivism in Twentieth Century Moral Philosophy’, pp.115-116

¹⁰³ See here Alexander Wendt, ‘Anarchy is what States Make of it: The Social Construction of Power Politics’ in *International Organisation*, Vol.46 (2), 1992, pp.391-425. It is fundamentally important

faced with the circumstances of pluralism, from out of which we must build a life that we regard as worthwhile. Part of such a 'project' as it were would include the establishment of moral guidelines which will incorporate expressions of a thin universalism. To be constructive in this way is perhaps to understand it in a more 'developmental' sense. As such, a 'constructive' argument is one which seeks not only to develop principles of regulation but also to persuade the justifiee to develop and reform his or her beliefs.¹⁰⁴ A genuinely constructive argument is one whose aims must include the *development* or *realignment* of the views of those justifiees whose views are incompatible, and not simply seek to empirically highlight a common moral thread between all justifiees.

Pluralism renders it unlikely that all people will arrive at the same conclusion, and this sets limits on what can reasonably be justified to others.¹⁰⁵ But even this assertion is made by reference to a prior normative commitment: it is not pluralism that sets these limits, it is how we morally conceive of people and our conduct towards them that sets them. The constructivists' motivation, and their concern with acceptance, is fundamentally moral. We can imagine many political grounds for rejecting acceptance, which would involve the objectionable use of force.

The kind of consent that thin universalism seeks will, as such, be as pluralized as the domain for which it is intended. As Evans points out, the level of acceptance that construction, and indeed thin universalism, seeks 'ranges from "outright actual agreement" to the little-more-than-notional conceptions of "what one *might* accept under some counterfactual ideal condition"'.¹⁰⁶ For some, only actual acceptance of thin universal principles will suffice, anything less suggests that the

not to confuse the constructivism advocated by the Rawlsians and Wendt's *social* constructivism – but the notion of 'building' common to both is a helpful and oftentimes illuminating concept.

¹⁰⁴ See Evans, 'Thin Universalism and the "Limits" of Justification', pp.81-86

¹⁰⁵ See Roberts, 'Why Thin Universalism Needs Conceptions of Society and Person', p.116

¹⁰⁶ Evans, 'Thin Universalism and the "Limits" of Justification', p.78

principles have not been sufficiently worked out. For others, reasonable acceptability will suffice, for example in situations where acceptance is not possible, such as with those unable to care for themselves. For still others, even acceptability will be impossible, because of the nature of their beliefs. In the case of the Nazi, for example, engagement, reform and perhaps even coercion will be required. We come, on this understanding, to regard construction not as creation, but rather as development and as progression. If we are to preserve pluralism as something which at times poses a threat to stability and peace, but which is intrinsically and instrumentally valuable, a part of a constructive procedure must surely involve dynamic processes. Part of the process of construction will sometimes inevitably involve attempting to persuade people, as difficult as it may often be, to see the world anew, to see the world as somehow pluralized.

The Reflexivity of Regulatory Principles

Construction requires deeper engagement with and between real people than a philosophical procedure alone can provide. Similarly, requirements of construction extend further than simply pursuing a broad basis of consent. They are more *restrictive*, too, because the requirements implicit within a commitment to construction constrain the uninhibited pursuit of acceptance. We construct because we believe that acceptance on the basis of aggression or violence is not genuine acceptance at all. At the same time, the aims and requirements of construction are *extended*. The demands of consent are an important aspect of the construction of regulatory principles; after all, we cannot offer reasons for a principle that simply cannot be followed by those who we ask to do so. This is so both for pragmatic reasons and for moral reasons that are derived from our own basic principles.

Although acceptance is an important aspect of justificatory argument, construction is not simply a matter of getting as many people as possible to agree.

Regulatory principles will inherently be broad heuristic guidelines and not strict algorithmic directives.¹⁰⁷ They must be subject to reflective critique and changing circumstance as the elements of construction – the materials, procedures and even principles – are not fixed or static but are continually undergoing change, revision and reflective reconsideration. Thin universalism, and particularly constructive thin universalism, takes seriously the contingency of its own normative assumptions, and of the facts themselves. First principles and other normative assumptions may be regarded as fixed points, though it must be recognised that all fixed points are provisional, even where they seem obvious.¹⁰⁸ It may be possible to express far greater confidence in certain moral judgements than others purely because no compelling reasons to revise them have yet emerged. Our judgements concerning genocide, slavery, paedophilia, rape and torture, for example, may provide compelling fixed points.¹⁰⁹ But questions to which only one answer seems acceptable are *still* open to reflection and revision in light of new evidence. And the convictions of the ‘fanatic’¹¹⁰ perhaps persuade us that an unwillingness to recognise that basic assumptions may become inappropriate in the face of change, leads to dogmatism.¹¹¹

Just as basic assumptions are not fixed, reasons, arguments and justifications are not fixed either. Because they are partly dependent on context, and no context is permanently fixed, they will by definition be provisional. *No* principles, reasons,

¹⁰⁷ See here O’Neill, *Towards Justice and Virtue*, ch.3.3 and 3.4

¹⁰⁸ In, for example, instances of racial or gender bias.

¹⁰⁹ See John Rawls, ‘The Independence of Moral Theory’ in *Proceedings of the American Philosophical Association*, Vol.48, 1975, pp.5-22 at p.8

¹¹⁰ See, for example, R.M. Hare, *Freedom and Reason*, (Oxford: Oxford University press, 1963), ch.9

¹¹¹ Roberts, ‘Why Thin Universalism Needs Conceptions of Society and Person’, p.117; See also Evans, ‘Thin Universalism and the “Limits” of Justification’, pp.89-92

justifications, or assumptions are static and *all* are subject to critical reflection. Genuine construction therefore embodies a commitment to ongoing critical reflection. This can be illustrated clearly by Rawls' notion of 'reflective equilibrium' which is reached by matching the conclusions reached through construction against our considered judgements. For Rawls, a judgement is correct because it issues from construction which, correctly followed, is reasonable. A correct model of practical reason will therefore yield reasonable principles, and once reflective equilibrium is reached, these will be the most suitable action-guiding principles to adopt. The constant state of flux in which reasoning operates, however, means that the search for reflective equilibrium continues *indefinitely*. A permanently settled account of our constructed principles is never actually reached.¹¹² As Scanlon notes, 'we are not in a position to know once and for all what these terms [of justification for principles] should be. Working out the terms of moral justification is an unending task.'¹¹³ And O'Neill reminds us that

Constructivism ... is not a novel philosophical method or procedure. To construct is only to reason with all possible solidity from *available* beginnings, using *available* and *followable* methods to reach *attainable* and *sustainable* conclusions for relevant audiences.¹¹⁴

One cannot construct first principles; a project which seeks to construct thin universal first principles from nothing more than the bare facts of pluralism will fail. It will fail because, as Cohen states, any normative principle which is dependent on fact is dependent on another principle which is not dependent on fact. Moreover, facts alone lack any catalyst to motivate the construction of normative principles.

¹¹² Rawls, *Political Liberalism*, p.96

¹¹³ Scanlon, *What We Owe to Each Other*, p.361

¹¹⁴ O'Neill, *Towards Justice and Virtue*, pp.63-64

One can however construct *principles of regulation* that are thin and universal using the facts of pluralism *and* a set of fact-independent first principles. This is how the thin universalist project must be framed if it is to succeed. Thin universal principles must be principles of regulation if they are to be responsive to that which they assert that they are.

Thin universal principles are responsive to facts about pluralism but they are also responsive to higher moral considerations. These include not only respect for and sensitivity towards that plurality, but also the conviction that there are certain basic standards of treatment which must be accorded to all human beings. Because of these moral considerations but also because of the sheer fact of pluralism, construction must also concern itself with the idea of consent to any principles it advocates. This consent must also be 'constructed' through argumentation and discourse and is a matter both of moral importance and practical necessity.

Ultimately, principles that emerge from construction are the product of their materials; one category of constructed regulatory principles will therefore be thin in content but universal in scope. While I have sought here to consider the contexts, materials, procedures and outcomes of construction more abstractly, the chapters that follow will examine in more explicit detail the process of construction and how it results in thin and universal principles. The discussion of constructivism found herein is part of an increasingly specific examination of thin universalism. In the first part of this chapter I considered the conceptual question of the relationship between facts and principles. In the second part I have sought to outline an abstract procedure for determining certain kinds of principles based on certain criteria. Chapters two and three consider in greater detail the materials from which construction proceeds. Later, through closer examination of those materials and criteria, I explore what a

particular category of constructed fact-dependent regulatory principles will look like, and how consent to them is constructed. Following this, the thesis examines how those principles might impact upon current debates in international moral and political theory.

Ultimately, the process of construction is intended to direct consideration of the facts in light of basic normative commitments towards a set of outcomes. Construction itself is intended to perform a reformatory role upon already held beliefs, subjecting agents' views to careful scrutiny in order to more fully and appropriately develop them. The intended outcome of construction is a set of principles which reflect the facts of actual human lives, but also reflects the awareness of the normativity that is brought to bear on those facts. Through arguments designed to fit a plurality of political worlds, construction aims to posit regulatory principles that are, in effect, designed and built by people themselves and adopted on their own terms.

Complex Pluralism and Violent Conflict

When an action is said to be right or wrong, what kind of statement is being made? What assumptions are implicit therein? By whom can they be made and to whom can they apply? Moreover, can there only be one set of answers to these fundamentally important moral questions? Western philosophy and Western society, throughout their long history, have often perceived or sought such singular answers. From Socrates to the present day there has been the recurring assumption and/or assertion that what is right is right, in all times and places. Thin universalism is premised in part on recognition of a tendency towards the contrary: that human beings, in fact, seem especially prone to *differ* in their answers to those questions. It is motivated by the idea that, on some of those answers (and on some of the questions) they simply *do not* agree, on others they *will not* agree, and on others they *cannot* agree.

Thin universalism is premised on at least two further inclinations. The first is that this human tendency towards diversity or disagreement is very real and is, most likely, not simply a matter of perception, misunderstanding or antagonism. And, in order to properly deal with this diversity or pluralism, no assertion about its epistemological status need be made. It may or may not be the case that people simply *appear* to differ; pluralism may be equivalent to the treatment of the dead by

the Greeks and Callatians.¹ It may or may not be the case that pluralism is premised on the assumption that the values held by one of the parties must be so held in error; it may or may not be the product of human imperfectability, incomplete knowledge, or defective reasoning. It may or may not be the case that people are simply *inclined* to disagree about what is good, right, or virtuous; it may or may not be that people seek disagreement. These all may be true of the ways in which people differ on normative matters. They are frequently perceived to be the root of *all* diversity and this is something that cannot be ignored by any theory that wishes also to take pluralism and its consequences seriously.

The second inclination is that there is no compelling reason to be troubled by this pluralism per se. The sheer fact that two people disagree is not a matter for concern; it is rather something that is worthy of respect, perhaps celebration. This is not to say that it will never amount to a cause for concern, given the all-too-common consequences of necessary and voluntary coexistence. Pluralism has a tendency to harbour potential for conflict which is at various times more or less explicit, and which on occasion has degenerated into violence. Thin universalism is concerned, therefore, to safeguard pluralism and see it flourish, whilst recognising that its dynamics often result in its own existence being threatened. Importantly and problematically the very fact of pluralism seems to raise questions about the plausibility of a 'universal' conception of morality from the outset. Given the plurality of moral viewpoints which will tend to drive human beings into conflict

¹ See Herodotus, *Histories* (London: Penguin, 1996), Book III. 'For if one were to offer men to choose out of all the customs in the world such as seemed to them the best, they would examine the whole number, and end by preferring their own ... Darius .. called into his presence certain Greeks who were at hand, and asked- "What he should pay them to eat the bodies of their fathers when they died?" To which they answered, that there was no sum that would tempt them to do such a thing. He then sent for certain Indians, of the race called Callatians, men who eat their fathers, and asked them, while the Greeks stood by, and knew by the help of an interpreter all that was said - "What he should give them to burn the bodies of their fathers at their decease?" The Indians exclaimed aloud, and bade him forbear such language.'

with one another, how might we secure legitimate conditions for a common morality? This chapter establishes the thin universalist project through a characterisation of pluralism, and how it can be understood.

Pluralisms

John Rawls' conception of pluralism has informed much of the political theory on the topic in the last fifteen years. Pluralism, as understood by Rawls, alters his conception of 'justice as fairness' as seen in *A Theory of Justice*, resulting in a 'political conception of justice'. Part of Rawls' reasoning for this is grounded in the anti-universalist critiques of Enlightenment liberalism mentioned earlier. His response can be glimpsed in certain aspects of *Political Liberalism*, most notably in the emphasis on context. Rawls' 'political liberalism' asserts the following:

A modern democratic society is characterised not simply by a pluralism of comprehensive religious, philosophical, and moral doctrines but by a pluralism of incompatible yet reasonable comprehensive doctrines. No one of these doctrines is affirmed by citizens generally. Nor should one expect that in the foreseeable future one of them, or some other reasonable doctrine, will ever be affirmed by all, or nearly all, citizens. Political liberalism assumes that, for political purposes, a plurality of reasonable yet incompatible comprehensive doctrines is the normal result of the free exercise of human reason within the framework of free institutions of a constitutional democratic regime. Political liberalism also supposes that a reasonable comprehensive doctrine does not reject the essentials of a democratic regime. Of course, a society may also contain unreasonable and irrational, and even mad, comprehensive doctrines. In their case the problem is to contain them so that they do not undermine the unity and justice of society.²

² John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp.xvi-xvii

Rawls appears to have cleared away many of the misapprehensions in the twenty or so years since *Theory*, recognising above all the diverse and pluralistic nature of the modern world. The influence of his work has led to resurgence in theorising pluralism on a number of levels.

The characterisation of pluralism for which I will make my case I refer to as ‘complex pluralism’, so named because to describe pluralism is to describe something multifaceted in character, exhibiting many differently pluralised dimensions. For the sake of clarity, however, I begin by outlining an important differentiation between two concepts which, though distinct, are commonly confused. Complex pluralism is one characterisation of the concept of ‘pluralism’, defined as the existence of diverse ethnic or cultural groups within a society or state, or beliefs or attitudes within a body or institution.³ It is a social condition demonstrating ‘diversity’, ‘difference’ or ‘disagreement’. However, pluralism must be disentangled from the similar but distinct concept of ‘value pluralism’, which describes not a social condition but a theory of value.⁴ Charles Larmore has observed that these two distinct notions have at various times been the source of much confusion when it comes to matters of justice and morality. The source of this confusion is clear: both have been referred to or regarded simply as ‘pluralism’ and

³ ‘Pluralism (3b)’, *Oxford English Dictionary Online*, Second Edition, 1989, (<http://www.oed.com> September 11th 2005)

⁴ ‘Pluralism’ itself is a term of relatively recent coinage when considered in the context of the history of thought. Mentions of ‘pluralism’ can be found in a theological context in Jeremy Bentham’s *Church of Englandism and its Catechism Examined*, dated 1818. Philosophically, William James considered the notion of ‘pluralism’ in a letter dated December 1882. See R.B. Perry, *The Thought and Character of William James* (London: Vanderbilt University Press, 1996). It is Isaiah Berlin, though, who provides the grounding for our modern notion of pluralism. Berlin spoke of a ‘pluralism’ of values in the closing section of his famous essay ‘Two Concepts of Liberty’, first delivered as his inaugural lecture at Oxford in October 1958, though his treatment of pluralism seems to date to his 1953 work *The Hedgehog and the Fox: An Essay on Tolstoy’s View of History* (London: Widenfield and Nicholson, 1953). The term ‘value pluralism’ has been seized upon by a number of subsequent thinkers, for example: William Galston, ‘Value Pluralism and Liberal Political Theory’ in *The American Political Science Review*, Vol.93(4), 1999, pp.769-778 and *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice* (Cambridge: Cambridge University Press, 2002); George Crowder, *Liberalism and Value Pluralism* (London: Continuum, 2005); John Gray, *Enlightenment’s Wake* (London: Routledge, 1995), particularly ch.6.

both utilise a common definition of the term: ‘the character of being plural or many’.⁵

The political doctrine of modern liberalism exemplifies this confusion. The use of the phrase ‘reasonable pluralism’ by Rawls in *Political Liberalism* to describe the natural tendency for reasonable people to disagree about the comprehensive nature of the good life is, Larmore claims, more suitably referred to as ‘reasonable disagreement’.⁶ This, in turn, positions it amongst those claims to the social condition of observable moral diversity that I am characterising here as pluralism, rather than amongst those that characterise pluralism as a theory of value.⁷ In spite of this, it is all too often taken for granted that modern liberalism is responsive to *value* pluralism. This has led to the assumption that any doctrine that seeks to posit action-guiding principles in a diverse society must also be so responsive, thin universalism included. This is, I claim, not the case, but because of this pervasive confusion, it is worth examining the doctrine of value pluralism in order to draw out two points. Firstly, the distinction between the two concepts that are commonly called ‘pluralism’; and, secondly, to establish why a constructed thin universalism is reliant on an account of one and not the other.

Value pluralism is typically contrasted with monism; a theory is monistic or pluralistic depending on whether it accepts *one* or *many* ultimate principles or values. Value pluralism describes a theory or a system of thought which recognises more than one ultimate principle, value or good, multiplicity of moral belief and value, or

⁵ Indeed, Larmore assert that liberalism has been modelled as a doctrine which is both sensitive and responsive to value pluralism when it might more accurately be described as sensitive and responsive to pluralism as diversity. See Charles Larmore, *The Morals of Modernity* (Cambridge: Cambridge University Press, 1996), ch.7. Larmore cites Thomas Nagel and Joshua Cohen as prime culprits in this tendency to conflate the two concepts, though William Galston and George Crowder also speak of value pluralism and liberalism in the same breath.

⁶ See Larmore, *The Morals of Modernity*, p.153; and John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), Introduction.

⁷ Larmore, *The Morals of Modernity*, p.153

the plausibility of many sources of moral authority. When we speak of a pluralism of values we are not referring to observable variations in the moral practises of human societies or individual human beings, but rather to a feature of the nature of value. On this account, those things that are valuable are not always compatible with one another. The term is typically identified with the writings of Isaiah Berlin, who conceives of it as describing 'a deep and controversial account of the nature of the good' whereby 'objective value is not of a single kind, but of many kinds'. He goes on:

This doctrine is called pluralism. There are many objective ends, ultimate values, some incompatible with others, pursued by different societies at various times, or by different groups in the same society, by entire classes or churches or races, or by particular individuals within them, any one of which might find itself subject to conflicting claims of uncombinable, yet equally ultimate and objective, ends.⁸

'Value pluralism' does not denote cultural diversity or socially drawn moral disagreement. Rather, it characterises our ultimate ends, basic commitments, or fundamental values; it is a theory about the nature of our *first principles*. Because value can exist in different things, and different things are valuable in different ways, there is no single common barometer of value and there is no one source of moral authority. Goods, values and ends cannot be reduced to a single unified whole.

Value pluralism thus makes a number of assertions about the structure of the normative universe. To assert value pluralism is therefore to make a kind of realist claim about moral truth. When the claim is made that, as a matter of fact, the world in which we live is pluralistic, a metaethical truth claim is being made. When one

⁸ Isaiah Berlin, *The Crooked Timber of Humanity* (London: Fontana, 1990), p.79-80

asserts there to be a plurality of basic moral principles a factual assertion is being made about the nature of principles themselves. William Galston remarks:

Value pluralism is offered as an account of the actual structure of the normative universe. It advances a truth-claim about that structure, not a description of the perplexity we feel in the face of divergent accounts of what is valuable. Value pluralism is not to be confused with emotivism, noncognitivism, or Humean arguments against the rational status of moral propositions. As does monism, it advances a “realist claim about the metaphysical structure of value”⁹

Value pluralism, if correct, is to be accepted as a truth about the world in which we live. It is, rightly, not to be confused with many of the other accounts of value which challenge concepts of the universal and even the moral – such as relativism, scepticism, subjectivism or emotivism. While it might appear that a thin universalism that takes seriously the facts of pluralism would be committed to affirming value pluralism, I assert that to do so constitutes a serious error on the part of any constructivist theory that emphasises the importance of consent. Firstly, however, I sketch the contrasting definition of pluralism as moral diversity in order to draw the distinction out more fully.

What I refer to above as ‘value pluralism’ must be demarcated from ‘pluralism’ denoting a diverse array of individuals and groups within a society. A ‘plural society’ then, is one characterised by diversity, difference and disagreement over an equally wide array of social, moral, political and economic issues. To speak

⁹ William Galston, ‘Value Pluralism and Liberal Political Theory’ in *The American Political Science Review*, Vol.93(4), 1999, pp.769-778 at p.770. The phrase in inverted commas is used by Galston and is quoted from Glen Newey, ‘Value-Pluralism in Contemporary Liberalism’ in *Dialogue* Vol.37(3), 1998, pp.493-522 at p.499

of pluralism in the sense of moral diversity, moral difference or moral disagreement¹⁰ is to refer to the demonstrable phenomena that *people hold diverse moral views*. Human societies tend to produce different moral, legal and socio-economic frameworks designed to regulate citizens' conduct and the contrasts between different practices and customs, perspectives on life and judgements about what make it valuable, are growing ever more visible.¹¹ 'Pluralism', then, describes a contrast between dissimilar human practices, customs, traditions, and cultures. Following more detailed exposition of its character, I come to refer to this characterisation as 'complex pluralism'. This latter conception of pluralism is becoming more and more widespread in both academic and popular discourse.

The two concepts are not competing accounts of the same phenomena; they in fact function within different orders of moral enquiry. Value pluralism is a second order, metatheoretical doctrine about basic moral principles, while pluralism is a first order moral theory about those principles that differently situated individuals and groups adopt to regulate their affairs. Pluralism is a about the social, cultural and moral diversity that is entailed by a diversity of principles of regulation. Doctrine, Larmore points out, and disagreement about doctrine can hardly be the same thing;¹² there is a conceptual difference between pluralism as moral diversity and pluralism as a theory of value. Indeed, and I move on now to my second point, we can acknowledge the fact that people disagree about the nature of value without having to say anything substantive about value itself.

¹⁰ Terms which are in fact interchangeable in this context. Each features in the definition of the other in the Oxford English Dictionary and each describe at root want of agreement, discrepancy, or dissimilarity. For the purposes of style and clarity, I refer to them collectively as 'moral diversity'.

¹¹ See Steven Lukes, *Liberals and Cannibals: The Implications of Diversity* (London: Verso, 2003), p.1

¹² Larmore, *The Morals of Modernity*, p.154

The concern to practice sensitivity towards the differences of those people with whom we interact may explain the ongoing conflation of the two concepts. Sensitivity towards different beliefs and practices may lead to acknowledgment of a plural social world but this doesn't really get to the heart of the matter. What I assert is that in order to talk of the observable social conditions of pluralism, one need *not* go further and acknowledge the more fundamental doctrine of *value* pluralism. The account in chapter one of the relationship between first principles and principles of regulation recognises that it is coherent to begin either with a *single* first principle or a *plurality* of first principles. When exposed to different factual conditions, even a *single* first principle may result in a *plurality* of principles of regulation and hence moral diversity. It is not necessary to insist upon a plurality of first principles and the constructive thin universalist says nothing about the first principles of others, be they monistic or pluralistic. But the value pluralist will cite this as a flaw in an account of moral diversity, failing to take proper account of the genuine plurality of human ends, values and goods, and thus failing to take proper account of the existence, nature and credence of other points of view.

The intention behind asserting value pluralism is often to avoid insisting that 'our' morality is the 'right' one.¹³ As Joseph Raz has suggested, pluralism is not a sign of imperfection in our understanding or of the imperfectability of human things as one might find in Aristotle. 'Genuine' pluralism and value incommensurability are for Raz, just as they are for Berlin, an 'ultimate truth'.¹⁴ So through an assertion of value pluralism, a kind of 'moral error' theory – where it is claimed that diversity is

¹³ This is something John Gray highlights throughout *Two Faces of Liberalism* (Oxford: Polity, 2000)

¹⁴ Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), p.327. It must be noted that Raz refers to value incommensurability rather than pluralism, but the two terms are often run together. For example, Galston's account of value pluralism incorporates value incommensurability. See Galston, 'Value Pluralism and Liberal Political Theory', p.770. John Gray makes a similar move in his conception of 'agonistic liberalism'; see his *Enlightenment's Wake* (London: Routledge, 1995), ch.6

the product of some kind of mistake – is avoided.¹⁵ Moral philosophy is therefore not simply about correcting this error. Similarly, avoiding the assertion that social pluralism is in some sense illusory, or transitory, or only skin deep, or that human beings have some kind of ‘natural’ tendency towards disagreement, seems part and parcel of this concern to respect the genuine character of diversity. This is a valid concern and any universalist moral theory that claims sensitivity to real world conditions, and in particular the conditions of pluralism, cannot lightly toss it aside. Asserting value pluralism seems to recognise the *legitimacy* of moral difference and of the objective validity which most moral frameworks hold for its adherents and of the contingency of our own views.

But a thin universalism that asserts value pluralism in order to take proper account of moral diversity forces it to court inescapable and potentially immobilising controversies. First amongst these controversies is that to cite a ‘fact’ of value pluralism seems to assume a Nagelian ‘point of view of the universe’ a ‘view from nowhere’ from which this fact can be observed.¹⁶ The criticisms that theories such as this are lofty, aloof, and disconnected from ‘real’ people are troubling and thin universalism seeks to confront them. Indeed, the majority of thin universalisms, particularly those which use construction have, by their very nature, been concerned to be connected to and derived from the authority and consent of those to whom they are to apply. They follow Michael Walzer in pursuing a thin universalism that is not ‘everyone’s morality because it is no-one’s in particular’ where subjective interest

¹⁵ As described by J.L. Mackie, *Ethics: Inventing Right and Wrong* (London: Penguin, 1977), ‘Part One: The Status Of Ethics’

¹⁶ See Thomas Nagel, *The View from Nowhere* (Oxford: Oxford University Press, 1986). Nagel’s view is far more subtly nuanced than is required to get my point across here, but many critics have raised powerful objections to the very concept of Nagel’s ‘nowhere’ argument, and for good reason.

and culture have been cut away, but that remains bound up within the plurality of moralities, cultures and societies.¹⁷

One might, then, assert that one can stand *within* diversity, regard an observable plurality of regulatory principles and conclude that such diversity cannot come from a single source, from error, or simple antagonism.¹⁸ It must come from a plurality of ultimate values or first principles. This leads to a second and, for a constructed thin universalism, more significant controversy. This is the inescapable fact that many moral cultures make truth claims which purport to be universally valid and which are grounded in broadly monistic conceptions of value. Protagonists of moral standpoints, Alasdair MacIntyre tells us, are almost never relativists; at the same time, rarely are they pluralists. Truth claims, he suggests, encompass a set of further claims about rational justification, which includes the assertion that all rival claims are in some way false (in that they proceed from false premises or make invalid inference or the like).¹⁹ Most moral cultures encompass some claims to truth, making them, by-and-large, hostile to the genuine recognition of value pluralism. The vast majority of moralities, be they religious or philosophical have, throughout human history (from Christianity to Buddhism, from Plato to utilitarianism), asserted a single source of value or authority in matters of moral concern. Pluralism, our socially diverse world, is made up primarily of *monisms*. Part of what makes that pluralism 'complex' is that the nature of value and the nature of pluralism are deeply contested.

¹⁷ Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad*, (Notre Dame: University of Notre Dame Press, 1994), pp.7, 15

¹⁸ Perhaps through, for example, the use of Cohen's thought experiments. See G.A. Cohen, 'Facts and Principles' in *Philosophy and Public Affairs* Vol.31 (2003), pp.211-245. See also, chapter one above, pp.51-53

¹⁹ Alasdair MacIntyre, 'Moral Relativism, Truth and Justification' in Kelvin Knight (ed.), *The MacIntyre Reader* (Oxford: Polity, 1998), pp.202-220 at p.204

Value pluralism, Larmore reminds us, is ‘a deep and certainly *controversial* account of the nature of the good.’ It must therefore be presumed that the concept of value pluralism is itself likely to be a *source* of disagreement among people, ‘reasonable’ or otherwise.²⁰ And, as a consequence, adherents of many monistic, determinist or universalist moral doctrines would need to radically change their comprehensive world-views in order to accept pluralism as a theory of value. Requiring them to do so signifies two further failures. It is a failure firstly to ‘take people as they are’ in that relevant facts about them were not taken into account. To fail in this regard signifies a failure to fulfil the practical and moral demands made by construction. It signifies a failure to follow ones own rules. It is secondly a moral failure, in that the moral character of those persons was not properly regarded. To fail in this regard is to fail to respect those normative characteristics of human beings deemed earlier to be significant. Such failures open up space in which the kind of unjustifiably homogenising, perhaps even unjustly coercive moves, which constructivism and thin universalism reject, can flourish.

If value pluralism is indeed a deeply controversial account of the nature of good, it seems clear that, practically speaking, one cannot assert a ‘truth of value pluralism’ as a simple fact, because this deep controversy renders it widely problematic. It is so controversial, in fact, that most would probably reject it. Morally too, one must question the assertion of any truth, whose acceptance would force such radical change in individuals’ and groups’ worldviews that from no point of view could one be said to have respected the beliefs, values or practices of others. Insistence on a principle that no one can accept, scarcely reflects sensitivity and respect!

²⁰ Larmore, *The Morals of Modernity*, pp.154, 168 [(emphasis added)]

As a result, a form of epistemic abstinence may be available to balance the concern to respect social pluralism (by not adhering to a theory grounded in error or perception) with the practical task of seeking consent (by avoiding premises that are inherently and deeply controversial). This can be done by ‘bracketing off’ the notion of value pluralism. By remaining silent on pluralism as a conception of value and asserting instead the observable fact of pluralism as diversity, persons are not asked to take on board premises they simply cannot accept.²¹ If the construction of thin universal principles of regulation is to proceed from some conception of our first principles in conjunction with ‘the facts of pluralism’, those facts need not be *metaphysical* in nature but ought rather to be *observable, practical* facts about the social world in which we live. Value pluralism does not constitute such a fact. What I come to call complex pluralism *does*. While this might appear to weaken my case in one respect by removing a strong metatheory, which seemingly supports both constructivism and thin universalism, it actually strengthens it in another. To abstain from making judgments about the ‘true’ nature of value is to embrace a more contingent and shifting basis for a thin universalism. It is to cast doubt on foundations of an ahistorical and transcendental nature and it is to demonstrate a sense of self-critique and reflexivity which is integral to the character of a thin universalism.

In sum, then, value pluralism is a contested notion, the truth of which will forever be in dispute, and which cannot therefore be a ‘fact’ in the sense of an uncontroversial premise from which to construct moral principles. The ‘fact’ to which my constructivism is to appeal is therefore the plurality of moral systems and cultural norms and philosophical and religious doctrines in the world. This is an

²¹ Larmore, *The Morals of Modernity*, p.173

observable fact, which reflects a genuine condition of domestic societies and the global social, economic and political arenas. To glimpse this fact one need do little more than open a newspaper, or turn on a television. It *could* reflect the truth of a plurality of values, but it could just as easily reflect some theory of error, or a transitory state of human affairs. The fact of pluralism does not have to reflect the truth of *value* pluralism.

Complex Pluralism

Given this distinction, one may be tempted to take up Rawls' notion of 'a pluralism of incompatible yet reasonable comprehensive doctrines'. Indeed, the 'fact of reasonable pluralism' seems congruent with the approach to pluralism favoured by thin universalism. Rawls borrows the distinction from Joshua Cohen, between 'the simple fact of pluralism' wherein the protection of basic liberties results in moral 'pluralism', and 'the fact of reasonable pluralism' wherein that protection leads to a pluralism where some moral conceptions fall within the set of fully reasonable conceptions.²² However, we are constantly reminded that beneath reasonable pluralism lies a simple pluralism. This issue arises noticeably when Rawls' struggles to address the problem of those elements of a plurality that are unreasonable from *within* the framework of his political liberalism. At the start of this chapter I began by quoting Rawls in stating that 'a society may also contain unreasonable and irrational, and even mad, comprehensive doctrines' and 'in their case the problem is to contain them.'²³ Rawls fails to do so within his own political conception of justice. Where violence is invoked as a means to a political or social end, Rawls advocates falling back upon a comprehensive liberal doctrine in order to reject it.

²² Cohen, 'Moral Pluralism and Political Consensus', p.282

²³ Rawls, *Political Liberalism*, pp.xvi-xvii

When certain members of a society deny what Rawls calls ‘the fact of reasonable pluralism’, he is forced to resort to a comprehensive liberalism, which of course is *not* endorsed by citizens generally. It reminds us again, that beneath reasonable pluralism is a simple pluralism that cannot be addressed from within Rawls’ political liberalism.²⁴

That the fact of pluralism does not necessarily reflect the truth of value pluralism does not itself make for what I call ‘complexity’. It is rather the multifaceted nature of the diversity that constitutes pluralism that makes an adequate account of it difficult and contestable. This characteristic of complexity manifests itself in several ways. Firstly, as I have already suggested, value pluralism is itself a pluralistically contested concept; there is little to no agreement about the ‘source’ of pluralism in society and there is still less agreement about the more fundamental values that may or may not give rise to it. Pluralism in this way demonstrates what I call ‘meta-complexities’. Secondly, pluralism exists in three or more distinct socio-psychological domains. These cover three sometimes synchronised, oftentimes competing, social and mental realms in which frameworks of principles interact. I refer to these as ‘complexities of domain’. Thirdly, when we speak of a plurality of social groups, we are not referring solely to a plurality of groups who adhere to *moral* frameworks; there are many more systems of group affiliation and competition which pay very little regard to moral questions. Similarly, pluralism is made up of groups and individuals, states and regions, sub-groups, factions and sects. Not all groups are the same size or of the same kind – they can range from single people to countries of billions. These I call ‘conceptual complexities’. Because I have already

²⁴ Rawls, *Political Liberalism*, pp.152-153

considered the complexity of the relationship between pluralism and value pluralism, I focus primarily on the complexities of the second and third kinds.

How might we characterise ‘complexities of domain’? Shane O’Neill, in *Impartiality in Context*, identifies two distinct domains of pluralism upon which I intend to focus. Following the Rawlsian characterisation, he argues that pluralism in the internal or domestic domain encompasses the inability of reasonable people to agree on comprehensive conceptions of the good (‘reasonable disagreement’). The focus here is on the plurality of groups *within* a political society, and this can be usefully drawn upon and incorporated into this more complex understanding of pluralism. Typically, O’Neill argues, this has been the context in which liberal conceptions of impartiality and egalitarianism have been invoked as a means of arbitrating the potential consequences of this plurality.²⁵ However, various theories of multiculturalism,²⁶ particularism and prescriptive accounts of pluralism²⁷ have emerged in recent years and now stand as fervent critics of strict liberal impartiality and egalitarianism, especially on questions of *cultural* equality and disadvantage, in its address of domestic pluralism.²⁸

In the international or global domain there also exists a plurality – here a plurality of differently constituted political societies, states, nations, religions and

²⁵ Shane O’Neill, *Impartiality in Context: Grounding Justice in a Plural World* (New York: State University of New York Press, 1997)

²⁶ See, perhaps most notably, Bikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Basingstoke: Macmillan, 2000); and Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon, 1995)

²⁷ Theories of ‘pluralisation’ such as those of Nicholas Rescher and William Connolly have emerged to urge that pluralism is not simply a background condition to which we must respond, but which is also a state of affairs, which ought to be pursued and brought about. See Nicholas Rescher, *Pluralism: Against the Demand for Consensus* (Oxford: Clarendon, 1993) and Connolly, *Pluralism*

²⁸ The literature here has burgeoned in recent years, perhaps in part due to Brian Barry’s thorough and entertaining yet somewhat bullish address of this issue. See Brian Barry, *Culture and Equality* (Cambridge: Polity, 2001); Paul Kelly (ed.), *Rethinking Multiculturalism: Culture and Equality and Its Critics* (Cambridge: Polity, 2002)

cultures.²⁹ The notion of an *international* plurality, described by Rawls as ‘the diversity among reasonable peoples with their different cultures and traditions of thought, both religious and nonreligious’, seems similar but not totally symmetrical to domestic pluralism. It is notable that, again, Rawls’ conception of pluralism makes no metaethical demands: he cites not value pluralism, but a conception of reasonable disagreement: ‘Even when two or more peoples have liberal constitutional regimes, their conceptions of constitutionalism may diverge and express different variations of liberalism.’³⁰ Focus, however, should remain on Rawls’ assertion of three points. First that pluralism is indeed an external, international issue; second that the concerns of any principles (in this case of justice, but also of morality) are to secure justice, peace and stability between the members of that plurality; and third that the best means of doing so is *not* through comprehensive unity of religious, moral or philosophical doctrine.³¹

The communitarian tradition has long since been concerned to address questions of international pluralism, an approach that O’Neill refers to as ‘contextualism’. Communitarians such as Michael Walzer have argued for ‘immanent’ or ‘connected’ critique, established as a form of social criticism as opposed to so-called ‘external’ critique. Walzer is deeply opposed to the idea of a supposedly objective, impartial and external spectator, who has access to allegedly advanced universal or transcendental principles and whose goal is ‘conversion’ not ‘criticism’. A connected critic on the other hand makes use of ‘standards ... that are internal to the practices and understandings of his own society’.³² Further, criticism is a first order activity and not a second order *reflection on* activity. In other words,

²⁹ O’Neill, *Impartiality in Context*, Introduction

³⁰ John Rawls, *The Law of Peoples* (Cambridge MA: Harvard University Press, 1999), pp.11-12

³¹ See Rawls, *The Law of Peoples*, pp.17-19 on ‘The Law of Peoples as a Realistic Utopia’

³² See Michael Walzer, *Interpretation and Social Criticism* (Cambridge MA: Harvard University Press, 1993), p.38-40

criticism, if it is to be so called, must be context-dependent; it must be a social activity in itself with a distinct social purpose. The critic takes sides and occupies a distinct position with regard to the prevailing forces within a society.³³ It is therefore insufficient, on this account, simply to examine and criticise social practices from outside, problematising again a Nagelian ‘view from nowhere’.³⁴ Construction must engage with internal, connected practices of critique, if it is to take proper account of pluralism.

The ‘international’ domain is thus characterised by a plurality of recognised states, societies and territories and by a plurality of groups which transcend the boundaries of those states, societies and territories. The ‘complexity’ is generated because the latter account of international pluralism is further problematised by the assertion of a ‘domestic’ pluralism, characterised by a plurality of groups within a recognised state, society or territory. This is so primarily because there are very few societies over a certain size that can be considered to be genuinely univocal or homogeneous because they are constituted by no single societal group. As such, asserts Seyla Benhabib, cultures are in fact *polyvocal*, multilayered, decentred and fractured systems and it is no longer plausible, or even possible, to speak coherently of seamless, monistic, homogeneous, internally coherent and hermetically sealed societal or cultural wholes. Attempts to make such claims essentially ‘fetishise’ cultures in a way that attempts to place them *beyond* any kind of critical analysis, in a way perhaps implied in Walzer’s insistence on the validity only of the connected critic. They in fact proceed from a false assertion about human society, referred to by

³³ Walzer, *Interpretation and Social Criticism*, pp.51, 55

³⁴ A similar notion can be found in the writings of Richard Rorty. Rorty’s philosophical pragmatism leads him to conclude that commitment to liberalism is the product of contingent historical circumstances, rather than of an understanding of some set of profound metaphysical truths or transcendental values. The conclusion that this leads Rorty towards is that it is not possible to question and challenge any culture from an external perspective. Richard Rorty, *Contingency, Irony and Solidarity* (Cambridge: Cambridge University Press, 1989), p.59

Benhabib as the ‘reductionist sociology of culture and knowledge’.³⁵ The interconnectivity and interdependence of the modern world prevents, to a large degree, the formation of coherent and socially universal, Rortyeen ‘we attitudes’, where the ‘we’ is genuinely uncontroversial.³⁶ The central cultural experience of modernity for a vast number of people is, therefore, the experience of pluralism itself. Shared cultural life is experienced, even at its strongest, *concurrently* with the experience of pluralism.

Furthermore, *all* societies face the issues of pluralism because, in the age of modernity and globalisation, all societies must confront one another and participate (to whatever extent) in a global plurality of states, societies, nationalities, ethnic groups, religions, cultures, classes and corporations; each possessive of a contingent history that has given rise to a relatively distinctive, often pluralised, framework of principles. What has been demonstrated by the modern age, more poignantly than any other historical era or epoch, is that human social relations, cultural creations and moral frameworks *demonstrably* differ both according to, and within the same time and place. It is worth emphasising ‘demonstrably’ because it is this new ability, however unwillingly, to *observe* moral difference that has so categorically confirmed this diversity. The growth in communication and transportation technologies, and the ease and speed with which information, goods and people can cross vast distances, and transcend natural and man-made boundaries, are characteristically modern phenomena. Again, the experience of an individual and collective cultural life is *shared* with an experience of the plurality of every level of those collective lives.

³⁵ Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton NJ: Princeton University Press, 2002), pp.4, 25-26

³⁶ See Rorty, *Contingency Irony and Solidarity*, p.59 for his identification of moral predicates formulated as so-called ‘we-attitudes’; and Benhabib, *The Claims of Culture*, pp.24-25



Of course, pluralism as understood here is not just limited to the international and domestic spheres. Pluralisation tends also to occur *within* groups and even within those subgroups. Hence, to these domains of international and domestic pluralism must also be added an unspecifiable number of other domains of pluralism on various levels reaching all the way down to the individual human being. This ‘individual’ domain, which is primarily psychological rather than social, is derived in part from the consideration of value pluralism and the multiplicity of values held by individuals. Yet surely, if we must abstain from a metaphysical account of value pluralism, what part could such a domain play in a characterisation of pluralism as complex? One might view the individual person as at least in part constituted by a complex network of overlapping, interacting and oftentimes conflicting group commitments. I could be after all a father, a grandfather, a Christian, a Catholic, British, English, an academic, a student, a Marxist, a member of the labour party, a trade unionist, a member of the local golf club, and a member of Weight Watchers, all at the same time. These various affiliations, memberships and commitments reflect a plurality of individual commitments which must be taken seriously. Very few people have no such plurality and even the most ‘fanatical’ individuals often have families, or consider themselves part of a community or state which is not directly related to their cause. Overall, part of the complexity of pluralist society is its many layers. Individuals with a plurality of commitments live in plural and diverse societies which in turn are part of a plurality of legal, national, moral, religious and ethnic communities which exist in a broader plural world.³⁷

³⁷ Which in turn may be part of an even broader plurality of worlds, but which, as ought to be clear, should not feature in a discussion of pluralism as an observable phenomenon. As I have stated, one of the key features of pluralism that permits its use as fact is its self-evidence. Of course, the notion of a plurality of plural *worlds* remains the purview of science-fiction, and the lack of any evidence of other worlds which would constitute such a plurality is reason enough to be unconcerned about this potential dimension of the question. Onora O’Neill makes a similar comment concerning the societies

This brings me now to the notion of ‘conceptual complexity’, which completes my account of complex pluralism. It is important to examine more closely what is ‘plural’ within pluralism and how pluralism functions as a system of conflicting organisational frameworks. The kind of conflict that tends to emerge from pluralist societies does not always turn on the basis of a plurality of purely *moral* dispositions. Here we might consider William Galston:

Not all goods are moral ... goods of the body, material resources, family and friends, a long and fortunate life – are also genuine goods. The effort to designate a single measure of value either flattens out qualitative differences or (as in John Stuart Mill’s version of utilitarianism) embraces these differences in all but name.³⁸

Galston of course is referring to value pluralism; that the genuine plurality of human goods and values is not exclusively confined to those in the moral realm. But, if an account of pluralism is to remain silent on the question of a plurality of values, must we be silent on this dimension of complexity also? The problem of conflict associated with pluralism need not be premised only on value conflicts. Rather, as should be clear, regardless of the source of the conflict, that conflict is undeniably ‘social’ and social conflict does not revolve solely around moral questions. Conflicts exist in the personal, social, cultural and economic realms and they amount to more than simply a plurality of moral viewpoints. The economic issues raised by leftist and libertarian critics, the gender-oriented issues raised by feminist critics and queer-theorists, and the cultural issues raised by communitarian and multiculturalist critics

of the T’ang Chinese and the Anglo Saxons during the middle ages. Being unaware of one another’s existence it would be a pointless exercise to consider whether one society acted justly or morally towards the other, just as there is little point pondering excessively the extent to which we may be acting morally or justly within a plurality of worlds. See Onora O’Neill, *Towards justice and Virtue* (Cambridge: Cambridge University Press, 1996), pp.105-106

³⁸ William A. Galston, *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice* (Cambridge: Cambridge University Press, 2002), pp.30-31

of the dominant liberal tradition form part of the complexity of the pluralist model. Economic conflict, over material issues such as property or territory,³⁹ for example, is clearly not coextensive with moral conflict. They have different features, cover different spheres of disagreement, and concern different values. Yet each amounts to a substantive framework, and cultures are partly constituted by the interactions, clashes and compromises of such frameworks. It might be prudent to ask, therefore, how it might be possible to tease out and elucidate a moral framework or perspective from people's commitments, be they economic, social, or cultural. One might, for example, be able to discern a commitment to liberty, or equality, or to rights and duties, based on a person's economic status, commitments and judgements. Similarly, one's cultural values will almost invariably inform one's more explicitly moral commitments. Even categories of gender and sexual orientation are constituted by acceptance of or challenge to a set or system of values which are evident implicitly in the choices we make on the basis of those categories. An account of pluralism, then, will need to take account of its conceptual complexities. How and, indeed, the extent to which these other systems of value inform agents' systems of *moral* value will of course vary.

These conceptual complexities are further stretched by the diversity of the nature of these frameworks. Some comprise domestic socially-situated groups, while others are international economic organisations. Some are legally recognised states, while others are disenfranchised individuals. No two groups are exactly alike, and there are sufficient differences to posit that, even if we were able to *categorise* the groups that comprise pluralism, those categories would themselves be sufficiently different to constitute a dimension of pluralism all of its own.

³⁹ On this aspect see, for example, David Delaney, *Territory: A Short Introduction* (Oxford: Blackwell, 2005)

As one might expect, pluralism in the modern age can be shown to be tremendously complex. The Oxford English dictionary definition of pluralism cited earlier specifically cites 'ethnic or cultural groups'.⁴⁰ Given this, the phenomenon I am describing is rightly characterised as 'complex pluralism' as it incorporates not only a plurality of ethnic and cultural groups, but also of religious, philosophical and moral groups, as well as economic and 'social' groups. It exists not only within 'a society or state', but also within 'a body or institution', and within international society generally. Its source is unclear, but again, I stress that this need not concern us. What ought to concern us is first the extent to which this complexity entails a relativity of values. Why doesn't cultural relativism follow from complex pluralism? The second and more important concern is the enormous potential for conflict, and moreover, violence, that pluralism contains. Ultimately, these two concerns will determine the form and scope of a procedure of construction and of a thin universalism.

Complex Pluralism, Relativism and Universalism

The complexities of the diversity that human beings and human societies face as a matter of fact may seem to be leading in one direction. It seems reasonable to affirm that the most plausible explanation for moral diversity is that pluralism affirms relativism: 'there is no single true morality. There are many different moral frameworks, none of which is more correct than the others'.⁴¹ But this need not be the case. To assert complex pluralism, one is committed neither to an absolute cultural relativity of all principles nor to some metaethical relativity of value. Pluralism and relativism, while similar, are in fact distinct, and it is important to

⁴⁰ See again, 'Pluralism (3b)', *Oxford English Dictionary Online*

⁴¹ Gilbert Harman, 'Moral Relativism' in Gilbert Harman and Judith Jarvis Thompson, *Moral Relativism and Moral Objectivity* (Oxford: Blackwell, 1996), p.8

outline how. An account of the distinction between pluralism and relativism must be developed in two stages. The first stage must distinguish again between first principles and principles of regulation, between value pluralism and complex pluralism, and between metaethical and cultural relativism. This is done in order to prevent conflation of two different arguments, with only one of which the thin universalist need engage. At the second, the answer takes the form of a constructed thin universalism itself.

The key to deflecting the claims that pluralism is simply relativism redescribed, or that it necessarily entails relativism, begins with grasping three fundamental distinctions. In chapter one I considered the distinction between fundamental first principles and adopted principles of regulation. First principles are statements of higher convictions, which one does *not* select or adopt in order to solve problems and which are independent of 'the facts'. Principles of regulation, by contrast, are those adopted in light of certain facts and are addressed to a concrete problem and are therefore *intended* to have certain effects. To assert 'pluralism' in this context is to assert one of the two concepts I have outlined above. In asserting *value* pluralism, one is making a claim about the nature of first principles, a truth claim that higher conviction are numerous, ultimate ends are varied, and first principles are many. By contrast, in asserting a form of *social* pluralism, of which *complex* pluralism is an account, one is making a factual claim, not about first principles, but about principles of regulation. It is to claim that the regulatory principles that various groups have adopted in, light of their own circumstances, can be seen to differ as a matter of fact.

Similarly, to assert relativism in a metaethical sense is to make a claim about first principles; to assert that they are not only many, but that they are entirely

context or framework dependent. In this context relativism is an *absolute* form of value pluralism. It describes an absolute, unchecked, unrankable, incomparable, incommensurable and unlimited plurality of values and goods, none of which can be compared alongside others, or alongside an independent moral barometer, in order to discern meaningful judgements or comparisons between them.⁴² For the relativist our first principles, our sense of ‘moral right and wrong (good and bad, justice and injustice, virtue and vice, etc.) are *always* relative to a moral framework.’⁴³ No single standard therefore exists by which one can assess the truth of a moral proposition. Like pluralism, metaethical relativism describes the structure of the normative universe – it is an account of the nature of value. Cultural relativism, on the other hand, is the different claim that one’s values or principles make sense only within the context of one’s own culture. What follows is the prescriptive assertion that ‘you’ cannot make judgements about ‘our’ principles or practices, because they are ‘ours’ and not ‘yours’. Cultural relativism is a claim to the relativity of adopted, fact-dependent, regulatory principles and not of basic, fact-independent first principles.

For the thin universal theorist of pluralism, the first task is then to demonstrate how and why asserting complex pluralism (which functions at the regulatory level) does *not* entail a relativity of values (at the level of first principles). This is done in a manner similar to the epistemic abstinence forwarded in the earlier discussion of value pluralism. To characterise modern society as being pluralistic is

⁴² Again, the value pluralist may wish to turn to Berlin for two means of revealing how a conception of value pluralism rejects relativity. He asserts firstly, in a line of thought derived from J.G. Herder, that ‘members of one culture can understand, and enter the minds of, and sympathise with, those of another’. This assertion is made on the basis that while there are many (potentially incommensurable) kinds of happiness, they ‘all respond to the real needs and aspirations of normal human beings’. See Berlin, *The Crooked Timber of Humanity*, p.84. Secondly, Berlin, to quote John Gray, ‘always affirmed the reality of goods and evils that are not culture-specific but generically human’; pointing to a universal minimal content of morality by which some cultures would be condemned. See John Gray, *Enlightenment’s Wake* (London: Routledge, 1995), p.81. For Berlin, pluralism denotes a distinctly (if not unproblematically) finite diversity of societal organisations.

⁴³ Harman, ‘Moral Relativism’, p.3 (emphasis added)

to advocate no prima facie rejection of the plurality, the universality or the relativity of first principles. One makes no claim about the plural, universal or relative nature of first principles, basic judgements, or ultimate values by asserting complex pluralism. This I have already established. The pluralism which characterises modern society is one of observable, actually-held views of human agents;⁴⁴ it is a plurality of principles of regulation. To suggest that complex pluralism therefore implies a relativity of values is to make a ‘category’ error – to confuse two orders of moral inquiry in such a way as to glean something of the nature of first principles from the principles of regulation that different societies adopt to regulate their affairs. At this point, the moral sceptic will want strongly to suggest that while it is not *necessarily* the case that a complex plurality of regulatory principles has higher order implications (i.e. implications regarding our first principles), it is perhaps the most reasonable thing to infer from the observable fact of diversity. Indeed, J.L. Mackie and Gilbert Harman have suggested that the fact that there is widespread ethical disagreement provides enough reasonable evidence to suggest that there are no objective moral facts – if there were, surely there would *not* be widespread ethical disagreement!⁴⁵ The question of why this does not imply a *relativity* of principles of regulation, in the same way that one might suggest a plurality of first principles implies a *relativity* of those principles, will be dealt with in due course.

Firstly, though, it is worth mentioning where universalism fits into this picture. In all of its key conceptions, value pluralism *also* presupposes and makes use of a thin conception of universalism. This is done precisely in order to reject the accusation that it is indeed a variety of metaethical relativism. A basic plurality of

⁴⁴ By ‘agent’ I refer simply to a morally relevant individual or group of individuals who possess ‘agency’ in that they are capable of holding and acting upon a framework of values. It assumes that people are capable of acting on a collective or individual basis towards a wide diversity of goals informed by a plurality of value frameworks.

⁴⁵ See Mackie, *Ethics: Inventing Right and Wrong*, pp.15-25; Harman, ‘Moral Relativism’, pp.8-14

fact-independent values, in order to resist relativism *must* make use of such a thin universalism. The pluralisms of Berlin, Galston, Crowder and Gray stress this need, as can clearly be seen in Galston's five 'basic premises' of value pluralism:

1. Pluralism is an account of the actual structure of the normative universe – it is 'true'.
2. Pluralism is not relativism. It is premised on a floor of basic moral decency.
3. Above this floor there is a multiplicity of heterogeneous goods that cannot be reduced to a common measure of value.
4. These qualitatively distinct values cannot be ranked.
5. There is no single overriding good or value.⁴⁶

The second of these concerns the moral minimalism that key value pluralists assert. According to Berlin, Galston et al, part of how we are to define pluralism and distinguish it from other accounts of the nature of value (and specifically relativism), is the in-built moral minimalism that underpins it. Can this truly be the case? Galston is keen to assert that the distinction between right and wrong is non-arbitrary, but he goes on to say very little about how that distinction is drawn, who draws it, and the extent to which cases close to the line are to be determined, or what criteria could be used to decide. Attaching addendums to pluralism such as a 'floor of basic moral decency' seems to set the concept of pluralism a partly prescriptive and not purely descriptive task. Either there *are* many sources of value or good or there *aren't* and surely, even without a moral minimum pluralism *still* describes a plurality of ultimate ends, values, or first principles. But by adding the idea of a moral minimum into an account of pluralism, some conception of value is ascribed to pluralism itself. Rather than it being a theory which simply describes the nature of the moral universe, Galston wants it to be, it becomes a partially normative theory.

⁴⁶ Galston, 'Value Pluralism and Liberal Political Theory', p.770

On the other hand of course, it can reasonably be claimed that there are simply some things that are *not* valuable, for example, wanton cruelty, torture, slavery or genocide. It could quite reasonably be established that there are simply no grounds for making the claim that such actions are justified. Pluralism is, we must remember, avowedly *not* a form of subjectivism or emotivism and the pluralist is *not* committed to the crude empiricist claim that everything that people value as a matter of fact must in some sense *be* valuable. This, it will be claimed is precisely where the moral minimum comes in. But how is one to determine where to draw the bottom line? And how would one demonstrate that that such a bottom line was not in some sense culturally biased?⁴⁷

This approach, then, seems simply to be a form of thin universalist project. One of the key features of a thin universalism is the idea that some actions are not acceptable in any context, that there is a limit to diversity, or that there is a moral bottom line of acceptable treatment of human beings. This assertion of ‘pluralism’ with an implicit moral minimalism therefore seems simply to ‘beg the question’. It presupposes that which is to be elucidated and justified, a moral bottom line, precisely because citing pluralism in a justification of thin universalism still leaves the question of where the ‘moral floor’ of pluralism is and how one establishes and justifies it. It is, after all, determination of those very limits to legitimate pluralism towards which a thin universalism strives.

The theorist of complex pluralism, however, not being embroiled in these debates, need say nothing about the relativity or plurality of first principles because it is a descriptive term which simply stresses that there is a diversity of social and ethnic groups in society. Such a conception is quite compatible with the rival claims

⁴⁷ Which would, of course, be both morally problematic for, and practically pervasive to, the objectives of pluralists, constructivists and thin universalists.

that all values are of a single source, all values are relative to a particular culture, that values are universal, or that values are many. One need not be a pluralist, monist, relativist, or universalist to acknowledge a plurality of social groups.

Seeking to characterise this plurality is to appeal to the validity of the claim that different people in different times and places hold at times radically different views. Such views are contingent, historically grounded and highly contextualised. Different values, principles and ways of life are regarded by different human beings and human societies as good. It is reasonable for them to do so in the sense that agents will hold strong, at times deeply powerful and justifiable reasons for following them. The strong emphasis on difference has been taken by many to mean that *all* evaluations are dependent upon the social context in which they arise and that culture, and indeed morality itself is therefore characterised by an inescapable and irreducible relativity of value.⁴⁸ A key task of the theorist of pluralism, and indeed, the task of the thin universalist, is to show that we need not accept the claim that *all* evaluations are necessarily context-dependent.

Cultural relativism, as such, can be countered on several fronts. Firstly it can be asserted, as I have done, that the kind of political, cultural and moral frameworks that are assumed by absolute pluralism do not exist in the way it is supposed that they do. They are not each single, homogeneous, closed systems. Rather, they are porous and changeable, connected and interdependent.⁴⁹ This raises two questions: Can these frameworks be considered frameworks in any meaningful sense? And how, if they *do* exist, can such frameworks, interdependent as they are, operate

⁴⁸ The literature here is vast, but the place to begin is with the most concise statement of cultural and moral relativism. See, therefore, Clifford Geertz, *The Interpretation of Cultures* (London: Hutchinson, 1975)

⁴⁹ See, again, this assertion made by Benhabib, that cultures are not 'internally coherent seamless wholes; many are in fact polyvocal, multilayered, decentred and fractured systems'. See Benhabib, *The Claims of Culture*, pp.24-25

without *any* kind of shared judgements? The consequences of this critique are instructive. They seem to echo Berlin's assertion that members of a community ought to be able to understand and sympathise with those of another because that which we might seek to understand is premised on something that is not culturally particular.⁵⁰ Similarly, Benhabib seeks to assert that, at the very least, it is possible to identify 'framework transcending criteria of evaluation' without which it would be impossible even to recognise and individuate those other frameworks.⁵¹

Second, the notion of 'absolute' plurality implied in relativism seems to be self-refuting. According to Melville Herskovits, 'evaluations are relative to the cultural background out of which they arise'. The longstanding critique here is that this poses immediate problems for the relativist because, if by 'evaluations' Herskovits means *all* evaluations of any kind (which he seems to), then the thesis is self-refuting. If the statement is correct then by its own virtue it *must* be contingent upon whether a particular cultural or moral framework accepts it, and not all do. In essence, relativism destroys the objective basis upon which it posits itself and hence cannot be a 'truth' that holds for all cultures; 'it asserts an absolute prescription that all prescriptions are relative'.⁵² Of course, it might be asserted that many, perhaps almost all, evaluations are relative, but that crucially some or many more are not. But it would seem that to make such an assertion is to stray from an absolute, relativistic pluralism and into, perhaps, a more complex understanding of it.

Third, even if relativism does not destroy its own objective basis then it is at least committed to one universal value judgement: that one ought to respect the integrity of and not interfere with the value systems of other cultures. Even absolute

⁵⁰ Berlin, *The Crooked Timber of Humanity*, p.84

⁵¹ Benhabib, *The Claims of Culture*, p.28

⁵² Melville Herskovits, *Man and His Works: The Science of Cultural Anthropology* (New York: Knopf, 1949), p.63; also Alison Dundes Renteln, *International Human Rights: Universalism versus Relativism* (London: Sage, 1990), pp. 68-69, 72

pluralism is, on this reading, premised on a very thin universalism grounded ultimately in some conception of respect or equality (just as the 'early' Walzer's strong contextual communitarianism is⁵³). The thin universal principle at work within relativism and its fellows is simply one of respect for other cultures, or the assertion that *all* evaluations are relative.

Cohen asserts that 'you cannot think a first principle right for one society but not for another without embracing relativism'.⁵⁴ For Cohen, it seems there can be no assertion of value pluralism without the assertion of relativism on some level. This relativistic concern may or may not be the case. This thesis does not speak to this issue and seeks actively to abstain from any kind of commitment such as this for the reasons outlined earlier. It must be noted, however, that Cohen has no such concern with a plurality of regulatory principles. Problematic as it is, absolute cultural relativity need not concern us if the object of inquiry and construction are principles of regulation. One can endorse different regulatory principles for different societies without being any kind of a relativist. Indeed, one can imagine that anything constructed will almost certainly differ according to variables within the procedure of construction *with or without* reliance on the plurality, universality or relativity of first principles in general. A plurality of principles of regulation, then, does not lead to the automatic dismissal of the thin universalist project before it gets off the ground. Complex pluralism can accommodate a metaethical relativism, that is, one can be a metaethical relativist, or reject it outright, and *still* regard complex pluralism as fact, without having to accept an absolute relativity of regulatory principles. This is in part due to the nature of the project and in part due to the nature of relativism itself.

⁵³ See Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (New York: Basic Books, 1983). See also, my introduction, pp.12-13

⁵⁴ Cohen, 'Facts and Principles', (s), p.243

Relativism retains a great deal of practical import for the thin universalist once precisely what 'relative' describes is established.

Pluralism and Violent Conflict

I have thus far attempted to establish that *if* the thin universalist project aims to establish and justify minimal but universal principles, capable of making judgements that are not contextually limited, it *must* account for complex pluralism. Complex pluralism must be distinguished from value pluralism if it is to serve as the basis for a procedure of construction intended to establish and justify universal principles. It is characterised by many dimensions and domains, as one might expect given that is both 'complex' and 'plural'.

However, while the fact of pluralism is a source of concern and consternation for many (however justifiably), it may also be the case that that concern lies not with pluralism itself but with the seemingly enormous capacity for conflict, even violence that it carries with it. This conflict and violence in turn poses a threat not just to human life and human societies but to the very existence of pluralism itself. Within the normative commitments that drive a thin universalism is the assertion that respect for human beings entails respect for their cultural creations in all their concomitant diversity. This in turn implies (using Cohen's method of illuminating our higher commitments) that pluralism itself is something to be valued and respected. While not all may agree with this assessment (arguing instead that all ought to be brought into the fold of a particular religion or way of life), part of what a thin universalism urges is the practical sense in which pluralism is an enduring state of affairs.

Where two frameworks offer contradictory accounts of the course of action one should take, but must also exist in the same context (they must exist both at the

same time and in the same place), conflict, and we must ultimately assume *violent* conflict, is often the unhappy result. This is not, of course, to follow the sceptical Platonic line of thought that popular political deliberation leads invariably to violence.⁵⁵ It is, however, to suggest that clashes frequently occur, and that they occur for a variety of reasons. Steven Lukes asks:

What theoretical and practical conclusions should we draw from the ever more visible contrasts between ways of life – between different practices and customs, between divergent perspectives on life and judgements about what makes it valuable, between divergent ways of responding to common problems that generate countless misunderstandings and conflicts that can end in war?⁵⁶

It is the potential for war that seems most unsettling about moral diversity. This might seem somewhat pessimistic, or perhaps an exaggeration of the extent to which diversity can lead to violence. But consideration of recent history reveals examples of disagreements degenerating into value conflicts and then further into armed clashes, wars and genocides. Conflict is perhaps as observable a fact as diversity itself.

It is often assumed that the *source* of this conflict must be a plurality of *values*, that value pluralism generates the conflict which poses this threat both to human lives and to pluralism itself. Berlin notes:

If, as I believe, the ends of men are many, and not all of them are in principle compatible with each other, then the possibility of conflict – and of tragedy – can never wholly be eliminated from human life, either personal or social.⁵⁷

⁵⁵ See here Plato, *The Republic* (London: Hackett, 2004), Book 8, Section 563a, p.260

⁵⁶ Steven Lukes, *Liberals and Cannibals: The Implications of Diversity* (London: Verso, 2003), p.1

⁵⁷ Isaiah Berlin, 'Two Concepts of Liberty' in his *Four Essays on Liberty* (Oxford: Oxford University press, 1969), p.169

If indeed there is a genuine plurality of values, ongoing and perhaps devastating conflict seems inevitable and eternal. Two separate points now emerge. First, value pluralism falls short of a full explanation of human conflict. As I have discussed, very few people actually accept the premises of value pluralism. Hence in citing it as a root cause of everyday conflict the problem of its contested status resurfaces, stalling the project once more. Moreover, if pluralism is genuinely important, and violent conflict is something which is a threat to it, it is a problem that must be addressed. However, it is not clear that the factual occurrence of violence could threaten the existence of *value* pluralism. If value pluralism is an account of first principles – of the structure of the normative universe – could it really be threatened by conflict and violence? Surely, while conflict is widespread and occurrences of violence are prolific, they do not, and could never, threaten this structure of value. This of course does not mean that what is valuable is not threatened; merely that ‘pluralism’ understood as a proposition about first principles is not what is at risk. Second, one *can* proceed with an account of conflict from the observable fact of complex pluralism without making assertions about value pluralism. It is complex pluralism and *not* a basic plurality of values (if one exists) that is actually at risk from violent conflict.

How does the question of violence therefore translate? John Keane suggests that civil societies⁵⁸ tend to generate two contradictory trends. On the one hand, socialising conflicts, which teach individuals and groups to live together and the meaning of concession and compromise, and on the other, vastly uncivil forms of

⁵⁸ Meaning, here, not the idea of societies that are in some way civil, but rather the (often times vast, often times minuscule) space between government and private life.

violence ranging from vaguely threatening rudeness to 'post-civilised barbarity'.⁵⁹

He goes on to stress that the ability of pluralistic societies to

enable groups to organise for the pursuit of wealth and power has made their capitalist economies and political institutions not only restlessly dynamic at home, but also prone to expansion on a global scale, one consequence of which has been the widespread exporting of violence ...⁶⁰

Keane is also aware of the multiplicity and complexity of a plurality of forms of life.

He goes on:

The legal or informal freedom to associate in complex ways afforded the members of any civil society evidently also makes them prone ... to violence at home. ... Civil societies ... are complex and dynamic webs of social institutions in which ... citizens' inability to conceive of and to grasp the horizons of social life, combined with the chronic uncertainty of key aspects of life (employment and investment patterns, who will govern after the next elections, the contingent identity of ones self and ones household) make their members prone to stress, anxiety, humiliation and revenge. ... Such fragility increases the probability that the customary moral sanctions and restraints upon the resort to violence can be rejected or avoided by some of the members.⁶¹

The fact that a pluralist society holds within it the potential for incivility, to paraphrase Keane, seems somewhat less surprising that it does at first sight. One can easily comprehend how a state of complex pluralism might develop into a state of conflict and even violence. This is not of course to insist that pluralist societies are *inherently* more violent, though that claim may be hard to resist and, at the very least,

⁵⁹ See John Keane, *Violence and Democracy* (Cambridge: Cambridge University Press, 2004), pp.91-92

⁶⁰ Keane, *Violence and Democracy*, p.98

⁶¹ Keane, *Violence and Democracy*, pp.99-100

it suggests that complex pluralism adds a new ingredient to the social mix which is itself a *potential* source of violent conflict.

However, given that conflict, incivility and violence do indeed pose a problem, there *will* be cause to seek resolutions to conflicts, often through arbitration, compromise or pursuit of common ground. Rarely does violence benefit where a peaceful resolution to conflict does not, and often the destruction of an enemy is counter-productive, even where unity, singularity and homogeneity are sought as ends. The common ground in question may vary from, at its strongest, deeply-held historical commonalities to nothing more substantive than recognition of the conditions and concomitant problems of diversity. In each case the connection will almost certainly be different. How the connection is established will also be different, as will the justifications for adopting certain courses of action – the common ground will be akin to a patchwork quilt rather than a single strand of gossamer. But the content of that common ground will always embody something fundamental if not singular.

‘The Problem’

It is because of conflict, and not because of pluralism, that common ground is sought. It is not pluralism itself that drives the particular requirements of justification, the need for construction, or even the thin universalist project itself. Rather, it is that pluralism seems to impel us into conflict, often times violently, that provides this ‘drive’. We offer reasons and justification and we attempt to construct consent to thin universal principles not simply because we want to agree, but because we want to minimise conflict and violence, a desire for which we may hold a number of good reasons.

We have good reason to assume that we cannot and must not *expect* others to share our social, moral, political, religious or economic values. Complex pluralism, conflict and violence provide reasons to offer adequately intelligible, sufficiently accessible, and meaningfully applicable justifications for the principles, beliefs and endorsements of particular courses of action we may wish to claim hold universally.⁶² Violent conflict provides a factual or empirical point, to which the moral principles we endorse are sensitive and from which a motivation to construct is derived. It is from the perspective of complex pluralism, but which recognises that it is the violent conflict that ensues that constitutes a problem to which a solution is required, that the drive towards construction of principles of regulation, which are thin and universal in character, emerges. They offer means of *dealing* with the violent conflict that emerges. This is especially pertinent as pluralism stresses the multiplicity of answers to questions of violence and suggests that the causes of violence are rooted in cultural and social relations and that violence itself is therefore contestable and contingent.⁶³

So, while it is perhaps perceived to be so, pluralism is not a problem per se, (though a *perceived* problem can admittedly be equally as dangerous, even then perception can be altered by experience). In some circumstance civility within a pluralist society breaks down, pluralism descends into violent conflict and a problem can be shown to emerge. This conflict, which reflects the complexities of pluralism itself can be of many kinds, be it crime, local rioting, minority persecution, war, civil-war, genocide or international terrorism.

⁶² ‘Adequately intelligible’ in that reasons must be posed in a language, form and manner which is intelligible to the recipient; ‘meaningfully applicable’ in that reasons must appeal to some authority or value which is genuinely applicable to recipients; ‘sufficiently acceptable’ in that the recipient must be physically, psychologically and socially *able* to accept reasons offered. I develop this further in chapter five.

⁶³ See Keane, *Violence and Democracy*, p.97

It is this, the potential for what Keane calls 'uncivil violence', that is the true 'problem' here.⁶⁴ Complex pluralism possesses an enormous and perhaps largely untapped potential for violence, kept in check by both pragmatic and moral concerns. When these checks fail, often in concert with any one of a number of other social, economic or political failures, and either within a society or between societies, violence ensues, and complex pluralism becomes a problem requiring a solution.

Of course, it may be argued that this problem of violence exists perpetually, but emerges only in certain context or as a result of certain actions or under certain conditions. Indeed, the potential for violence escalates at certain times, in certain places, and in certain circumstances. In certain contexts, for example in contemporary Baghdad, it is almost omnipresent. In others, in New York and Washington on September 11th 2001, its expression is highly distinctive and deeply shocking, or, in the case of Rwanda in 1994, it is utterly devastating. In many places, however, it exists perpetually as potential; most societies and, indeed, most *cities* over a certain size harbour it. The violent potential of pluralism overflows in a variety of different ways, in a variety of places.

Pluralism, and the potential for violent conflict which it holds, is not just an issue that faces liberal democracies; it clearly faces all societies. This is so because there are very few societies over a certain size that can be deemed genuinely to speak with a single voice. Moreover, all societies face the issues that pluralism presents because, in the age of modernity and globalisation, all societies must interact with one another in an *explicit* and a *global* plurality of states, religions and ethnic groups, each possessive of a contingent history that has given rise to a characteristic, and itself pluralised, conception of value.

⁶⁴ See Keane, *Violence and Democracy*, particularly chapters 3 and 6

In sum, then, it is the violence which ensues from a complex pluralism which the thin universalist project takes as its factual starting point. Value pluralism simply cannot be taken as such; too many of the world's comprehensive religious, moral, and social doctrines are too inherently monistic to accept such a fact. Value pluralism does not afford the complexities I have outlined in this chapter; one cannot posit a domestic *and* international plurality of ultimate values or ends, for this would confuse two separate orders of moral inquiry. What is more, value pluralism is *not* threatened by violence and conflict; if value pluralism is an account of the structure of the normative universe, such issues could have no significant bearing upon it. It is rather complex pluralism, as I have characterised it here, that interacts with the issues at hand and it is complex pluralism that is the proper focus of this project. What I shall demonstrate over the coming chapters is that complex pluralism is connected fundamentally to how one develops and justifies a thin universalism. It is from the fact of complex pluralism that we find the resources required to construct a set of thin universal principles of regulation; it is complex pluralism that impacts how that construction is to proceed and those agents and features that need to be considered. It imposes substantial limits on the kind of universal judgements one can make and has a profound impact on the form and content of those judgements. If universalism is to survive the recognition of complex pluralism intact, it must situate that pluralism, and the problems of conflict and violence associated with it, front and centre; it must acknowledge them, respond to them and revolve around them. It must, I shall argue, be thin.

So far I have outlined how one might go about developing a set of thin universal principles of regulation, through a constructive procedure, from (inter alia) the facts of complex pluralism. Such a project aims not to construct morality in its

entirety, nor does it aim to establish ethical first principles. I turn my attention in the next chapter more explicitly to the moral motivations of a thin universalism, in conjunction with the procedure of constructing principles of regulation from the facts of complex pluralism. These motivations take the form of a set of prior moral commitments – a principled commitment to respect the moral significance of human beings and their social worlds – within the context of pluralism; they drive the thin universalist project and provide a point of departure for developing a ‘pluralistically enlightened’ universalism. It is these commitments that highlight the need to make moral arguments justifiable, firstly in the sense that they must be reasoned and coherent, and secondly in the sense that they must aim to be publicly justified – they must aim to take account of the moral character of those who are to receive them. It is from these commitments that construction must proceed and it is these concerns to which I turn my immediate attention.

- three -

‘First Principles’ and Questions of Justification

How one characterises and defines pluralism will of course determine in part how one responds to it. The constructive thin universalism I develop in this thesis is a direct response to the complex pluralism outlined in the previous chapter and to the conclusions about the nature of principles developed in the first. Once misconceptions about the object of construction – regulatory principles – and about the nature of pluralism – its complexity, interconnectivity and violent potential – have been cleared away, there remains one final task before it becomes possible to begin to characterise constructed regulatory principles which bear certain characteristics. If ‘principles of regulation’ respond both to facts and principles alike, given that the previous chapter considered the *facts* of complex pluralism, a discussion of the *principles* – those pre-existing commitments, moral motivations or first principles – at work in construction is now necessary.

As such, this chapter begins by considering the normative dimension of the materials from which construction and hence thin universalism proceeds. These normative materials I refer to as ‘first principles’ in accordance with the distinction drawn between fact-independent first principles and constructed, fact-dependent regulatory principles in chapter one. The chapter examines how one might establish them as starting points for the thin universalist project and explicitly how they might be justified in this role. This done, the features of the procedure which constitute the

materials from which the construction begins are all in place. This chapter closes the gaps in my account of what I have called the ‘materials of construction’. Ultimately, it offers the first stages of my, at this stage, quite abstract account of construction – and specifically the construction of a thin universalism – which will unfold in the chapters that follow.

First Principles

Analytic philosophy tends to make a distinction between the form, content and purpose of different kinds of principles. The outcome of the thin universalist project is a set of principles of regulation, which are a particular kind of *moral* principle. But because of the urgency and severity of the cases to which thin universalism is addressed – those things that should be secured or prevented everywhere – they are essentially *political* principles. Political principles are moral principles which are deemed to be enforceable by an empowered body such as the state. Principles of regulation are political principles. Principles of regulation also display, among others, three characteristics, which make them importantly distinct from and which they *could not* possess if they were first principles:

1. They can be the product of a procedure of construction.
2. They can therefore be regarded as fact-dependent, or fact-sensitive.
3. They *could*, therefore, but need not be ‘thin universal’ principles.

The *justification* of regulatory principles is heavily intertwined with these characteristics. They are said to be justified, at least in part, because they are the product of construction, because they respond to the facts, and because they respond to the facts in this particular way.

However, in chapter one I established that they also respond to basic, higher, more ultimate commitments, which I characterise as our first principles, which do *not* bear these characteristics, which are not in this way justified and whose justification, as such, remains open to question. Cohen's analysis of facts and principles does not address the question of how our first principles might be justified, only the question of how we arrive at them, and how we might reason from them. But a thesis with broader aspirations will need to concern itself with how one arrives at first principles, how one reasons from them *and* how one might justify them and thus how one might establish their validity, particularly over other possible first principles reached in a similar way. This task is crucial not least because the validity of constructed thin universal regulatory principles is, *inter alia*, a function of the validity of the first principles from which they are constructed. Just as one cannot construct from what appear as facts, but which actually amount to highly contentious claims about the nature of value, one cannot proceed without first offering some justifiable grounds for the first principles from which one begins.

The account of construction developed in chapter one asserted forcefully that first principles are not *objects* of construction but *materials*. They form part of that set of factors which shape those regulatory principles that we construct. The first principles which inform the construction of thin universal regulatory principles need not exhibit any of the thin universalist characteristics that their constructed counterparts' possess (though this does not preclude the possibility that they may well do so). Following Mark Evans we can identify two powerful considerations that bear upon the thin universalist project:

- [1] the belief that ‘being human’ has an invariable normative significance that places moral limits on the kinds of society fit for people to inhabit (the *universalism*);
- [2] a respect for the plurality of human values, cultures and belief systems, which implies that a truly universal morality necessarily under-determines the full moral character of any particular form of society (the *thinness*).¹

Redescribed as first principles we might posit:

- [1a] an imperative to treat those individuals with the characteristics relevant to describing them as ‘human’ in such a way as to respect their existence, well-being and flourishing *as* individuals. And
- [2a] an imperative to respect the broad plurality of human social and cultural creations in such a way that recognises their contribution to human existence, well-being and flourishing.

Principle [1a] reflects the persistent belief that what it is to be human holds, and continues to hold, a distinct normative significance which does not vary according to particular attributes or characteristics or particular human societies or cultures. Attached to this belief is the notion that there are, in fact, certain limits on the *kinds* of society fit for human beings to inhabit; there are certain ways of organising social, cultural and political life that are simply not conducive to the living of a worthwhile life. This is the source of the ‘universal’ content of thin universalism. The view has long since been the perspective of liberalism, but it has recently been adopted by a number of universalism’s opponents as a response to noteworthy concerns that theories of so-called ‘radical socialisation’ and ‘radical value incommensurability’ are unable to avoid a moral relativism untenable in the interconnected plural world

¹ See Mark Evans, ‘Thin Universalism and the “Limits” of Justification’, in Bruce Haddock, Peri Roberts and Peter Sutch (eds.), *Principles and Political Order: The Challenge of Diversity* (London: Routledge, 2006), pp.76-96 at p.76

described in chapter two. They fail to account fully for the complex nature of pluralism.²

By unpacking principle [1a] a whole set of first principles which are equally basic and fact-independent, but which are less abstract, emerge. Respect for the ‘existence’ of individual human beings implies a commitment to respect human life and to respect it on an individual basis, howsoever it might be socially situated. This respect might be further discharged through a commitment to provide for the basic needs that human beings possess, such as food and water, clothing and shelter. ‘Being human’ entails biological imperatives which must be met in order for the status of ‘human’ to be maintained. A commitment to the normative significance of human beings might therefore prompt first principles prohibiting violations of the body, such as purposeful causing of harm and other brutalities. This may also include prohibitions on killing of certain kinds, or perhaps any kind.³ In order to respect flourishing we might posit a commitment to equality – ‘rough equality between people is good’. We might seek to combine that with a commitment to ‘freedom’, again broadly conceived, prompting a prohibition on slavery and perhaps, conversely, an emphasis on education, as both freedom and equality provide for human flourishing. These may amount to a first principle that commits us to facilitate meaningful lives where possible.

Principle [2a] reflects an acknowledgement of, respect for, and sensitivity towards the complex plurality of human cultures, and of their concomitant beliefs, values and social systems outlined in the previous chapter. While it often leads to

² Radical socialisation theories might include those outlined by Clifford Geertz in *The Interpretation of Cultures* (London: Hutchinson, 1975), and by Michael Walzer in *Spheres of Justice: A Defence of Pluralism and Equality* (New York: Basic Books, 1983). Radical incommensurability theories are considered by John Gray in his later work, particularly *Enlightenment's Wake*.

³ Though, it must be made clear, one could not identify first principles that prohibit torture, or murder, as these are, in a very distinctive way, fact-dependent principles.

heightened social conflict and even violence, pluralism, it must be recognised is here to stay. Though this will be disputed, pluralism itself is, and ought to be regarded as a state of affairs that is in some way valuable and therefore worth sustaining. In the first instance, this commitment reflects the acknowledgement that two people can and will hold different views about a single issue. It secondly recognises that this conflict of views is most likely ineradicable. Even if pluralism could be eliminated, it would most likely be through a violation of the principle [1a] above, and as a consequence we must conclude that it not temporary or transitory. Taken a step further, this second basic principle reflects the more problematic claim that pluralism aids in the development both of a wider view of the world, and of greater self understanding. From this is derived an understanding that if a morality is to be truly universal it will invariably *underdetermine* the full scope and content of morality in any society, including a liberal society, in which it holds. This is the source of thin universalism's 'thinness'. Typically the domain of the particularist, it is universalists, and liberals in particular, who have come to regard pluralism in this way and have sought to adjust their theories of justice and morality accordingly.⁴

Following principle [2a], we might firstly restate the general inclination to respect cultural diversity, moral difference and social pluralism. Herein is contained a commitment to recognise and value human societies – a recognition that, in order to respect what it is to be human, we must also respect that which constitutes them. First principles which express that importance and respect are also present. We might, at the same time, posit a commitment to peace – we ought to pursue peaceful relations in all situations as a matter of priority and urgency. Unpacking this still further we might also therefore posit a commitment to non-interference towards that

⁴ Here the obvious candidates are those liberals in the Rawlsian tradition.

with which we disagree or of which we disapprove. We might therefore value autonomy or recognise the importance of self-determination on the part of political, social and cultural structures and wish to recognise them as first principles.

These first principles are recognised through an examination of pluralism; they are *not* generated or created by that examination. That is, it is through an examination of the factual conditions of complex pluralism that we are able to illuminate our, perhaps hidden, higher convictions. This explicitly does not *determine* what those convictions are. However, it is through this careful examination of pluralism that the form of universalism present in the first commitment reasserts itself so forcefully. Similarly, it yields the equally strong second consideration: that we have good reason to respond sensitively and cautiously when confronted by a complex plurality. These two motivating principles are not derived from factual considerations about human beings, or about their societies. They are ways of orienting and organising normative thinking *about* facts. They are not fact-dependent, and would hold regardless of any changes in factual circumstance, specific attitudes, or local conditions. In recognising these ultimate principles through the kind of processes discussed by Cohen in 'Facts and Principles'⁵ it is possible to regard them as *starting points* for a further procedure of construction and justification which yields thin universal regulatory principles.

They are illuminated and recognised through careful consideration of our initial responses or considered judgements about complex pluralism. When pluralism is examined and conclusions are drawn, that examination and those conclusions are drawn in light of those first principles. They are not fixed, nor are they transcendental or eternal truths – though many of them may be true – they are simply

⁵ G.A. Cohen, 'Facts and Principles' in *Philosophy and Public Affairs*, Vol.31 (2003), pp.211-245 at (e), pp.215-6. See also chapter one of this thesis.

justified responses to the world as it stands. They form, alongside the facts, the basis of a procedure of construction designed to generate as outcomes fact-dependent regulatory principles which are intended to address, confront, critique, preserve and affect the complex plural world in which agents find themselves.

They may appear to be themselves constructed; indeed, they are powerfully linked to the facts of pluralism, but they are not *dependent* on those facts, and it is this that defines them as *first* principles. They may well be *reducible* to the two more abstract principles already considered and there is nothing in their expression which is not encapsulated by the commitments to respect for human beings and respect for pluralism. Indeed, 'respect for human beings' may even be able to absorb respect for pluralism; for how is one to respect human beings if one does not respect their diverse social creations? The core of the first principles which are illuminated by the examination of pluralism in the previous chapter is a single, what we might call 'homo sapiens-centric' first principle. This first principle assumes human beings as our moral category, an assertion which of course requires further justification of its own.

It is important to begin by reasserting the exact wording of this first principle: 'homo sapiens-centric'. It uses the biological categorisation of human beings as a species to define its scope, to which it attaches powerful and unique moral characteristics. This is quite clearly apparent in the phrasing of the first motivating principle, 'that "being human" has an invariable normative significance'. But, of course, this prompts the question: why treat 'human' as a category, and why should it take priority over others? What makes us distinct and why is this distinction possessive of such normative weight? Why must human beings be the basis for a universal morality of *any* kind?

In answer to this it should firstly be noted that some conception of humanity as a principle category for addressing moral questions is a common move, and one that is certainly not limited to universalist or Western thought. Even anthropological relativisms and other theories of radical socialisation often begin from a barebones conception of a universal ‘human nature’, rational psychology, our capacity for reason, emotion or sensation or the like.⁶ Such accounts often struggle to find theoretical leverage without such conceptions. The notion of human beings as *tabula rasa*, encompassing no inherent characteristics or worth of any kind is implausible and extremely uncommon, and ‘nature versus nurture’ is a false dichotomy. While it is not my intention to move into a discussion on the relative weight of nature and nurture, of ‘humanity’ and ‘culture’, or of the universal and the particular in the development of moral characteristics, it is important to emphasise that neither fully makes sense, in this context, without the other.

As such, it is of course *possible* to ask that people regard themselves as part of a category called ‘human beings’, but is it *reasonable* to ask them to do so? Can they actually be provided with reasons to do so? It is certainly not *unreasonable* to assert membership of the category ‘human being’. While it would perhaps be irrational to refer to oneself *only* as a member of the human race (and thus depriving oneself of all the material, spiritual, cultural and social benefits of group membership), doing so whilst at the same time affirming ones allegiance to a number of other groups would be perfectly reasonable. As Martha Nussbaum states, one needn’t give up on ones local affiliations to profess to also being a citizen of the

⁶ Particularly, here, see Steven Lukes’ suggestion that Rorty, who gives a supposedly foundationless, ‘ungroundable’, account of social life, which avows any common human nature. Yet at the same time he cites characteristics such as humiliation, poetry, sex, identity as distinctly ‘human’. See Steven Lukes, *Liberals and Cannibals*, p.19; and Richard Rorty, *Contingency, Irony and Solidarity*.

world.⁷ So, is it reasonable to ask people to think of themselves in universal terms on some level? To think of themselves as human beings, rather than as Welsh, black, Muslim, working class, liberal, Kurdish, conservative or the like? In chapter four I outline arguments that help to construct an impression of the necessity of ‘the universal’ as a tangible and important category. For now it is enough to assert that, given the complexities of pluralism, with its concomitant economic and political interconnectivity and social and cultural porosity, we have good reason not always to confine our moral thinking to restricted, ‘inside’ groups.

Nonetheless, are there dangers of treating human beings as a moral category? Does it advocate disregard for non-human things of value, such as non-human animals? After all, cruelty and disregard are as common in human relationships with animals as respect and compassion.⁸ Might it also generate a disregard for things which are important to human beings, but which lack the characteristics possessed by human beings and non-human animals. The natural environment, or constructed human environments, may come under considerable pressure if our moral category is taken to be human beings. Disregard for such environments could have immeasurable impact which would invariably spread to an impact on human beings. Indeed, high on the political agenda recently has been the debate over the climate change and carbon emission standards. A disregard for the environment has potentially *existential* implications. Constructivism need not be, and is not blind to this.⁹ Citing human beings as our principal moral category does not *exclude* moral reflection on non-human considerations. Just as asking people to view themselves as members of the human race is not the same as asking them to cast off their more

⁷ See Nussbaum, *For the Love of Country: Debating the Limits of Patriotism*, pp.6-7

⁸ See here much of Peter Singer’s work on animal rights, for example, *In Defence of Animals: The Second Wave*, Second edition, (Oxford: Blackwell, 2005). See also John Gray, *Straw Dogs: Thoughts on Humans and other Animals*, (London: Granta, 2003)

⁹ See O’Neill, *Towards Justice and Virtue*, pp.174-178

particular affiliations, so citing the category of ‘homo sapiens’ does not mean that everything outside that category can or ought to be excluded from our moral thinking.

At the centre of this response to pluralism we find a core made up of fact-independent, homo sapiens-centric basic or first principles. Importantly though, what defines first principles *as* first principles is not their non-reducibility, but rather their explicit fact-independence. First principles *could* be further reduced to more abstract and more general principles, but they are still essentially first principles. Constructed principles on the other hand, which respond to facts about the world and agents and, crucially, *other principles* cannot be first principles precisely because they respond to fact. This I emphasised in chapter one and Cohen and Sen label those principles that don’t reflect facts as ‘basic’. While he does not press this particular point, it is clear that Cohen regards *fact-independence* as the key criteria for the label ‘basic’ or in this case ‘first’.¹⁰

But why not proceed simply from that single homo sapiens-centric first principle? The answer to this is that it may be *too* abstract. If we seek to cash out a principle which articulates nothing more than the sentiment that we ought to ‘respect human beings’ we may find that many doctrines which *claim* to respect them do no such thing, or even that moral atrocities are committed in the name of such a principle. We may call to mind the concern of Richard Rorty, that acts of sexual sadism by Serb soldiers upon ethnic Muslims involved no violation of respect for them as human beings because they were as beasts to them.¹¹ Nor is it inconceivable that the Nazis believed that they were somehow ‘respecting human beings’ by

¹⁰ See Cohen, ‘Facts and Principles’, (d), p.214, fn.5

¹¹ Richard Rorty, ‘Human Rights, Rationality and Sentimentality’ in *Truth and Progress: Philosophical Papers Vol.3* (Cambridge: Cambridge University Press, 1998), pp.167-185 at pp.167-168

ridding the earth of the Jewish people. Showing ‘respect’ to infidels or non-believers may simply involve sending them to heaven. A homo-sapiens centric first principle would show such points of view to be in obvious error. One cannot follow through on such a first principle in any way that denies the normative significance of any human being. The homo sapiens-centric first principle, while it may afford too much interpretive flexibility on its own (or without further elucidation) is still vital for orienting how first principles are carried through. And as such, regulatory principles that deny the humanity of some human beings, and use this to exclude them from moral consideration, are faulty and have not been adequately scrutinised during their construction.

A single first principle then is abstract, so abstract, in fact, as to be hollow and open to almost unlimited interpretation. We might in turn consider Carl Schmitt’s claim that certain models of political thought press us to brand those who we count amongst our ‘enemies’ as ‘inhuman’: something less than ‘human’.¹² But branding certain kinds of treatment as ‘inhuman’ is not simply about tackling a descriptive issue; it is far more normatively loaded than that. Referring to a course of action as ‘inhuman’, or referring to someone as ‘inhuman’ is to make a claim about the rightness and wrongness of that action, about how they should or should not act. To claim that someone has acted in a way that is inhuman is not to claim that the actor is in some way not human, but that they have acted in a way that human beings should not act. Referring to someone as ‘inhuman’ is different to referring to them as ‘not human’. Again, a homo sapiens-centric first principle would preclude such an implication.

¹² See Carl Schmitt, *The Concept of the Political* (Chicago: University of Chicago Press, 1996) and *The Nomos of the Earth in the International Law of the Jus Publicum Europeum*, (London: Telos, 2003)

While the *two* principles outlined above can provide some safeguards against such accusations, there may still be too little substantive content therein to establish them as considered valid and justified responses to the facts of complex pluralism. The *set* of first principles I have forwarded above, while they are still notably abstract, are far less so than the two imperatives which encapsulate them. They properly reflect the wider considered judgements which we come fully to realise after examining the facts of complex pluralism. Nonetheless, it quickly becomes apparent that even they are still too abstract to be of any great use in practice. One can see how such abstract principles have little capacity to solve genuine moral problems. Indeed, it is partly because those principles are too broad, abstract and general to confront the world that we seek regulatory principles in order to navigate them and why we might employ methods of construction in order to arrive at them.

First principles, it becomes clear, will be inclined to conflict, contradict and compete. They are generalised statements which reflect our considered judgements about the facts of the world in which we live. It stands to reason that we would react to different events in ways that lead to considered judgments which in many cases are not logically compatible with one another. In preserving the welfare and flourishing of some it may be necessary to restrict the freedom of others (for example, in cases of violent or sexual crime). Peace is good, we may say, and to pursue peace is an honourable goal but, to return to Brian Barry, we might worry that 'peace at any cost is a curious universal value'.¹³ The balance between justice and mercy, between freedom and equality, between peace and security cannot be struck simply by weighing up these values or principles in abstraction. Indeed, it is precisely because they are abstract that we find ourselves in need of *other* principles

¹³ Brian Barry, *Culture and Equality* (Cambridge: Polity, 2003), p.135

in order to navigate them. They will not solve our moral problems, and may in certain cases complicate them. They do, however, offer insight into the kind of social world in which we seek to live and it is this that motivates and shapes the construction of regulatory principles.

But this begs a number of further questions. Why these principles and not others? What grounds might we have for holding them, or for citing them as important features of how we organise normative thinking? What validates or legitimates them? It is all very well to cite these first principles as points of departure for a procedure of construction, but this leaves open the question of why we should depart from these points and not others. The principles themselves remain in need of justification – a task for justificatory philosophy.¹⁴ Thin universalism appears, to supporters and critics alike, to be obsessed with the justificatory arguments that might defend it and thin universalists tend to approach questions of justification with some rigour. The issues raised here are far from settled and the emphasis on justification itself needs to be justified. I now turn to examine what justifies the first principles I have outlined above, and what validates them as starting points for a constructivism of this kind. Ultimately I will assert that the justification of first principles is the first stage of a legitimate procedure of construction and is itself a reflection of the commitments posited in the two first principles.

Justification

What does it mean to offer justification for a set of first principles? Where might such an argument begin and how might it proceed? What does it mean to offer

¹⁴ Here I follow Mark Evans again, in his understanding of ‘justificatory philosophy’ as referring to the justification of fundamental or first principles (and as distinguishable from ‘critical expository philosophy’ which takes certain principles as given and seeks to explore consequences that follow from them). See ‘Thin Universalism and the “Limits” of Justification’, p.82

justification, to justify what one does, what one thinks or what one believes? Is it simply to provide good reasons or to have adequate evidence for holding a belief or principle, for expecting others to do likewise? Presumably, in order to justify the holding of a belief or principle one must demonstrate that one has *warrant* to hold it and that warrant is most likely provided by the holding of supporting reasons.¹⁵ This is the common view of ‘justification’, though it has been suggested that justification must be more discursive than the simple giving of reasons.¹⁶

While we might wish to seize on a more unequivocally ‘critical’ account of justification, providing ‘reasoned warrant’ in fact fulfils its necessarily critical function. The reasons provided that constitute a justification for a basic moral principle must ultimately be defended from the criticisms that it is bound to face, especially when confronted with complex pluralism.¹⁷ Justification is a monological *and* a dialogical task which takes place both within and between people, groups of people or their representatives. The justification of first principles and vindicating them as starting points for other philosophical and political projects must occur in this way. Only by examining alternatives, through criticism and critique, can reasons be shown to adequately provide warrant for the holding of a principle.

¹⁵ Evans, ‘Thin Universalism and the “Limits” of Justification’, p.77

¹⁶ Carl Wellman, has suggested that the reasoned warrant approach to justification is essentially ‘uncritical’. Justification, he argues, is not simply about the giving of reasons, but about answering *all* challenges that a given position (or principle) might actually face – countering all objections and criticisms. He states: ‘On the challenge-response model of justification, to explain how ethical statements can be justified is to explain how the various challenges to which they are subject can be met.’ See Carl Wellman, *Challenge and Response: Justification in Ethics* (London: Southern Illinois University Press, 1971), especially p.171

¹⁷ And it may be objected that Wellman misunderstands what he calls the ‘uncritical’ model of justification. We do not, by and large, provide the kind of reasons required by justification unless we are challenged in our position and we might reasonably be said to be holding an unjustified position if we were unable to provide reasons when prompted. Furthermore, we might describe ourselves as justified in holding a belief until a valid objection or fault is identified, at which point we may be justified in discarding that belief. Moreover, Wellman’s insistence on a defence from *all* challenges may well render the task of justification ultimately fruitless and nothing more than the endless pursuit of an unattainable point of ‘rest’.

The question that follows from ‘what is justification?’ will inevitably be ‘why justify?’ Although an answer is implicit throughout this project, the purpose of justification is still an important question to ask explicitly. Why might justifications be offered to agents at all? First and foremost, in a plural world, any view or principle is likely to face any number of challenges at any given time. A view may also seek to challenge the status-quo, or majority opinion on any given issue in any given context. Indeed, we may be inclined to say, with Don Herzog that:

Disagreement and doubt *create* the demand for justification. Unless we are willing to let political debate collapse into posturing and invective, we want to be able to provide reasons for our views, good reasons, terrific reasons if we can. We may even want to prove that our views are correct. We want, in a word, to be able to justify our views.¹⁸

On closer inspection, however, it becomes apparent that it is not from the simple fact of pluralism that the concern for justification arises. Rather, it is the normative way in which that pluralism is evaluated, in conjunction with the threat of conflict which is engendered by it, that generates this concern. There is nothing inherent in pluralism that commits us to offering justification for our views rather than asserting them by threat of coercion. It is only through a particular normative evaluation of pluralism – which regards both individual people and their cultural creations as things of value – that we arrive at an understanding of why we offer justification. Herzog suggests we justify because we are unwilling to let political debate collapse into posturing and invective. Surely it is this and not simply ‘disagreement’ that prompts justification? Similarly, it is not just the fact that people disagree; it is the

¹⁸ Don Herzog, *Without Foundations: Justification in Political Theory* (London: Cornell University Press, 1985), p.18 (emphasis added)

fact that they will often violently conflict, that prompts the need to justify. Because we wish to avoid violence and invective, other routes and methods are sought.

Justificatory arguments may therefore provide one tool for settling conflicts. They can help to sweep away *unnecessary* barriers to acceptance and consent to an idea or principle, such as genuine error and misconstruction. This in turn leaves the problems and concerns associated with pluralism to speak for themselves, uninhibited by their associated misunderstandings.¹⁹ One need not take a stance on the desirability of agreement and consensus in general to suggest that unnecessary barriers to it ought to be removed to allow a more open and honest appreciation of complex pluralism. As Roberts states, ‘reasons ... a theory offers hold only insofar as the account of the circumstances of justice accurately reflects “the world”’.²⁰ To endorse pluralism is to acknowledge the vastly divergent positions, moral and otherwise, that people hold and to acknowledge that consensus is neither a viable (nor, in many cases, a desirable) answer to many of the questions posed by modernity. But, one can surely be sensitive to pluralism without rejecting all forms of consensus. A de facto rejection of *all* agreement seems at best premature. Indeed, why insist on a rejection of consensus, if one genuinely exists but is obscured by misunderstanding?

Justification may also have a more personal role. Stanley Cavell has proposed that one purpose of justification is to ascertain where we ourselves stand on a particular issue. This, he argues, is vital in our ability to reason and offer reasons to other people. While participation in moral debates is indeed essential to develop one’s relationships with others, it is also a vital tool in clarifying our thoughts on our

¹⁹ Stephen Mulhall, *Stanley Cavell: Philosophy’s Recounting of the Ordinary* (Oxford: Clarendon Press, 1994), p.42

²⁰ Peri Roberts, ‘Why Thin Universalism Needs Conceptions of Society and Person’ in Bruce Haddock, Peri Roberts and Peter Sutch (eds.), *Principles and Political Order: The Challenge of Diversity*, (London: Routledge, 2006), pp.111-127 at p.114

own principles. How can we participate in dialogue with different and oftentimes opposing ideas, (which, may, in turn, be something that we value highly in itself), without being as clear as possible on the position we ourselves occupy? Cavell, in a well quoted passage, states:

I have described moral arguments as ones whose direct point is to determine the positions we are assuming or are able or willing to assume responsibility for; and discussion is *necessary* because our responsibilities, the extensions of our cares and commitments, and the implications of our conduct, are not obvious; because the self is not obvious to the self.²¹

Such personal ambiguity, Cavell suggests, is itself of a number of varieties. It might concern the nature of the actual principles that we hold, their extent, content and scope and how far our ‘cares and commitments’, as he puts it, actually extend. It may concern what the nature of those principles *ought* to be: how far those cares and commitments *ought* to be extended. Or it may concern how the consequences of an action do not always track with the intended consequences. ‘In a world where the consequences of action can be multiple, complex, interwoven, and widely ramifying’ – in a world of *plural* consequences – ‘what we did can come as a complete surprise to us’.²² This is true of our principles. The consequences that flow from them cannot always be predicted in a world marked by complex pluralism and justification can help us to work through them thoroughly. Justification is a powerful tool, which helps to make known or explicit our commitments, both to others and to ourselves.

Justification, then, is intended in the second instance to uphold clarity of thought. To demand justification, of others and ourselves, is to demand critical engagement with the principles at issue when forming an opinion about them. To

²¹ Stanley Cavell, *The Claim of Reason* (Oxford: Clarendon Press, 1979), p.312

²² Mulhall, *Philosophy's Recounting of the Ordinary*, pp.43-45

demand justification is to demand that minimal standards of logical coherence and reasoned argument are met. It is to demand the provision of good reasons for holding a belief or principle and for beginning philosophical work from it. To demand justification is also to demand that principles that are to have an impact on public life are to be submitted to public scrutiny. It is to demand that reasons be subjected to critical analysis by those for whom the reasons are intended to have meaning.

The Limits of Justification

Having emphasised strongly the importance of a commitment to justification, to providing upstanding legitimate reasons for the holding of first principles, it is important also to identify the risks of pervasive justificatory procedures. Any project concerned with justification must find a resting place, or a point of departure, in order to avoid the fruitless and potentially damaging justification of *everything* related to a particular principle, or the infinite regress of inferential or deductive justifications.

How then, does one reconcile a commitment to justification with the pragmatic need to identify its limitations? In response, the thin universalist project seeks not concrete, transcendental foundations upon which it might base the construction of regulatory principles, but rather justifiable and valid starting points for further procedures of moral inquiry. It is the concern with pluralism and the thorough understanding of the relationship between facts and principles towards which the thin universalist project aims, that places far stronger emphasis on these more modest and contingent goals. What is sought are not transcendental foundations, but reasoned limits of justification for first principles, in order to render them *useful* to a procedure of construction and hence to thin universalism.

Firstly, only certain points of an expression of principle are subject to the requirements of the kind of justification I am referring to. We only need concern ourselves with justifying that which is morally relevant to the statement (rather than to the act of speaking itself) and are not necessarily required to justify that which does not make a claim about the facts of a given case.²³ The necessities of justification do not extend to justifying discourteous expression, for example.²⁴ But once demands for unnecessary, extraneous, and superfluous justifications have been ruled out, it is possible to begin to characterise where the limits of justification can be drawn. Evans notes that thin universalist arguments tend to be particularly concerned with their own justification. As a result they often become overly preoccupied with reconciling the implications of these justificatory commitments with other normative commitments, most notably with ideas of contingency and fluidity which resist the kinds of concrete foundations one might suspect justification is there to supply.²⁵ The result is argumentation with no natural or discernable limits to where justificatory argument stops, or ceases to be effective; a constant insistence on justification which, many of its critics suspect, is in fact foundational, or which is simply circular.

²³ Such challenges may, therefore, include: challenges to the truth claimed within the statement; challenges to the status of the statement *as* a statement (where it might be claimed to be a command or exclamation in disguise); challenges its meaningfulness; challenges its validity or premise-conclusion relationship; challenges its validity-value, to challenge that it actually makes no argument at all; challenges to the competence of its speaker; and finally, challenges to the ‘knowability’ of the truth of it by anyone. See Wellman, *Challenge and Response*, pp.173-176.

²⁴ Although, of course, Wellman points out that features such as discourtesy must be justified for other reasons associated with uttering statements of principle. Repeatedly shouting one’s point of view, drowning out all others would of course have to be justified, but does not call into question the validity of the statement *per se*. Although it might suggest imperfections in the statement itself, imperfections such that diversions such as shouting are necessary to hide them.

²⁵ See Evans, ‘Thin Universalism and the “Limits” of Justification’, p.77

Without solid transcendental foundations, it is frequently suggested that scepticism must be the default position in *all* moral inquiry.²⁶ Given the sensitivity and caution with which thin universalism approaches complex pluralism it would seem that doubt *must* be the default position. We must be provisional sceptics and suspend all of our convictions ‘until the verdict is in’, rendering all pre-existing normative content invalid. This practice appears to be the most epistemically sound starting point for construction and the safest means of asserting the validity of thin universalist argument. In turn, this also renders invalid the kind of constructivism I have been outlining thus far. Without normative content in the start-up assumptions which are present prior to construction, no such construction can take place. Nothing moves us to construct because we are not moved to respond in any particular way to the facts that surround us. If we wish to avoid the kind of foundations that make many of the convictions of thin universalism redundant, and yet if we also still wish to construct on the basis of how we confront the world around us, some alternative way of regarding the normative content is needed.

Hence, once it is established that what is required is justified, reasoned, valid starting points for moral inquiry, and not concrete transcendental foundations, it becomes clear that we need not be preoccupied with the justification of *everything* associated with moral argument. Those first principles from which we wish to proceed do not find themselves in need of the kind of inferential and ultimately strong foundationalist justification which is the source of the above consternation.

²⁶ See, for example, J.L. Mackie, *Ethics: Inventing Right and Wrong* (London: Penguin, 1977) and Gilbert Harman, *The Nature of Morality* (New York: Oxford University Press, 1977)

First Principles as Non-Arbitrary Starting Points

This account of the limitations inherent in the justification of first principles may not be terribly persuasive on its own. It will appear to be nothing more than yet another foundational argument for some, while to others it will appear dangerously arbitrary and provide no grounds for constructing any kind of action-guiding principles however thin they may ultimately be. What is needed is a concurrent account of how and why the first principles identified at the start of this chapter (and which will give rise to the requirements of thinness and of universalism) can be considered valid, reasoned and non-arbitrary. What validates the particular first principles from which I begin?

The task at hand is to demonstrate *how* and *why* the two sets of first principles constitute legitimate, valid or justified moral motivations, or starting points for a procedure of moral construction. We will remember that they express two key sentiments: [1] the normative significance of ‘human beings’ which delimits the range of legitimate modes of social organisation and [2] respect for the complex plurality of human social and cultural creations which delimits the determinacy of a genuine universal morality.²⁷ In chapter one I made the case, with G.A. Cohen, that *a principle can reflect or respond to a fact only because it is also a response to a principle that is not a response to fact.*²⁸ In chapter two I suggested that constructed thin universal principles are particularly sensitive to the facts of complex pluralism. It is crucial to the coherence of a constructive account, therefore, that those *first* principles that are *not* a response to the facts of complex pluralism are correctly modelled and adequately justified. But the acknowledgement that pluralism poses a ‘problem’ of some kind for social and political organisation itself provides some

²⁷ These are adapted from Evans, ‘Thin Universalism and the “Limits” of Justification’, p.76

²⁸ Cohen, ‘Facts and Principles’, (d), p.214 (emphasis added)

leverage for the justification of those principles. Problematising pluralism in the first instance commits one to certain first principles; principles which may not be explicit either to oneself or to ones intended audience at the onset of the undertaking. In the course of examining concrete circumstances and offering such a problematisation, principles come to light as having bearing on those circumstances. When pluralism is examined as it is in chapter two it becomes clear than an account of pluralism illuminates two principal moral judgements: the two first principles stated above. Pluralism poses a ‘problem’ for social and political organisation *only* when examined with a concern for the normative significance of human beings and a concern to respect that plurality in mind. In the absence of either one of those concerns the ‘problem’ is radically different and drastically reduced.

Without a concern for the significance of human beings we have no reason to pursue universal principles at all, nor do we find ourselves impelled to pursue reasoned arguments, or arguments of *any* kind! Without a concern for the significance of human beings, the best way to secure desired regulatory moral principles is surely through force, the most direct method of ensuring compliance. Similarly, pluralism may not even be considered a relevantly motivating factor in constructing moral principles if that plurality was not viewed as in some sense valuable, legitimate or valid. Without such a consideration, there would be no concern *not* to impose rigid uniformity and determinacy in the regulatory principles to be constructed. There would be little need for construction and coercion would again suffice. Pluralism *only* poses ‘problems’ because of how we normatively evaluate it.

Evaluation of the facts and the practice of justification provide for the kind of clarifying process advocated by Cavell. Indeed, Cohen, in his evaluation of facts and

principles, suggests just such a process. It may be crucial to our understanding of where we stand on a particular issue to examine the facts and to engage in a process of uncovering our basic commitments. As such, it is worth briefly revisiting the example at hand, of which I made use in the first chapter.

Begin with the factual observation of a complex pluralism of human agents and groups. On the basis of this fact, assert that only a thin number of moral principles should be 'universal'. Why does the fact of complex pluralism affirm the need for thinness? Any answer to this will include affirmation of a more ultimate principle: that we ought to respect human societies and their diversity. This notion holds regardless of whether the principle of thinness holds. It also holds regardless of whether the fact of complex pluralism is true. The notion that we ought to respect human cultures and societies is not sensitive to the existence of a complex plurality of such cultures. It may be sensitive to *other* facts such as the integral role of culture and social practice in constituting human identities. But the integral value of 'culture' and 'socialisation' for human identity only supports the notion that we ought to respect human cultures and societies in light of the more ultimate principle that we should respect and cultivate human identities. And so the procedure goes on.²⁹

Rawls too suggests that we can 'arrive' at our first principles. Through careful examination of concrete instances and tracing our moral commitments back it is possible to uncover a set of considered underlying judgements which constitute those first principles. The process of reflective equilibrium is intended to develop principles of justice which either match our assessment of the world as it is, or alter and expand them in an appropriate manner.³⁰ We cannot know, independently of consideration of our own moral circumstances, the exact scale of our own basic

²⁹ See chapter one, pp.51-53

³⁰ For Rawls' consideration of reflective equilibrium see *A Theory of Justice*, pp.17-22

principles. The identification of more basic principles provides for a more explicit consideration of our gauged intuitions or ‘considered judgements’³¹ which emerge from that identification. Both processes involve the exposition of and, if necessary, the revision of our basic judgements or first principles through an examination of concrete factual circumstances.

It is firstly important to note that this kind of procedure demonstrates how many of our moral commitments may be thoroughly opaque to us in the Cavellian sense. Upon examining complex pluralism, principles that may previously have been unknown to us become illuminated. When traced back carefully through the kind of inferential and critical exposition outlined above, our first principles become more explicit to us. By problematising pluralism, therefore, I am also outlining a commitment to a particular set of first principles and it may be that it is only through that problematisation that those principles are perceptible.³²

The case is similar with our history. Thin universalism is motivated in part by a recognition and celebration of the significance of pluralism and contingency. Within that recognition is acknowledgement that modes of social organisation cannot be viewed abstractly. Social relations, political institutions and moral principles cannot be viewed as disconnected from the history and experiences of the people, the society, to whom they belong. It is possible, then, to turn to this history, and to these experiences to provide some explanation and perhaps even justification for the moral commitments out of which thin universal principles are constructed. Upon examination, many events in recent history go some way towards an explanation, and even contribute towards a justification of those commitments that motivate *both* thin and universal justifications. In the West, some of these events are so deeply

³¹ To employ once again the Rawlsian phrase. See Rawls, *A Theory of Justice*, p.47

³² See Cohen, ‘Facts and Principles’, (d), p.214

embedded in the popular psyche that it is hard to imagine how many identities could be constituted without addressing them. If there is indeed a moral imperative towards universal justifications some of the motivation to do so can be found in a shared moral history. If there is an imperative to temper universal justifications according to complex pluralism, the source of this may be found in that history also. By examining those aspects of experience that may help to identify first principles it is possible, in turn, to begin to account for *why* we hold them, and why they provide good reasons for engaging in constructive procedures. ‘History’ *cannot* give rise to first principles but it can help to enlighten us as to why we hold the ones we do, and may suggest why we are justified in doing so. Our history can provide clues about why we construct, what we construct, and why we construct what we construct: thin, yet universal principles.

The purpose of *studying* our history is to develop and cultivate our knowledge. This does not have to be the development and cultivation of our *moral* knowledge, which Rorty would want to reject.³³ It is simply the expansion of the materials upon which we draw in order to help us formulate moral principles and make moral and non-moral decisions. We can therefore look at the moral history of our society, of our culture, our class or our religion alongside that of humanity as a whole in order to help us in this task. We may look at our recent history in particular detail, perhaps because it is more relevant or we have more information on it, perhaps because the values of our recent past most closely resemble our own,³⁴ or perhaps because we can draw from it a more emotive response. Nonetheless, if we

³³ Rorty, of course, has sought to conduct political philosophy detached from a moral epistemology. The most pertinent example of this for present purposes is his ‘Human Rights, Rationality and Sentimentality’.

³⁴ There is perhaps little value in making moral judgements about sexual practices in Ancient Greece, but a great deal of value in examining and making judgements about the relation of sex to the law in latter twentieth century Britain.

characterise our present 'condition' as being *connected* to that history in such a way that allows for critical engagement with it, examination of history helps us to confront our moral insecurities. By confronting our history we temper our moral judgements accordingly, adding to the knowledge we possess that informs our moral decision-making and helping us to make better, more attuned moral judgements.

What should now be apparent from these accounts is that by problematising pluralism and our experience of it we come to understand our responses to those experiences, and the first principles that inform them, as *fundamentally non-arbitrary*. In this crucial sense our first principles, while they need not provide a *foundation* for thin universal regulatory principles, they may provide a valid *point of departure* for the procedure of construction of which thin universal regulatory principles are an outcome. Our responses to pluralism and our responses to history, experienced or studied, are defensible as non-arbitrary in a way that is usefully applicable to a constructed thin universalism. Cohen, of course, is not interested in how we might go about justifying the principles that emerge from considering the relationship between facts and principles. Indeed, without further consideration, they look a great deal like a set of moral intuitions which we arrive at through reasoning theoretically and practically. The problem, of course, is that identified by Rawls: intuitions alone simply provide an unranked plurality of first principles which offer too little to go on.³⁵ Furthermore, simply appealing to intuitions looks dangerously arbitrary; there are a great many intuitions that prove to be ill-advised or imprudent, others are simply mistaken, while many more may be illegal or positively dangerous. We might be concerned by the idea of simply 'running with our intuitions' in all

³⁵ And, indeed, this is precisely why Rawls favours his own political constructivism to any form of rational intuitionism. See Rawls, *A Theory of Justice*, pp.34-40; for a consideration of intuitionism in comparison to constructivism see his *Political Liberalism* (New York: Columbia University Press, 1993), pp.90-99

circumstances as a default course of action. Any number of intuitive courses of action could be the wrong ones. The principles that issue from careful consideration of complex pluralism are, however, not simply intuitions of this kind. They are not moral gut reactions to observable features of the world. The principles that are taken here to be a point of departure for a procedure of construction are genuinely compelling, and have reverberated throughout history and society. We have good reason, therefore, to take these concerns seriously.

Doubt and Faith

In light of these assertions a de facto assumption of scepticism akin to that of the natural sciences starts to seem somewhat misplaced. As a starting point for moral inquiry it is regarded by many as intellectually unsustainable, morally imprudent and realistically impracticable. This seems borne out by experience: to suspend all beliefs prior to a conclusive intellectual outcome is to suspend indefinitely morality itself and all attempts to address the immediate problems that face us. What's more, it seems naïve to assume that simply because one endorses scepticism, that one can forgo the kind of requirements demanded by justification. It is surely the case that one must provide some justification for holding to a sceptical default position? Doubt requires as much justification as belief and to place a belief that we *already* hold into doubt requires reasons as deeply compelling as those we would need in order to adopt a new belief.³⁶

The case might also be made that in order to justify *everything* one believes is burdensome to the extent that no end-point justification (of the actual principle at stake) could ever be made because there would always be something somewhere in

³⁶ Matthew Festenstein, *Pragmatism and Political Theory: From Dewey to Rorty* (Cambridge: University of Chicago Press, 1997), p.5

the network of one's beliefs that needs further justification. The obvious result is that the justification of any little thing I believe turns into the overwhelming demand to justify *everything* I believe.³⁷ Anti-foundationalists of various kinds go further. Rorty, for example, suggests that, in a Western liberal context, Western liberal practices do not require foundational furnishing or ultimate, independent justifications, and can flourish more fully without them.³⁸ This sentiment is reflected in Rorty's pragmatist forbears. In *The Will to Believe* William James critiques what he characterises as a misplaced insistence on the requirements of evidence for the justification of all beliefs.³⁹

We are often in some sense endowed with the 'will' of James' title: 'If your heart does not *want* a world of moral reality, your head will assuredly never make you believe in one. ... When we stick to it that there *is* truth, we do so with our whole nature, and resolve to stand or fall by the results.'⁴⁰ Questions of truth aside, it is correct to say that we frequently are, in one way or another, invested in the results of moral investigations. We are affected and moved by the possible outcomes and as a result moral questions tend to present themselves as 'questions whose solution cannot (always) wait for sensible proof'.⁴¹

The 'problem' of violent conflict that becomes apparent upon consideration of the complex pluralism of the modern world can certainly be regarded as urgent. Again, James asks: 'Are there not somewhere forced options in our speculative questions, and can we ... always wait with impunity till the coercive evidence shall

³⁷ Evans, 'Thin Universalism and the "Limits" of Justification', pp.78-79

³⁸ Festenstein, *Pragmatism and Political Theory*, p.113.

³⁹ William James, 'The Will to Believe' in *The Will to Believe and other Essays in Popular Philosophy* (London: Longmans, 1917)

⁴⁰ James, 'The Will to Believe', pp.22-23

⁴¹ James, 'The Will to Believe', p.22

have arrived?’⁴² So we are sometimes forced to make choices prior to the elucidation of all available evidence. Many of these choices cannot be pre-empted, avoided, or delayed. We cannot afford to wait and see; we cannot afford to be sceptics in all things.

When faced with this kind of choice, we may not know why we ought to trust those moral intuitions or first principles in which we believe prior to the outcome of inquiry. James speaks of the ‘prestige’ of certain opinions, which grip us with a faith-like appeal, such as scientific facts, political ideals, religious beliefs, economic values and such, without holding easily identifiable supporting reasons.⁴³ How we arrive at such a sensation of prestige, and how it bestows authority on our moral beliefs I have sought to outline already. They are judgements that have reverberated through and been shaped by the conduct of society and history. They have emerged from a process of careful reflection and are tentatively posited as valid points from which further inquiry can begin. And it is not always the case that these basic beliefs are arrived at through the presentation and examination of all possible evidence. For James, then, there is something at least partially contingent and non-foundational about the location of our basic moral convictions.⁴⁴

But James goes further. It may be the case that it is only with a *faith* in certain beliefs that those beliefs can be realised. There are, he argues, perhaps cases where a fact cannot come at all unless a preliminary faith exists in its coming.⁴⁵ Society itself could not exist without a certain degree of faith in those others with whom we share

⁴² James, ‘The Will to Believe’, p.22. This sentiment is echoed by Bruce Haddock in his ‘Practical Reason and Identity’ in Bruce Haddock and Peter Sutch (eds.), *Multiculturalism, Identity and Rights* (London: Routledge, 2003), pp.10-24

⁴³ He states: ‘we all of us believe in molecules and the conservation of energy, in democracy and necessary progress, in protestant Christianity and the duty of fighting for the “doctrine of the immortal Monroe,” *all for no reasons worthy of the name.*’ See James, ‘The Will to Believe’, p.9 (emphasis added)

⁴⁴ James, ‘The Will to Believe’, p.11

⁴⁵ James, ‘The Will to Believe’, p.25

it. We tend to cooperate as individuals based on a certain degree of faith in others, and not purely out of a Hobbesian self-interest.

Faith in those first principles that emerge from an analysis of complex pluralism is far from *blind* faith.⁴⁶ The first principles which inform the construction of thin universal regulatory principles are particularly sensitive to the justificatory requirements laid out here. Indeed, the relationship between the first principles from which construction proceeds and the justification of those first principles suggests that commitment to them is reasoned. It is surely the case that we would question the justification of principles that called upon us to reject justification in favour of coercion? It is not the case that we stumble upon our first principles and seize them as moral truths. In fact, the path by which those first principles are reached is closely examined and carefully chosen. The well-trodden path is not always the one taken, though it is always questioned as to *why* that way is most frequently chosen. There will often be much backtracking and sidestepping and, as I have sought to demonstrate, the destination is often unknown. Yet the path makes itself apparent, even if we are surprised still to find it, or taken aback at where it appears to lead.

Justification and Construction

It is important firstly not to overstate the extent to which faith can bolster our first principles and secondly not to assume that justification can be completely forgone. The idea of faith does not justify first principles; faith, I have sought to show, is justifiable when that in which we have faith is arrived at through reflective processes of examination and critique of the facts and our considered responses to them. Hence justification is not just something that is 'nice if you can get it'; it plays a far more

⁴⁶ Evans, 'Thin Universalism and the "Limits" of Justification', pp.89-92

substantial role in validating one's position. I am not suggesting that justification of first principles be forgone, simply that it be understood in such a way as to free it from the constraints and misconceptions of common foundational accounts of what it is to justifiably hold a basic commitment. *Without* justification, accounts of and debate over our basic commitments quickly degenerate into empty rhetoric, invective, sound bites and slogans with little or no substance, and unchallengeable because all positions are held on the basis of dogmatic 'faith'. And the victory of 'credulity' over caution, we might be advised to remember, has been the source of many of those events in our past that inspire the first principles to which we continue to cling.⁴⁷

It is possible that we are seeing the effects of a 'weak' commitment to justification in those offered by coalition governments regarding many aspects of the 'war on terror' since 9/11.⁴⁸ The growing sensitivity towards the complexities of pluralism in Western moral and political philosophy has been accompanied by an ever increasing emphasis on the 'clash of values' in every-day political discourse. The rhetoric of 'terror' and of 'fundamentalism' in the United States has been accompanied by a campaign to 'export' the Western values of democracy, freedom, toleration and human rights to the rest of the world. Concerns over this campaign have been all too easily dismissed simply as Christian fundamentalism on the part of

⁴⁷ See Evans, 'Thin Universalism and the "Limits" of Justification', p.91

⁴⁸ This situation is identified quite succinctly by Slavoj Žižek concerning the case of the war in Iraq. In *Iraq: The Borrowed Kettle*, Žižek forwards a scathing critique of the justification for the 2003 war: (1) Saddam Hussein possesses weapons of mass destruction (WMDs) which pose a 'clear and present danger' not only to his neighbours and Israel, but to all democratic Western states. (2) Even if Saddam does not have any WMDs, he was involved with al-Qaeda in the 9/11 attack, so he should be punished. (3) Even if there is no proof of the link with al-Qaeda, Saddam's is a ruthless dictatorial regime, a threat to its neighbours and a catastrophe to its own people, and this fact alone provides reason enough to topple it. Žižek, in his inimitable style, proceeds to show how this trend seemed to be associated with almost *every* aspect of the Iraq conflict. His point here is that, in the case of Iraq, where numerous sundry justifications are offered and argumentation is inconsistent there are frequently other reasons, not part of the justifications offered that lie behind them. This, in turn suggests that the justification that are offered in those cases are specifically intended to mislead and conceal. See Slavoj Žižek, *Iraq: The Borrowed Kettle* (London: Verso, 2004), ch.1

the Bush administration, but it reflects something more deeply rooted and more broadly acknowledged in much of Western culture. The belief that the West alone (and the US in particular) has 'got it right' and that the discourse of democracy, rights, equality and citizenship are the only means by which any society can progress, is more prevalent than ever. Where particular values are being touted as universal truths and imposed on others, oftentimes by force, and accompanied by disregard for the rigours of justification that prompts moral and social catastrophes such as the Iraq War.

Of course, the refusal to allow justification to become pervasive and to re-examine and detail its limits certainly does not indicate a 'weak' commitment to it. But one can undoubtedly imagine the kind of abuse it might be subjected to – the random and haphazard discarding of the requirements of justification in situations where providing them is problematic. Where justification is weak, inadequate or inconsistent, one often finds ulterior motives which are not as wholesome, and certainly not as adequately justified as they appear to be. The 2003 Iraq War is perhaps a case-in-point of this. There remains good reason to call for a reassessment of the procedures of justification, suggesting that it fulfils other roles than simply providing a concrete and transcendental foundation for our moral beliefs.

We may rightly be concerned, given the evaluation of complex pluralism, about asserting first principles which constitute an ahistorical, transcendental, eternal foundation for establishing further moral principles. The justification of first principles, however, is about identifying and establishing acceptable assumptions which constitute starting points for construction. It is not about discovering

something that exists ‘beyond culture’⁴⁹ and in this way is not reliant on claims about moral knowledge, or about transcendental moral foundations, or even about ‘human beings’. It is compatible with claims of contingency, even almost total moral relativity, and it is certainly compatible with complex pluralism.

If it is the case that one must be suitably justified in holding *any* basic moral commitment and that one must also be committed to justifying that fact, then one cannot help but assert *some* kind of starting point. Ultimately, by seeking to justify the first principles which are illuminated through a consideration of complex pluralism – respect for individual persons, respect for their cultural creations – commits one *to* those first principles. The very giving of justifications and the act of justifying reflects a specific set of normative commitments, which themselves are reflective of the first principles I have identified. Justification reflects a basic commitment. It is, therefore, partly the commitment to justification that makes a thin universalism thin, makes it universal, and makes it the product of construction. It is the moral commitment inherent but not always explicit in justification that make it so important, both in moral discourse generally, and to a thin universalism more specifically. Simply committing oneself to justification is an expression of a particular set of ethical commitments. Importantly though, this does not damage the principles under consideration, but affirms them. It demonstrates the reflexivity by which they were reached and their considered nature. The first principles that inform a thin universalism are fundamentally non-arbitrary.

If we are to say, then, that our basic commitments are to underpin a procedure of construction of regulatory principles which are intended in some sense to be ‘principles for all’, it will always be prudent to offer some justification as to why this

⁴⁹ Clifford Geertz, ‘Anti Anti-Realism’, *American Anthropologist* Vol.86 (2), 1984, pp.263-278 at p.265

is so. To proceed from the requirements of acceptability and other such basic standards of reason giving is to make an argument not for the imposition of moral values but to engage in a moral dialogue with others. This dialogue will of course involve persuasion, exchange and compromise, but the desired outcome is one of mutuality and accord, not necessarily concerning the intricacies of how a society ought to be run, but concerning the shared ethical standards according to which such debates take place.

This chapter has sought to establish as valid the first principles out of which regulatory principles may legitimately be constructed. It has sought to justify them, to show how they provide warrant to engage in the procedures of construction that follow and to show how they legitimately fulfil a role in that procedure. It is significant to understand, then, that the engagement in justification of first principles as starting points *is itself* part of the procedure of construction. Justification is one of the first stages of construction – it seeks to establish as valid one of the materials of construction. Furthermore, it seeks to establish them as valid in the knowledge of a complex plurality of agents and so demonstrates a commitment to the first principles about which they are concerned.

The materials of construction in place, I go on in chapters four and five to discuss the construction itself. My attention in chapter five is focussed on the construction of consent, while I turn my immediate attention in chapter four to the construction of thin universal regulatory principles themselves.

- four -

Constructing Thin Universal Regulatory Principles

Chapters one to three have sought to establish that it is *possible* to construct principles of regulation understood as principles that can be adopted in order to regulate human affairs, to solve conflicts, and to meet some of the moral demands of modernity. They can be constructed from facts of the world, the facts of complex pluralism, and from our ‘first principles’, our considered basic judgements about those facts. Complex pluralism will tend to enrich our various social lives but will also tend to drive us towards violent conflict. Consideration of complex pluralism can highlight first principles, which in turn motivate and orient the character of the principles of regulation constructed from those facts, in order to address those conflicts.

Chapters four and five go on to suggest that through a constructive undertaking between social agents, from individual people to different societal groups, regulatory principles emerge that reflect both those facts and first principles. They establish more substantively, though still somewhat abstractly, what the outcomes of construction might be, given those facts and principles. Chapter four addresses how and why the principles of regulation that emerge from construction are ‘thin universal’ ones. It shows how complex pluralism demands that our first principles be followed through in a particular way, or that our first principles demand that we respond to complex pluralism in a certain way. That way is the construction

of thin universal principles, which others can accept when we engage in the regulation of our affairs.

With the materials of construction in place, an account of the procedure of construction highlights *why* pluralism is so significant for moral discourse and why it compels a specifically thin universalism, but also why ‘pluralism’ alone does not provide a de facto compulsion to do *anything*. The chapter therefore examines how complex pluralism, considered in light of our first principles, provides reasons for adopting certain principles of regulation that ought to bear certain characteristics. It considers how, why and in what way constructed regulatory principles are ‘universal’, and how, why and in what way they are ‘thin’.

Within this discussion the chapter considers the ‘ethnocentricity’ critique of ‘universal’ principles: that they are *not* universal but rather an expression of particular cultural norms. If this is so then ‘universals’ are ethnocentric and are, by extension, disturbingly morally and culturally imperialistic in a way that not only logically contradicts the moral commitments of the thin universalist project, but that is morally inappropriate, even catastrophic, in its own right. As such, ‘thinness’ emerges as a response to these powerful concerns and the chapter contends that constructing universalism is less problematic than its detractors might think, but *only* if it is ‘thin’ at the same time.

Furthermore, chapters four and five establish the construction of thin universal regulatory principles as the first of a *two stage* procedure of construction, akin to Rawls’ ‘two stages of theory formation’.¹ Thus far I have only alluded to, but will across these chapters flesh out more fully, these two stages whereby regulatory

¹ See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993); Jürgen Habermas, ‘Reconciliation Through the Public Use of Reason: Remarks on John Rawls’ Political Liberalism’ in *The Journal of Philosophy*, Vol.92 (3), 1995, pp.109-131, at p.121; and John Rawls, ‘Reply to Habermas’ in *The Journal of Philosophy*, Vol.92 (3), 1995, pp.132-180

principles are constructed through open philosophical reflection, and consent to them is constructed through continuous engagement in public discourse. The two stages are strongly interconnected and, while distinct, each impacts upon the conduct of the other. It is through *both* constructions that validity is conferred upon regulatory principles.

Chapter five takes up the related question of how consent to thin universal regulatory principles might be constructed. What emerges in chapter four is an account of a constructed set of thin universal regulatory principles which serve a specific set of functions and address specific moral questions. The chapter forms part of the increasingly specific account of these principles that has been developing throughout the thesis and begins with a reconsideration of the character of thin universal principles.

Moral Minimalism as Thin Universalism

The thin universalist project is an attempt to secure the validity of certain moral judgements in a world marked by a complex plurality of viewpoints. Can we still maintain ‘principles in a plural world’?² How can we make genuinely valid judgements about events or actions that take place in frameworks of value that are differently constituted to our own? A thin universalist project offers one way of pursuing these questions, but as my introduction showed, there are many ways of pursuing thin universalism. One method critiqued was the idea of a moral minimum applicable in all cases. This idea captures many of the requirements of securing principles in a plural world *and* endorses, critically, the plurality of social worlds in which we live.

² See Bruce Haddock, Peri Roberts and Peter Sutch, ‘Introduction’ in Bruce Haddock, Peri Roberts and Peter Sutch (eds.), *Principles and Political Order: The Implications of Diversity* (London: Routledge, 2006), pp.1-9 at p.2

The idea of a moral minimum has emerged in connection with value pluralism. Because value pluralism presents a challenge to traditional religious, metaphysical and rationalist accounts of morality it provokes the suspicion that what logically follows from it is a form of moral relativism. If, as Isaiah Berlin argues, there are not one, but valuable human ends, if there is value in many ways of life, and if there is more than one answer to many moral questions,³ it seems likely that the variety of ends, ways of life, principles and values that human beings will pursue is *limitless*. Such a plurality will include some ways of life, some principles and some values that will be incompatible, even hostile to others. Some will appear downright abhorrent to others; some will actually *be* downright abhorrent.

As such, theorists of value pluralism have typically posited that it is premised on what William Galston calls a ‘floor of basic moral decency’ which is derived from Herbert Hart’s ‘minimum content of natural law’.⁴ Berlin is careful to assert that ‘relativism is not the only alternative to universalism ... nor does incommensurability entail relativism.’⁵ ‘Pluralism is not the same as relativism’, Galston claims.

Philosophical reflection supports what ordinary experience suggests – a non-arbitrary distinction between good and bad or good and evil. For pluralism as for any serious position, the difference between (say) saving innocent lives and shedding innocent blood is part of the objective structure of the valuational universe. This provides a rational basis for defining a floor of basic moral decency for individual lives and for societies. ... As Hampshire ... puts it, “there are obvious limits set by common human needs to the

³ See Isaiah Berlin, ‘Two Concepts of Liberty’ in *Four Essays on Liberty* (Oxford: Oxford University press, 1969), p.169

⁴ Galston, William Galston, ‘Value Pluralism and Liberal Political Theory’ in *The American Political Science Review*, Vol.93(4), 1999, pp.769-778 at p.770; H.L.A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1994), pp.193-200

⁵ See Isaiah Berlin, *The Crooked Timber of Humanity* (London: Fontana, 1990), p.85

conditions under which human beings flourish and human societies flourish.”⁶

However, it is far from ‘obvious’ what human needs must be fulfilled in order for human beings and human societies to ‘flourish’, and *where* one draws the line under a genuine plurality of human goods and values remains uncertain.⁷ It remains even less clear as to what kind of society would best serve those needs, or what kind of principles one might seek in order to secure them. To premise pluralism on a basic floor of moral decency, therefore, prompts the questions that motivate the thin universalist project, it does not provide answers to them.

It is important to remember that the thin universalist project is a response *not* to this kind of *value* pluralism but to the complex pluralism of actually held views. Its concern is not with what can be considered valuable and not valuable or where the line between them must be drawn. The concern is, however, similar. The development of principles capable of regulating our affairs, out of first principles and the facts of pluralism *do* take on a character similar to that of moral minimalism, but importantly *do not* make the strenuous metaphysical claims about the nature of value inherent in value pluralism. They do not presuppose either the existence, or the validity of any kind of ‘floor of basic moral decency’ outside of that laid out by the first principles outlined in the previous chapter.

As chapter two makes clear, *complex* pluralism does not demand the acceptance of a plurality of *values*. It does not posit an account of the objective structure of the ‘valuational universe’ but rather simply acknowledges a fact about

⁶ William Galston, ‘Value Pluralism and Liberal Political Theory’ in *The American Political Science Review*, Vol.93 (4), 1999, pp.769-778, at p.770. Galston’s reference to Hampshire is quoted from Stuart Hampshire, *Morality and Conflict* (Oxford: Blackwell, 1983), p.155

⁷ Because the thin universalist project largely abstains from a comprehensive characterisation or exhaustive list of first principles, it resists characterising them as ‘thin universal’. First principles, as chapter three posits, are characterised simply by their fact-independence.

the broader social world – that people’s evaluative views are observably diverse. As complex pluralism eschews any stance on the structure of the valuational universe it no longer begs the question with regard to a floor of basic moral decency. Because it sets aside the question of what is or could be valuable it does not presuppose any kind of limit on what can rightly be regarded as such. This then becomes one of the tasks of the thin universalist concerned with complex pluralism; it establishes the project, it does not suppose any kind of solution to it. So where can a line be drawn beneath the observable pluralism of views which surround us? How are we to decide upon which of these multifarious views are legitimate and which are illegitimate? The thin universalist project concerns the *pursuit* of a principled pluralism of actual views premised on a ‘minimum’ or ‘thin’ universalism of constructed fact-dependent regulatory principles; it does not *presuppose* one. The thesis thus far has sought to establish that such a project is plausible and desirable. I now take up the explicit workings of that construction.

My focus is now split between consideration of the ideas of ‘thinness’ and of ‘universalism’. This segregation is necessary because, while the concepts are clearly interlinked, they reflect two distinct considerations and perform different tasks as characteristics of constructed regulatory principles. Nonetheless, certain questions will inevitably permeate both discussions. Given the complexity of the pluralism that characterises so many societies, what reason is there to suggest that moral universalism in *any* form is still justifiable? Given too that it would not be unreasonable to be pessimistic about the scale and extent of the conflict between agents that pluralism seems to engender, what reason is there to suggest that universal principles of any kind are still relevant? Conversely, if universalism *is*

defensible, why concern ourselves with being ‘thin’ – surely ‘right is right’ regardless of complex pluralism? Why do we need fact-dependent regulatory principles of any kind, why are fact-independent first principles alone insufficient? How and why is a thin universalism an *appropriate* response to the facts of complex pluralism? How do ‘thin’ ‘universal’ regulatory principles help to preserve that pluralism in a principled way?

What follows explores more extensively both the derivation and the defence of the thin universalist project. It explores the ideas of thinness and universalism and how they are constructed in response to the materials already established. In this way, suitable candidates for common moral principles are those which do not rest on strenuous claims which require agents to radically change their world-views to be acceptable.⁸ Such a candidate will offer means of retaining a strong, coherent, ‘pluralistically enlightened’ universalism; a universalism that ‘makes sense’.⁹

Universalism

I begin with ‘universalism’. At least some constructed regulatory principles will bear universalist characteristics; but there are many ways of understanding what it is for a principle to be universal. Before proceeding with an account of their construction, it is therefore important to clarify what exactly is meant by the term ‘universalism’ when used in reference to regulatory moral principles. The underlying notion of universalism at work within the thin universalist project reflects the complexity of many aspects of moral deliberation concerning pluralism. Just as many human

⁸ As Judith Butler suggests, simply making a convincing argument is not enough to persuade people to see the world anew. See Judith Butler, ‘Universality in Culture’ in Martha Nussbaum and Jean Cohen (eds.), *For Love of Country: Debating the Limits of Patriotism* (Boston: Beacon, 1996), pp.45-52

⁹ Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Age* (Oxford: Princeton University Press, 2002), p.36; Steven Lukes, *Liberals and Cannibals: The Implications of Diversity* (London: Verso, 2002), p.12

societies contain a plurality of social, economic and cultural groups, just as human beings are likely to adhere to a diversity of views, just as there are likely to be numerous justifications and justificatory strategies for a variety of moral principles, so it seems obvious to assume that the scope, relevance and applicability of regulatory principles will *not* be the same in all cases. Some will be universal, while others will invariably be particular, perhaps even relative. Some considerations within the moral domain may require or demand a universal (or near universal) regulatory principle. Some actions prompt universal commendation, while others, universal condemnation.

On the other hand some considerations make little sense and are even morally unacceptable expressed in purely universal terms and therefore require more particular principles. Regulatory principles that are less than universal will be bounded in a variety of ways: along local, national, or regional lines, or according to religious, ethnic, cultural or social divides. For example, principles governing work and leisure, sexuality, health and hygiene, and any number of further aspects of day-to-day life will vary according to the character of the society.¹⁰ This plurality of moral domains precludes the contention that *all* principles must be universal and therefore uniform or homogenising, and the reverse claim, that morality is *entirely* culturally bounded and absolutely relative.¹¹ Accusations, then, that universalism demands strict impartiality between all persons (that we must, for example, treat our own children with no more care and concern than anyone else's), rigorous uniformity

¹⁰ Perhaps the most obvious proponent of this kind of pluralism is Michael Walzer. See his *Spheres of Justice* (New York: Basic Books, 1983), pp.3-6 and throughout.

¹¹ See Onora O'Neill, *Towards Justice and Virtue*, pp.52-54, see also ch.4 concerning the scope of ethical concern.

(that universal implies denial of all differences between persons),¹² the eradication of difference, or even those people who are different, are misplaced.

This however does not answer the questions with which we are concerned, it merely helps to frame them: In what way are regulatory principles universal and *how* and *why* does construction yield universal principles? Universalism can refer to one or more of a cluster of related concepts which refer variously to characteristics, dispositions and categories pertaining to human beings. It can, at the same time, also be established and understood conversely from a number of other concepts that have emerged in response to it.

‘Universalism’ is an empirical or cognitive concept that can describe some facet of ‘human nature’ as a whole, such as a capacity for reason, or a set of basic needs, potentialities, capacities, capabilities and vulnerabilities.¹³ But this can be distinguished from moral universalism or cosmopolitanism, captured in Kant’s categorical imperative that ‘I ought never to act in such a way that I could not also will that my maxim should be a universal law’.¹⁴ It is also captured by Seyla Benhabib: ‘All human beings, regardless of race, gender, sexual preference, ethnic, cultural, linguistic or religious background are to be considered moral equals and are therefore to be treated as equally entitled to moral respect’.¹⁵

Moral universalism can be contrasted with moral particularism which conversely asserts that

¹² This well-established critique of moral universalism can be found in various feminist critiques. See Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990) and Carol Gilligan, *In A Different Voice: Psychological Theory and Women’s Dependence* (Cambridge MA: Harvard University Press, 1982)

¹³ Lukes, *Liberals and Cannibals*, p.13 and Benhabib, *The Claims of Culture*, pp.26-27. See also O’Neill in *Towards Justice and Virtue* and Martha Nussbaum in *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000)

¹⁴ Immanuel Kant, *Groundwork for the Metaphysics of Morals* (London: Hackett, 1993), pp.402, 421, 429 [Prussian Academy pagination]. Many contemporary liberals, such as John Rawls, Ronald Dworkin, Alan Gewirth, Onora O’Neill and T.M. Scanlon are deemed to be ‘Kantian’ universalists.

¹⁵ Benhabib, *The Claims of Culture*, p.27

One ought to give preferential consideration to the interests of some persons as against others, including not only ones self but other persons with whom one has special relationships, such as, for example, the members of one's own family or friendship circle or local community or nation or various other restricted social groups.¹⁶

Particularism claims a degree of moral *inequality* dependent on the nature of one's relationships with others. On various particularist models we might see ourselves as having a stronger moral commitment to other, smaller, more particular groups of which we are a part, or to whom we have commitments, such as our own families, to members of our own community, state or religion.¹⁷ Universalism questions particularism's claims in favour of a universal moral egalitarianism, often expressed through the language of justice or rights. While it is important to note that universalism need not totally deny the claims of moral particularism, it does reject the claim that the particular could completely usurp *any* sense of wider moral commitment.¹⁸

Some claim that this moral universalism can be extended into a universal human entitlement to certain basic *legally recognised* rights, securing the rights to life, liberty, security, due process before the law, and freedom of speech and association, including freedom of religion and conscience which ought to be

¹⁶ Alan Gewirth, 'Ethical Universalism and Particularism' in *The Journal of Philosophy*, Vol.85(06), 1988, pp.283-302, at p.283

¹⁷ David Miller uses the example of two students who are equally in need of urgent medical attention – one from his own Oxford College and one from another. It is only possible to take one to hospital and Miller makes the case for attending to the needs of the student from his own college first. This kind of preferential attendance to ones own inside group is the very essence of particularism, and powerful and robust claims it often makes upon many of us. See David Miller, 'The Ethical Significance of Nationality', in *Ethics*, Vol.98 (4), 1988, pp.647-662

¹⁸ Indeed, it should be apparent that *thin* universalism is premised on the notion that many – perhaps even a vast majority – of our moral commitments *are* justifiably particular, but that we cannot entirely do away with broader universal judgements.

accorded universal respect by all legal systems.¹⁹ But of course the human race is subdivided into exclusionary nation-states, each of which has jurisdiction over a given population and territory. While there *are* a number of trans-, supra- and extra-national legal bodies and instruments, it is still the nation-state that is formally recognised as sovereign in international law, which for now inhibit the realisation of a legal universalism. But many universalist theories, thin or no, have variously utilised *all* of these descriptive and prescriptive universalisms in their arguments. This establishes the question of what is universal about *constructive* thin universalism.

The ‘universal’ aspect of thin universalism can be viewed from two distinct points of view. Onora O’Neill suggests that universality can be a characteristic both of the *form* and of the *scope* of a moral claim.²⁰ ‘Formal’ universalism pertains not to the scope or domain in which principles are binding, but to the cases to which they apply. Hence a principle is formally universal if it applies to *all like cases within a given domain*. That domain could be any business, school, community, society, culture, nation, religion, class or gender. Once the domain is identified and fixed, a principle can be said to be universal if it applies to all like cases within it. ‘Like cases’ are held to be all given situations where the same criteria can be applied.²¹ For example, in the UK the extension of the franchise to women following the Representation of the People Act of 1918 granted ‘universal suffrage’ to all who fulfilled the criteria set by age and citizenship. Children were not enfranchised, nor were non-UK citizens, yet the Act is ‘universal’ within a given domain.²²

¹⁹ Benhabib, *The Claims of Culture*, p.27-28

²⁰ O’Neill, *Towards Justice and Virtue*, p. 11

²¹ O’Neill, *Towards Justice and Virtue*, pp. 11, 54

²² The Representation of the People Acts were a series of UK Acts of Parliament from 1867 that extended voting rights, creating universal suffrage in 1928. The 1918 act gave the vote to men over the age of 21 and women over the age of 30, and the 1928 act extended the vote to women over the

Universality of form is, in part, about logical consistency; about treating like cases in a like manner. Because of the emphasis placed upon construction of *consent* within thin universalism and constructivism, it seems likely that very many, perhaps the majority, of principles will be ‘universal’ but *only* within a limited domain. This is purely because coherent and consistent argument are important parts of moral and political discourse, but only rarely do the requirements of consistency extend beyond the boundaries drawn by human social systems. Universality of form is also only one dimension of the kind of universalism that the construction of regulatory principles pursues. It simply establishes minimum conditions of logical consistency, which *alone* do very little work within the thin universalist project.²³ One needs first to fix and justify the *scope* of an argument before establishing the *formal* conditions of universalism.

Given that regulatory principles can be universal within a given domain, and with a plurality of relevant domains in mind, it follows some will be of only *limited*, while others will be of *broader* scope. Some principles that issue from construction will be of universal, inclusive or cosmopolitan scope. Principles can therefore be universal in form whilst being limited in scope. Indeed, particularist, communitarian and even relativist thinkers need not deny that principles are formally universal, provided their domain is clearly defined. Many reject however, the plausibility of principles of genuinely cosmopolitan scope or universal inclusivity.²⁴ In the vocabulary of thin universalism there is a strong connection drawn between universal

age of 21. Certain people had the right to more than one vote; this was abolished by the 1948 act. The 1969 act reduced the minimum age of voting to 18.

²³ What it does do is draw a line under what is an acceptable argument. We need not seek to take on board the position of those who advocate equality in one breath whilst uttering racist remarks in the next.

²⁴ Although thin universalist arguments tend to circumvent this rejection by constructing thin universal principles that aim to be acceptable to groups, or by showing how a thin universalism can cohere with their moral claims. In this way thin universalism resonates far more strongly with many of its opposition doctrines than it might first appear.

form and cosmopolitan scope. Those principles that it seeks to construct as 'universal' are both universal in form and cosmopolitan in scope. Thus thin universalism is modelled as a form of cosmopolitanism, as a set of universal moral concerns which are intended to transcend legally defined or contextual boundaries.

Constructing Universalism

Thin universalism claims the need for at least some principles that are inclusive, cosmopolitan or universal and which can provide basic orientation for agents seeking to navigate a plural world. But how and why does construction yield principles that are universal? How does one proceed from an account of complex pluralism and a set of first principles grounded in ideas of respect for persons and respect for pluralism in order to construct regulatory principles that are universal in the way described? Given the conditions of complex pluralism, the first principles by which it is viewed, and the relationship between facts and principles, the scope of the principles in a constructive account of thin universalism will be, to paraphrase O'Neill, 'more-or-less cosmopolitan'.²⁵ To accept the complex plurality of views that exists within cultures and societies and to accept a plurality and interconnectivity of those cultures and societies is to accept that certain morally significant actions will have a *broader* impact than principles of restricted scope can accommodate. Justifications for the endorsement, prohibition, or requirement of certain actions, may need to have more than local or restricted force.

These assertions require further examination, beginning with the compelling notion of interconnectivity. In chapter two, I explored a dimension of pluralism referred to as 'interconnectivity'. This was the claim that 'in the age of modernity, all

²⁵ O'Neill, *Towards Justice and Virtue*, p.68

societies must confront one another and participate (to whatever extent) in a global plurality of states, societies, nationalities, ethnic groups, religions, cultures, classes and corporations.²⁶ The world is made up of actors, some of whom have legal recognition, others seek it, and others do not. These actors have become increasingly obvious to one another and few societies can genuinely ignore or be ignored by others. What is more the relations between them are becoming ever more complex with vast movements of people, information, goods, services and ideas across traditionally defined territorial boundaries.

These issues have been addressed predominantly within the context of the globalisation debate. It is the mechanisms of global capitalism and the international system of market exchange that have had more impact than any other phenomena in recent times on how societies interact with one another. And globalisation implies an increasing sense of economic, social, cultural, technological, and political interdependence, integration and interaction. The International Monetary Fund (IMF) describes globalisation as a historical process:

It refers to the increasing integration of economies around the world, particularly through trade and financial flows. The term sometimes also refers to the movement of people (labor) and knowledge (technology) across international borders. ... reflecting technological advances that have made it easier and quicker to complete international transactions – both trade and financial flows. It refers to an extension beyond national borders of the same market forces that have operated for centuries at all levels of human economic activity ...²⁷

²⁶ See chapter two, above, p.101

²⁷ International Monetary Fund, 'Globalisation: Threat or Opportunity', *International Monetary Fund Website*, 2002, (<http://www.imf.org/external/np/exr/ib/2000/041200.htm#II> November 23rd 2006)

The debate over globalisation has shifted to that of its merits and there remains little debate over whether globalisation (however conceived) actually exists. One need not ‘come out’ in favour of moral cosmopolitanism or universalism of any kind, to recognise the forces of globalisation at work on an unprecedented scale.²⁸

This growing integration, perhaps even interdependence, is not simply confined to the market sphere. Conceptions of regional and global *civil society* have begun to develop, which point to networks of actors unbounded by the nation-state system.²⁹ John Keane suggests we come to regard it as

a dynamic non-governmental system of interconnected socio-economic institutions that straddle the whole earth, and that have complex effects that are felt in its four corners. Global civil society is neither a static object or a fait accompli. It is an unfinished project that consists of sometimes thick, sometimes thinly stretched networks, pyramids and hub-and-spoke clusters of socio-economic institutions and actors who organise themselves across borders, with the deliberate aim of drawing the world together in new ways. These non-governmental institutions and actors tend to pluralise power and to problematise violence; consequently their peaceful or ‘civil’ effects are felt everywhere, here and there, far and wide, to and from local areas, through their wider regions, to the planetary level itself.³⁰

The empirical evidence for the existence of a ‘global civil society’ is strong. Keane suggests that in the past century, the number of institutions operating at a global level has increased two hundred-fold, and there are now several thousand agencies, groups, institutions, congresses, and organisations that employ hundreds of

²⁸ See David Held and Anthony McGrew, *Globalisation / Anti-Globalisation* (Cambridge: Polity, 2002)

²⁹ See, for example, John Keane, *Global Civil Society* (Cambridge: Cambridge University Press, 2003)

³⁰ Keane, *Global Civil Society*, p.8 (author’s emphasis)

thousands of people and which channel billions of US dollars each year.³¹ Agents, who work within several different legal regimes often find themselves in a position where coordinating fundamental principles is required in order to act consistently according to their mandate. All are faced with a breathtaking complexity of actions, interactions, borders and channels which compete and constantly shift, leaving little knowledge sufficiently concrete as to truly establish and demarcate any given politically defined space. As Keane states:

The global circulation of books and magazines, internet messages, and radio and television programmes combine to spread the sense that this civil society resembles a kaleidoscope of sometimes overlapping or harmonious, sometimes conflicting and colliding groups, movements and non-governmental institutions of many different and often changing colours. Perhaps it is better to speak of global civil society as a dynamic space of multiple differences, some of which are tensely related or even open to conflict.³²

It may be prudent to ask what we might want to defend about civil society, and about pluralism, if they expose us constantly to potentially violent conflict. However the answer to such a question is mapped out, it cannot be denied that civil society organisations that exist beyond the boundaries of politically defined nation states are growing, albeit at different rates. Many work with explicitly ethical mandates in mind. Charity and development organisations, who work according to overtly normative guidelines to protect human rights or to alleviate poverty, typically operate in many geographical regions and act according to numerous sets of covenants and

³¹ Keane, *Global Civil Society*, pp.4-5, fn.5-8

³² Keane, *Global Civil Society*, p.175

laws.³³ Furthermore, this interconnection has been present at ‘grass-roots’ level for decades, in the form of the international trade union movement. An official international union movement has existed since 1949, which now takes the form of the International Trade Union Confederation (ITUC)³⁴ which in turn has 168 million members in 154 countries.³⁵ Unions are now explicitly internationally-minded, and business is conducted with these connections, and a greater impact, at the forefront of proceedings.

All of this points to the fact that we are, matter-of-factly, confronted with a complex plurality of individuals, groups and societies. Our moral commitments to them may be a source of debate, but we *are* confronted by others. We therefore have what Benhabib calls a ‘*pragmatic imperative*’ to enter into dialogue with one another.³⁶ And as such we find ourselves with cause to pursue principles that can comprehend these new relationships and confrontations. It is this that most strongly prompts universalistic arguments. It is surely plausible to suggest that we do in fact ‘share a world’ and that there is something inescapably ‘human’ about this. Agents are connected if they assume that they can act upon or be acted upon by others.³⁷ Many problems faced by contemporary societies are not locally bounded and many are explicitly global and, in some cases, existential. The issues of climate change and environmental destruction, international drug- and arms-trading, terrorism, and poverty all constitute such problems. The facts of complex pluralism, when viewed in light of first principles that reflect our considered responses to them, lead us to

³³ See for example the work of Amnesty International, Human Rights Watch, or development agencies such as the IAED, the International Agency for Economic Development.

³⁴ A union of the International Confederation of Free Trade Unions (ICFTU) and World Confederation of Labour (WCL)

³⁵ See ‘General Information’, *International Trade Union Confederation Website* (<http://www.ituc-csi.org/spip.php?rubrique57> November 23rd 2006)

³⁶ See Benhabib, *The Claims of Culture*, p.36 (author’s emphasis); O’Neill, *Towards Justice and Virtue*, p. 156

³⁷ Hannah Arendt make claims similar to this in *The Human Condition* (Chicago: University of Chicago press, 1958) and O’Neill, *Towards Justice and Virtue*, p.101

acknowledge and take account of these connections between ourselves and others. Such connections cannot be satisfactorily addressed by restricted regulatory principles and they draw us to construct regulatory principles that can accommodate a connected complex plurality.

Of course, not all that is within the scope of our moral concern so constructed comes ‘naturally’, in spite of this interconnection. We may therefore find ourselves challenged to fulfil what is owed to others within our scope of concern without the benefit of a pre-existing attachment to them. A common criticism of constructivist and other such moral projects is that they impose, implausibly, stringent and fatuous characteristics on ‘morality’. Richard Rorty in ‘Ethics without Principles’ makes the claim that to speak of morality in the language of principles – as, for example, ‘rights’, ‘obligations’ and ‘duties’ – is to misunderstand its true nature. Rather, he claims, morality comes naturally to the human animal. A mother feels no sense of artificial or imposed duty or obligation to her child or to the rights that that child possesses; rather, hers is a natural bond of love and care and this captures the true essence of morality.³⁸

Rorty is correct in suggesting that the moral bond between a mother and child is not one ‘imposed’ by morality after rational deliberation on her part to determine the correct course of action with regard to her offspring. But this natural bond is *naturally limited* to relationships where such moral bonds exist. Ties between family members, friends and even countrymen could be described in this way; those who feel bound to and even constituted by those relationships may feel morally bound to them in this ‘natural’ way. But if this is the full domain over that which we call ‘morality’ presides, *all* others in our interconnected and complex pluralistic world

³⁸ Richard Rorty, ‘Ethics without Principles’ in *Philosophy and Social Hope* (London: Penguin, 1999), p.78

are connected to us by no such bond. Those in distant lands have no such natural ties to us. This issue is compounded by what Elaine Scarry calls ‘the difficulty of imagining other people.’³⁹ But we *do* have duties beyond these ‘natural’ bonds; actions *do* impact others with whom we have no natural connection. It *is* possible, given the nature of interconnectivity, to infer that we are not merely connected to those with whom we have ‘natural’ ties. We do have duties beyond our natural ties, which in no way detract from, but which add to them.

Proponents of an ‘ethics of care’, such as Carol Gilligan and Nel Noddings, make similar claims against principle-based arguments.⁴⁰ But, while we may not want to take a wholly impartialist approach and claim that we owe equal attention both to our own children *and* those of others, we might equally surmise that to suggest that we owe others *nothing* is troubling at best. Noddings’ relational ethics of care, for example, rightly asserts that one cannot truly care about the children of a far off country as much as one cares for ones own. And indeed, it seems problematic to suggest that we can easily come to have truly ‘caring’ feelings for the whole of mankind similar to those feelings we hold for our nearest and dearest. Such feelings are generated by actual encounters between specifiable real people, thus setting an impossible task prior to forming a conception of where ethical concern should lie.⁴¹ Nonetheless, it is surely not the case that we owe *nothing* to those others with whom we cannot engage in a specifiable way. Where we perceive our actions to have some effect on unseen and ‘unspecifiable’ others, perhaps collectively rather than

³⁹ Elaine Scarry, ‘The Difficulty of Imagining Other People’ in Martha C. Nussbaum and Jean Cohen (eds.), *For Love of Country: Debating the Limits of Patriotism* (Boston MA: Beacon, 1996), pp.98-102

⁴⁰ Such as, for example, Carol Gilligan, *In A Different Voice: Psychological Theory and Women’s Development* (Cambridge MA: Harvard University Press, 1982); Nel Noddings, *Caring: A Feminine Approach to Ethics* (Berkeley: University of California Press, 1984)

⁴¹ See Noddings, *Caring*, p.79-83; Rosemarie Tong and Nancy Williams, ‘Feminist Ethics’ in Edward N. Zalta (ed.) *The Stanford Encyclopaedia of Philosophy*, Winter 2006 Edition, (<http://plato.stanford.edu/archives/win2006/entries/feminism-ethics> February 11th 2007)

individually, we *do* have a connection with those others, however implicitly, which in turn has a powerful moral dimension.⁴²

The construction of universal regulatory principles seeks to overcome the limitations imposed by what we ‘care’ for. It does so by bringing to light the duties we have towards things for which we could never be said to ‘care’ in the way conceived of by Rorty and Noddings. Constructed regulatory *principles* provide something beyond the natural bonds felt by us towards those with whom we are closely connected.

The construction of those principles, it may be suggested, is ‘unnatural’; something that requires overly complex and inaccessible justification, or perhaps even radical alteration of the way people in various societies think, and structure their thought. But, constructivism has a far greater resonance with the way the world seems to be, and universalism is not a characteristic of moral discourse that is particular to Western culture. This is borne out by the way in which many cultures and societies understand the characteristics of their moral frameworks, and the status of their moral statements.

People of all walks of life, from a wide variety of national, ethnic, religious and economic backgrounds, endorse universalisms of various kinds. Protagonists of moral standpoints which generate large and systematic disagreements, notes Alasdair MacIntyre, are never themselves relativists. The force of their claims is not merely relative to some local scheme of justification. Each make universal *truth* claims about what constitutes the good life, couched in the terms of their *own* conception of the good.⁴³ And, as Brian Barry notes:

⁴² See O’Neill, *Towards Justice and Virtue*, p.113-119

⁴³ Alasdair MacIntyre, ‘Moral Relativism, Truth and Justification’ in Kelvin Knight (ed.) *The MacIntyre Reader* (Oxford: Polity, 1998), p.204

Liberalism rests on a vision of life ... like any creed it can be neither justified nor condemned in terms of anything beyond it. It is itself an answer to the unanswerable but irrepressible question: 'What is the meaning of life?'⁴⁴

Liberalism, like many political doctrines with moral underpinnings, is based on a universal conception of the good life. It is not Western liberalism alone that has sought to solve absolutely the riddle of what constitutes the good society. To argue that liberal universalism is inherently and uniquely 'ethnocentric' is to make over generalising and homogenising claims about Western liberalism and about other moral and cultural systems.⁴⁵

There are three separate claims here. First, 'the West' is not a fully coherent, ideologically homogeneous body and so to identify the whole of 'the West' as universalist is unsustainable. Second, to make an argument which is grounded in a 'West versus the rest' dichotomy is to fallaciously homogenise *all other* social and cultural systems into one group who seemingly think alike. Third, to reiterate, many of those other cultures themselves make, at times, strong universalist claims. So to claim that Western culture is in some sense *uniquely* universalist is a misrepresentation. 'Universalism' is far less problematic than many of its detractors suggest, not least because many of the cultures, societies, and practices that those detractors would wish to defend in the face of rampant Western universalism are themselves premised on universal truth claims.

Take, as an example, universalist trends in Indian Hinduism which, like many religions, shares a duality of images. One is pluralist-universalist – tolerant of other religious systems, committed to the value, equality, even the truth, of those systems. The other is nationalist-universalist – juxtaposing itself with Islam and equating

⁴⁴ Brian Barry, *The Liberal Theory of Justice* (Oxford: Oxford University Press, 1973), p.127

⁴⁵ Benhabib, *The Claims of Culture*, pp.24-25

Hindu identity with Indian identity, and therefore a notion of Indian citizenship.⁴⁶ In the first image, universalisms of a variety of thicknesses are at work. Indeed, the stressing of a plurality of equally valid religious systems has powerful universalist qualities in and of itself, and one that resonates closely, and perhaps most comfortably with the idea of a thin universalism. Further than this, though, many strands of thought on the subject of 'religious diversity' stress the idea that all are differing interpretations of the same truth. Gandhi, emphasising his own Hindu universalism, states:

Religions are different roads converging to the same point. What does it matter that we take different roads, so long as we reach the same goal? In reality, there are as many religions as there are individuals.⁴⁷

Even in the second image, where commitment to the validity of other religious belief systems is not at the forefront, different universalising assumptions are made. Denise Cush suggests that 'exclusivist' claims to truth, which may seek to convert all others (referred to as 'monoexclusivism') or not ('henoexclusivism'), are premised on a belief that the truths inherent in, in this case Hinduism, are universal.⁴⁸

Similar currents can be glimpsed on other religious frameworks; the Jewish belief in their covenant with God, as described in the Torah, has similarly universalist underpinnings. Whether that is understood as a mission to be a 'light unto the nations', and to exemplify the covenant with God, or whether God is

⁴⁶ Denise Cush in 'A Suggested Typology of Positions on Religious Diversity' in *Journal of Beliefs and Values*, Vol.15 (2), 1994, pp.18-21

⁴⁷ M.K. Gandhi, *All Men Are Brothers: Life and Thoughts of Mahatma Gandhi as Told in His Own Words* (Paris: UNESCO, 1958), p.59; Denise Cush and Catherine Robinson, 'The Contemporary Construction of Hindu Identity: Hindu Universalism and Hindu Nationalism' in *The Internet Journal of Religion/Diskus*, Vol.2 (2), 1994, (<http://web.uni-marburg.de/religionswissenschaft/journal/diskus/cush&robinson.html>) February 9th 2007)

⁴⁸ Cush and Robinson, 'The Contemporary Construction of Hindu Identity: Hindu Universalism and Hindu Nationalism'

understood to have a relationship with all peoples, Jews and non-Jews alike. Islam has a similar gamut of universalist underpinnings. Muslims believe that the Koran was sent by Allah to bring peace and harmony to *all* of humanity through Islam. The idea of universal peace for both Muslims and non-Muslims extends to tolerance of worship and securities of property and person for non-followers. Ideals of equality can be glimpsed in the performance of Hajj at Mecca. Those branches of Islam that do not stress this level of equality still demonstrate 'monoexternalist' universal qualities. These range from making claims to the truth of their faith, to professing the need to convert non-believers, in extreme cases through violence.⁴⁹

Universalism is also visible in numerous other non-religious valuational and ethical frameworks, including utilitarianism and socialism. Construction and universalism resonate both with these doctrines and with the claims of their opponents. This view is reinforced when we remember that even the strongest claims of particularity or relativity are often couched in the language of truth, some conception of the absolute, or in explicit universal terms. As Alison Renteln notes, even relativisms tends to assert an absolute prescription that all prescriptions are relative.⁵⁰

Even rejection or denial of universal standards often implicitly acknowledge, or perhaps even endorse in some sense, universal prescriptions. If justifications cannot be arbitrary then this is a pragmatic political concern, but also a more fundamental moral one which reflects a degree of de facto universalist thinking. Indeed, agents do, in their attempts to justify their own actions or criticize those of

⁴⁹ See, for examples in Islamic thought, Abdul Qadir, *Arab Nationalism and Islamic Universalism* (New Delhi: Global Vision, 2006); Ira M Lapidus, 'Between Universalism and Particularism: The Historical Bases of Muslim Communal, National, and Global Identities' in *Global Networks* Vol.1 (1), 2001, pp.37-55

⁵⁰ Alison Dundes Renteln *International Human Rights: Universalism Versus Relativism* (London: Sage, 1990), pp.68-69, 72

others, appeal to wider audiences in various justificatory circumstances.⁵¹ Many agents recognize that reasoning has to be wider than those like-minded individuals who will tend towards agreement and it is only by casting a wider net that approval is 'legitimized'. For example, attempts to 'cover up' serious violations of human rights such as genocide or oppression suggest not only implicit acknowledgement of their existence (however understood) but also of their binding moral status and inclusive scope.

At other times, skewed, perhaps even abhorrent, conceptions of 'the universal' are articulated in order to defend certain practices. Others may be regarded not as agents but as something else; as less than human. Such tactics have been used in many societies to exclude certain members, often racial, ethnic and religious minorities, women and homosexuals, from cultural, social or political life. Richard Rorty highlights a story, taken from the conflict in the former Yugoslavia in the 1990s, of sexual sadism by Serb guards on Muslim prisoners, in which the ethical standing of the Muslims was denied through an outright rejection of their status as human beings. Thus they were not violating human rights, because those they were assaulting were not human beings.⁵² In such cases, O'Neill argues, 'there will be no way to convince them that those others fall within the scope of their ethical consideration'.⁵³ While clearly incompatible with the variety of universalism at work

⁵¹ O'Neill, *Towards Justice and Virtue*, p.53

⁵² Richard Rorty, 'Human Rights, Rationality, and Sentimentality' in *Truth and Progress: Philosophical Papers vol. 3* (Cambridge: Cambridge University Press, 1998), p.167

⁵³ O'Neill, *Towards Justice and Virtue*, p.110. This issue is acute in most contemporary work on ethical consideration. Rorty's provisionally non-cognitivist account of sentimental education and discourse struggles to account for 'the genocidal maniacs of the world'; see Mark Evans, 'Pragmatist Liberalism and the Evasion of Politics' in Mark Evans (ed.), *The Edinburgh Companion to Contemporary Liberalism* (Edinburgh: Edinburgh University Press, 2001), pp.148-161 at p.156. Meanwhile Rawls comes close to pulling the rug from under his freestanding 'political conception of justice' by retreating to a comprehensive liberal doctrine in order to deal with doctrinal extremism; see John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p.153. O'Neill faces a similar problem, she can offer nothing to say to those who truly seek to deny the ethical standing of certain others.

here, it is clear that universal considerations feature in the structures of many modes of discourse. Invoking universalism to legitimate action, however barbaric, demonstrates its significance and appeal if, perhaps, nothing else.

Universal principles also possess strong psychological appeal, because they do not contradict how social actors typically view moral assertions. This proves to be particularly powerful in the construction of consent to thin universal regulatory principles. Universalism does not seem to contradict those intuitions that tell us what morality or moral principles *ought* to be, a problem faced by doctrines such as relativism, particularism, emotivism and nihilism. Each of them must contend with strong currents in popular sentiment which intuitively oppose their positions. While complex pluralism may appear to raise questions about what is right and wrong, true and false, it also compatible with what people believe these concepts to be by establishing and illuminating clear counterpoints to those dualisms. Thin universalism is sufficiently thin to allow it to comport with propositions that agents already hold to be 'truths'. In other words, agents can comprehend and acknowledge thin universal principles as 'true', which they themselves hold as true, and which others recognise, though *not* necessarily as true (but as something else that gives them authority). In this respect, it offers a plausibly 'realist-in-appearance' approach to the truth-value of moral principles; this is a significant aspect of the historical appeal of universalism and it cannot be ignored. Because universal regulatory principles share many characteristics with realist positions, they are able to retain some of the appeal and connection to their subject held by Judaeo-Christian principles, and this is something that should be taken seriously, especially given the importance of consent for the legitimisation of constructed regulatory principles.

But why do people tend to search for and cling to universally applicable criteria, characteristics, norms, standards and requirements amongst fellow human beings? Provisional answers here might be based on the determination to have our own principles upheld. We hold people to certain ‘universal’ standards because we want to feel that if we treat others well, they will treat us well in kind. This has a number of functions including self-preservation. In Hobbes’ *Leviathan*, fear and mistrust, and imperfect knowledge about the capacities of others, drive individuals in the state of nature to adopt a ‘get them before they get me’ attitude.⁵⁴ Similar lack of knowledge may lead to a ‘live and let live’ attitude; if you do not harm others they will have no recourse to harm you.

Examples of this are evident in the history of thought. It can be seen in the Golden Rule (‘do unto others as you would have them do unto you’),⁵⁵ the Categorical Imperative (‘so act that you treat humanity whether in your own person or any other person never merely as a means but as an end in itself’),⁵⁶ and the UN *Universal Declaration of Human Rights*.⁵⁷ It is this determination drives the idea that all human beings must therefore be entitled to basic rights to life, liberty, security, due process before the law and freedom of speech and association.⁵⁸ The universal *legal* recognition of our status as human beings would be the final result of a determination to see our principles upheld.

This may simply be symptomatic of the psychological burden of a world ‘without God.’⁵⁹ Since the Enlightenment and the decline of religion in the West, the

⁵⁴ Thomas Hobbes, *Leviathan* (Cambridge: Cambridge University Press, 1996), Part I

⁵⁵ Matthew 7:12

⁵⁶ Immanuel Kant, *Grounding for the Metaphysics of Morals* (Cambridge: Hackett, 1998), pp.429, 402 (Prussian Academy pagination)

⁵⁷ United Nations Office of Public Information, *Universal Declaration of Human Rights* (New York: United Nations, 1980)

⁵⁸ Benhabib, *The Claims of Culture*, pp.27-28

⁵⁹ Nietzsche, of course, famously pronounced ‘God is dead’ in *The Gay Science* (New York: Random House, 1974), Section 125, pp.181-182

rise of empiricism and rational science has made us acutely aware of our *physical* existence. Knowledge of death and the fact that we must sooner or later die (some massive leap in our understanding of the human body notwithstanding) is a burden that has the potential for enormous psychological consequences. Without the guaranteed security of immortality (Heaven, Hell, Reincarnation, Salvation, Damnation, The Soul, Karma etc.), facing the acceptance of death is a necessity. We may therefore look at death as a *universal* and *human* experience, for comfort and a lessening of this burden. This attachment to things that remain universally ‘human’ acts as a powerful draw for many situated in a complex and pluralised world and various ‘humanisms’ retain prevalence and appeal.⁶⁰

If consideration of complex pluralism leads us to begin from first principles which embody a notions of ‘respect for persons’, it is crucial to understand how and why those persons orient themselves in the way that they do. Many still think universally when it comes to moral questions and construction can help pragmatically and morally to see where this may lead. Pragmatically, of course, the fact that ‘the universal’ is still such a prevalent aspect of how agents structure moral thinking suggests that the procedure of constructing palatable universal principles is far from an impossible, if ultimately unending, task.

Ultimately it becomes clear that agents may *need* universal principles. They need them to orient, contextualise and coordinate other, perhaps more specific and perhaps more thickly conceived principles. It is a mistake to envisage a procedure of construction doing all of our moral work for us; we do not construct all of ‘morality’, and indeed we construct regulatory principles out of, *inter alia*, *other* principles. We

⁶⁰ See, for example, Karl Marx’s ‘motto’: ‘*Nihil humani a me alienum puto*’ (‘I consider nothing human to be alien to me’). See David McLellan *The Thought of Karl Marx* (London: Macmillan, 1971). The motto is taken from Terentius, the Latin playwright, from a dialogue between the characters Menedemus and Chremes in his play *Heautontimoroumenos* or *The Self-Tormentor* (London: Penguin, 1965)

do not construct all of our principles, merely those principles that we intend to have certain 'effects' on our surroundings and on others.⁶¹ In this instance, orienting principles are required in order to draw together those aspects of a human life which are separate but connected in order to have them cohere. Walzer envisaged separate 'spheres' of life⁶² but, as O'Neill remarks:

It will not be enough to approach the various spheres, segments or aspects of an acknowledged domain of ethical consideration relying only on a variety of more specific principles of more restricted scope. The segments of a full domain of ethical consideration can only be organized if *some* inclusive principles cover the entire scope of acknowledged ethical consideration, and demarcate and link the restricted segments and spheres of life within which more specific principles are to serve. Hence those who lead their lives in the contemporary world will need at least some inclusive basic principles whose scope is more or less cosmopolitan.⁶³

Universal principles do more than cover ethical judgements in a particular domain, to which we feel only a limited connection at times. They do not simply ground the validity of cross cultural moral judgements. They may in fact be central to the orienting and organising of our multifaceted moral commitments. And, in a world characterised by a complex plurality of interconnected and interdependent agents, the significance of this need for orientating principles is most apparent.

⁶¹ Jerry Cohen is referencing Robert Nozick here. See G.A. Cohen, 'Facts and Principles' in *Philosophy and Public Affairs* Vol.31 (2003), pp.211-245 at (s), p.240

⁶² See again Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (New York: Basic Books, 1983)

⁶³ O'Neill, *Towards Justice and Virtue*, p.156

Universalism and Ethnocentrism

A commitment to universalism is grounded in first principles that reflect the judgement that 'being human' has an invariable normative significance that places moral limits on the kind of society fit for people to inhabit.⁶⁴ In a plural world, that normative significance means that we must retain a universal domain of moral concern. While a commitment to the normative significance of human beings is not dependent on the factual claims of complex pluralism, the constructed regulatory principles which are universal *are* fact-dependent. Pluralism, then, demands that our first principles be developed and built upon in certain ways and certain of those first principles demand specifically universal characteristics in the regulatory principles constructed from them. Universalism is dependent both upon the factual considerations of complex pluralism and upon our basic, considered normative commitments.

Universalism, then, is the product of certain moral predispositions which have been established as valid. Constructive procedures are employed because it quickly becomes clear that the considered responses to pluralism are alone inadequate for addressing problems of violent conflict that threatens individuals, societies and pluralism itself. In order to affect these issues, regulatory principles that have universal characteristics are required. Onora O'Neill states:

the first step towards a substantive account of justice must be to establish some inclusive principles of justice. The most elementary principles of justice must be inclusive and must provide basic orientations, by which more restricted and specific principles, and hence indirectly also some institutions,

⁶⁴ See also Evans, 'Thin Universalism and the "Limits" of Justification', p.76

practices and acts conceived of in specific, ‘thick’ terms, and their special obligations and rights, can be shown as justifiable and others unjustifiable.⁶⁵

This draws together many of the claims that orient the ‘universal’ dimension of the project. Thin universalism is an important step in regulating our affairs. If morality is to be an important aspect of that regulation, we will need to establish *some* regulatory moral principles that are universal in reach. In responding to complex pluralism, it is easy to understand how and why universal principles still have a role to play. They provide means of and set terms for engaging in moral discourse in order to arbitrate and delimit the consequences of violent conflict between agents. They also serve to connect, order and cohere more specific principles.

Nonetheless, universalism, even so constructed, remains confronted by a number of potentially pervasive problems. While arguments in favour of universalism may be convincing, the suspicion remains that universalism – or, at least, the universalism of which the kind I am advocating here is a subset⁶⁶ – is the product of a Western liberal system. This is problematic because universalism intends its reach *beyond* that of Western liberal peoples. The suspicion remains, then, that universalism is *still*, half a century after decolonisation, nothing more than a renewed attempt at Western imperialism. On this account, ‘universalism’ is and can only ever be the product of set of norms which are culturally particular. As such it will never be valid in its intended cosmopolitan domain.

Is universalism ethnocentric? The issues surrounding this question have been in vogue for some time now, but the question itself has only recently been made

⁶⁵ O’Neill, *Towards Justice and Virtue*, p.157 (The cited passage refers to ‘justice’ rather than ‘morality’, but its point is not lost)

⁶⁶ That is, the kind of universalism that might be described by Michael Walzer as ‘covering law universalism’ – a description with which I disagree in the most part. See Michael Walzer, ‘Nation and Universe’ in Bruce Haddock, Peri Roberts and Peter Sutch (eds.), *Principles and Political Order: The Challenge of Diversity* (London: Routledge, 2006), pp.10-41 at pp.10-11

explicit.⁶⁷ This concern needs to be taken seriously, if the universalism that is to be constructed is truly a *product* of construction and not simply a form of comprehensive universalism, the likes of which have been around for centuries. A defence of universalism must take seriously what motivates the charge that it is ethnocentric.⁶⁸ To do so requires a characterisation of ethnocentrism. Alfred Kroeber states that ethnocentrism is the ‘tendency ... to see one’s in-group as always right and all out-groups as wrong wherever they differ.’⁶⁹ Now, for universalism to be ethnocentric in this way would take a rejection of many of the characteristics of pluralism outlined in chapter two, and hence many of the arguments that go into the construction of universalism. The notion of societies and cultures as ‘open systems’, which are not hermetically sealed but plural, porous and multifaceted, calls this kind of suggestion into question. Herodotus may be correct: when asked to select the best of all the customs and principles in the world, most people would select their own.⁷⁰ Again, this is only problematic if those customs and principles are to apply to a wider domain. In such instances, ethnocentrism becomes moral or cultural imperialism. Many universal principles fall prey to this critique, not least because in numerous past instances universal value judgements have been accompanied by acts of empire-building, justified on the grounds of (inter alia⁷¹) religious salvation of the conquered or the importance of civilising ‘savage’ peoples.⁷² If there is or was such a thing as

⁶⁷ See Martin Hollis, ‘Is Universalism Ethnocentric?’ in Christian Joppke and Steven Lukes (eds.), *Multicultural Questions* (Oxford: Oxford University Press, 1999), pp.27-43 at p.36. And, following that, Steven Lukes, ‘Is Universalism Ethnocentric?’ in his own *Liberals and Cannibals*, (London: verso, 2002), ch.2. See also Benhabib, *The Claims of Culture*, ch.2 which also appeared in Lukes and Joppke, *Multicultural Questions*.

⁶⁸ Lukes, *Liberals and Cannibals*, p.12

⁶⁹ Alfred Kroeber, *Anthropology*, (New York: Harcourt Brace, 1948), p.266 quoted in Lukes, *Liberals and Cannibals*, p.12

⁷⁰ Herodotus, *Histories* (London: Penguin, 1996), Book III

⁷¹ Because it would be foolish to pretend that ‘empire’ was little more than an attempt to universalise a particular set of value judgments.

⁷² Edward Said, of course, grounds this imperialistic ethnocentrism firmly in the cultural past of the West. See Edward W. Said, *Culture and Imperialism*, (London: Vintage, 1993)

‘the West’, and if it has or had at any point a homogeneous coherent value structure, then one can point to many historical and contemporary examples of empire-building which would seem to solidify the concerns of universalism’s detractors.

‘Western’ Enlightenment universalisms, when led down this line of reasoning, begin to look more and more incapable of accounting for the world in which they find themselves and it has experienced something of an ‘epistemological crisis’ in the last century.⁷³ Universalism starts to look objectionable according to both external critique and to its *own* considered judgements. Confronted by complex pluralism’s fundamental challenge to its core values, universalism in its traditional senses seems incapable of confronting or accounting for the world which it is designed to analyse. Moral descriptions thick with cultural specificity – *ethnocentric universals* – can no longer account for the undeniable diversity of views in the modern world. A state of crisis seems inevitable.⁷⁴ This has led, in the past, to the expectation on the part of some that pluralism was an ‘ephemeral, even an epiphenomenal incident’ that would dissipate given enough time, and the right level of rationality.⁷⁵ Change is forced on a tradition in crisis by an alternative capable of explaining why the crisis has arisen and why the presuppositions of the conceptual scheme prevent the tradition from overcoming it.

In spite of this damaging characterisation of Enlightenment universalism, there remain two ways to counter its critique. Firstly, to recap arguments highlighted earlier: Such a claim assumes that Western, Enlightenment-influenced thought can be

⁷³ See Alasdair MacIntyre, ‘Epistemological Crises, Dramatic Narration and the Philosophy of Science’ in *The Monist*, Vol.60, 1971, pp.433-472. See also, Kelvin Knight’s ‘Introduction’ to his edited volume, *The MacIntyre Reader* (Oxford: Polity, 1995), p.17.

⁷⁴ Bellah et al alluded to just such a crisis in American social and political life. It was suggested that modern America was ‘trying to live by the Lockean language of individualism in an instrumental world it can no longer describe.’ See Robert N. Bellah et al, *Habits of the Heart* (London: University of California Press, 1985)

⁷⁵ See John Gray, *Enlightenment’s Wake*, p.65. This was not just the case with liberal thinkers, but with Marxists too, who foresaw the overcoming of those same differences for the sake of class solidarity.

regarded as coherent, systematised and homogeneous, rather than the densely layered and polyvocal system of interactions that it is. This is accompanied by a homogenising perception of *all other* cultures; there is ‘the West’ and then ‘everyone else’, from whom the West is radically different.⁷⁶ Moreover, there is the suggestion that it is only Western liberal societies that conceive of moral principles in universal terms and that somehow all other cultures perceive of their moral codes as nothing more than *relative* to their own systems.⁷⁷ Very few cultures are relativist, and many religions, nationalisms, ethical, political and philosophical doctrines believe that they have solved the problem of how to live justly, rightly or virtuously and that those solutions are universally valid.

Secondly though, the universalist might seek to take on board and adapt to the ethnocentrism critique rather than simply deny it. The universalist might look to an altered conceptual scheme capable of overcoming the fundamental ‘problems’⁷⁸ which led to the epistemological crisis faced by universalism in the first place. The question becomes: How does one go about establishing an ethnocentrically and pluralistically enlightened universalism? *Only* a universalism that takes seriously the concurrent considerations of socio-cultural sensitivity – only a thin universalism – is equipped to give proper regard to the complex pluralism of the modern world, and hence is capable of deflecting the claims of ethnocentrism.

Thinness

In spite of this, accusations of ‘ethnocentrism’ and ‘imperialism’ may be troubling. Firstly, because the concern for persons encoded into the first principles which are

⁷⁶ See Benhabib, *The Claims of Culture*, pp.24-25

⁷⁷ See, again, MacIntyre, ‘Moral Relativism, Truth and Justification’, p.204

⁷⁸ The scare quotes here indicate that complex pluralism is a problem for universalism, rather than for ‘humanity’ or for ‘society’.

valid starting points for construction demand de facto rejection of *any* regulatory principles that can be shown to be imperialistic on the grounds that uniformly impressing *all* of ones values on others scarcely shows 'respect' towards them. Second, because *even if* universal principles are constructed from valid starting points on the basis of acceptable facts about the world, it *still* appears that nothing more than principles with local or limited force are constructed.

Furthermore, the broader the scope of applicability, the more divergent and pluralised the points of view under consideration become. And the more regulatory principles we ask a diversity of people to consider, the greater the likelihood that some will have reason to reject them. This prompts further questions about how to secure agreement to those principles, which generates further concern over coercion and respect for persons. Principles must seemingly accept their own limitations of scope and applicability or risk imposing comprehensive values on others. There seems little scope for constructing universal principles, morally or practically. However, this leaves unexplored the second dimension of construction that draws on the respect for pluralism inherent in our first principles, and which leads us to be 'thin'.

'Thinness' emerges in part from the dichotomy between 'thick' and 'thin', though they were not coined in the same context at the same time. In fact 'thinness' emerged some time later. 'Thickness' first emerges in the work of Bernard Williams who notes, critically, the tendency to favour general ethical concepts such as '*good, right, ought, and the rest*'. Williams characterises a distinction between these general expressions and more specific ones. He describes those more specific ethical concepts as 'thicker' than the general ethical expressions and suggests their use is in part determinate on fact:

those ‘thicker’ or more specific ethical notions ... such as *treachery* and *promise* and *brutality* and *courage* ... seem to express a union of fact and value. The way these notions are applied is determined by what the world is like (for instance, by how someone has behaved), and yet, at the same time, their application involves a certain evaluation of the situation, of persons or actions.⁷⁹

‘Thick’ ethical notions express a ‘union of fact and value’ in that they embody an evaluative element in conjunction with an empirical element. An act, Williams suggests, is frequently described as being of a particular character as a matter of fact, and acts of that particular character are evaluated as being acceptable or unacceptable. Allan Gibbard frames the term thus: ‘A term stands for a thick concept if it praises or condemns an action as having a certain property.’⁸⁰ ‘Thickness’ therefore suggests a measure of context dependence, a greater degree of specificity and a lesser degree of generality, and a stronger relation to concrete circumstance.⁸¹ Thick terms are, broadly speaking, culturally specific or particular in their evaluative meaning.

It is worth considering Gibbard again for a contrast between Williams’ use of ‘thickness’, and ‘thinness’ in this context.⁸² He notes that, where thick concepts are used, they ‘work quite differently from “thin” normative concepts like *right* and *good*’.⁸³ By this seems to be implied two ways in which thick and thin concepts are

⁷⁹ Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge MA: Harvard University Press, 1985), p.129

⁸⁰ Williams, *Ethics and the Limits of Philosophy*, pp.129-130; Allan Gibbard, ‘Thick Concepts and Warrant for Feelings’ in *Proceedings of the Aristotelian Society: Supplementary Volume LXVI* (66), 1992, pp.268-9. While Gibbard is critical of the notion of thick concepts, he also notes a contrast with ‘thin’ normative concepts, but this discussion has not quite reached that point yet.

⁸¹ And it must be made clear that this coinage of the term overlaps with, but is not identical to Williams’ use of the term.

⁸² In spite of its chronological irregularity, a more intuitive narrative of the evolution of the term can thus be constructed.

⁸³ Gibbard, ‘Thick Concepts and Warrant for Feelings’, p.269

incongruous. First, the evaluative features of thin concepts lack the culturally embedded qualities of thick terms. Their descriptive task is, in some way, different to thick concepts, in that they have a different relationship to the agents or action they describe. This does not, however, mean that thin terms cannot be fact-responsive. And second, by contrasting terms like *right* and *good* with terms like *treachery* and *courage* there is a difference in the degree of generality between thick and thin concepts, (which is not to say that thick concepts can simply be collapsed into thin ones).

For Stuart Hampshire, ‘thinness’ takes on the more normative, less descriptive form relevant to this thesis, a form similar to the second point of note concerning Gibbard’s analysis. Hampshire refers to ‘a thin notion of minimal procedural justice’ embodied in minimal but universal principles which inherently underdetermine moral discourse, and which allow for a variety of divergent outcomes depending on the various contexts of that discourse.⁸⁴ This sense in which principles can be ‘thin’ by legitimating a wide diversity, and not a single social, cultural and political form through underdetermination of the full moral character of those forms, is echoed by Haddock, Roberts and Sutch.⁸⁵

Hampshire captures an element of thinness implied by Williams’ description of thickness and establishes a now common coinage of the term within analytic philosophy. He draws a close association between thinness and moral minimalism, stating:

⁸⁴ Stuart Hampshire, *Innocence and Experience* (London: Penguin, 1989), p.14 and ch.2, especially pp.72-78

⁸⁵ Bruce Haddock, Peri Roberts and Peter Sutch, ‘Introduction’ in Haddock, Roberts and Sutch (eds.), *Principles and Political Order*, pp.1-9 at p.2

There is a basic level of morality, a bare minimum, which is entirely negative, and without this bare minimum as a foundation no morality directed towards the greater goods can be applicable and can survive in practice.⁸⁶

The association that can be drawn between this minimalism and the notion of thinness to which Williams alludes is clear. A thick moral term is culturally specific or particular, while a thin moral term is more general, derived from something not particular to a single context. The generality of thin concepts suggests that their deployment is intended for a scope *wider* than those of thick concepts. Furthermore, when understood in the context of a 'bare minimum', thinness begins to look far more like the kind of concept which is a direct response to concerns over the ethnocentric and culturally imperialistic universalisms, with which *thin* universalism is intended to be a break.

Thin regulatory principles bear certain key characteristics. They are first of all thin in the sense that they represent nothing more than a 'bare minimum' set of principles. They are thin in that they are limited in number, rather than in their scope or applicability (as thin universalism couples principles that bear the feature of being limited in number with the feature of being universal in scope or applicability). Following Evans, thinness can be characterised as

a rather sparse set of principles (where 'principle' denotes a general directive or regulative ideal for how agent's ought (not) to act), substantive enough to establish some fundamental norms for human coexistence but not so thickly determinate as to be completely insensitive to the concrete particular and the possibilities of variable interpretation.⁸⁷

⁸⁶ Hampshire, *Innocence and Experience*, pp.72, 78

⁸⁷ Evans, 'Thin Universalism and the "Limits" of Justice', p.77

Thinness fundamentally *underdetermines* the full moral character of any set of social, cultural or political interactions. All forms of life, including liberal forms of life, will therefore be underdetermined by the content of thin principles. Thin regulatory principles amount to the most *basic* of standards that must be met in order for a regime, way of life, or set of cultural, social and political institutions to satisfy conditions of meaningful human existence.

Constructing Thinness

Thinness is an outcome of construction. Constructed principles will bear the characteristic of thinness so described because of those facts and first principles that go into construction. In chapter three I suggested that an examination of complex pluralism illuminates fact-independent principles characterised by, alongside respect for human beings, respect for the plurality of human values, cultures, societies and belief systems.⁸⁸ This principle was unpacked to demonstrate fact-independent commitments to value human socio-cultural creations, to respect the integrity and autonomy of human societies through non-interference and self-determination, and to peaceful coexistence.

These first principles recognise that, while it frequently leads to heightened social conflict and even violence, pluralism is the norm. Rawls was correct to take seriously the ‘fact of pluralism’ and its dissipation should not be anticipated for the foreseeable future.⁸⁹ Even if pluralism *were* something eliminable, to do so would most likely be through a violation of those first principles. Even though many find it troubling, pluralism is here to stay. Taken further, these principles recognise the claim that pluralism has the potential to aid in the development of self-understanding

⁸⁸ Evans, ‘Thin Universalism and the “Limits” of Justice’, p.76

⁸⁹ See Rawls, *Political Liberalism*, p.xvi

and a 'wider' view of the world. This may require affirmation and proliferation of pluralism and complexity and, though this thesis remains neutral on that score, it may be *only* in so doing can a space for pluralism be secured.

Thinness is the product of first principles considered in light of the facts of complex pluralism. Just as universalism can be defended on the grounds that it is constructed from facts and first principles, thinness can be similarly defended. Given both our first principles and the practical concern to elicit agreement around principles intended to be applicable to a complex plurality, the more principles that we assert the less people are likely to connect with them. The more we ask of people the more problematic the construction becomes, both practically and morally.

Pragmatically, of course, it is a statistical probability that a plurality of agents with different views is more likely to agree on one thing than two, and more likely to agree on two things than twenty. Thinness in thin universalism reflects this pragmatic concern: the more principles we ask others to agree to, the fewer of those others will be inclined or able to agree. The more people to whom we appeal, the fewer principles over which that appeal is made, the more likely we are to find a point of agreement. This is the political dimension to thinness, which is reflected in later Rawlsian *political* liberalism. Rawls is 'thin' here in two specific ways. The first is carried over from *A Theory of Justice*: the only object of 'justice as fairness' is the basic structure of society arrived at through the decision mechanism of the original position.⁹⁰ Second, 'political liberalism' limits the object of 'justice as fairness' to the political and not the metaphysical.⁹¹ In this way Rawls pursues the distinctly political project of *political* constructivism towards an explicitly 'political conception

⁹⁰ See John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971), pp.7-11; *Political Liberalism*, pp.11-12

⁹¹ See John Rawls, 'Justice as Fairness: Political not Metaphysical' in *Philosophy and Public Affairs*, Vol.14 (3), 1985, pp.223-251

of justice' which seeks 'to avoid opposing any reasonable comprehensive doctrine' that citizens of a society might hold.⁹²

But this political, pragmatic dimension to the construction of thinness is underpinned by a more fundamentally *moral* imperative. It would be simple to assume that thinness emerges as an outcome of construction because of the need to generate consent around principles that we seek to advocate as universal. Rawls' political construction aims entirely not to contradict comprehensive moral doctrines in order to establish an overlapping consensus which citizens generally can affirm.⁹³ However, it is not solely due to a pragmatic suspicion that thicker universalisms will be unable to generate the popular support they might require to be regarded as valid that drives thinness.

Thinness is a *moral* construction grounded in the first principles surrounding the imperative to respect pluralism. In considering first principles such as respect for diverse social forms, respect for the legal autonomy of other societies and the value of peaceful coexistence it becomes clear that thinness is not just about garnering consent for universal regulatory principles, it is also about cashing out first principles in an appropriate way. The source of the thinness and the universality of regulatory principles is our first principles. Both amount to more than simply pragmatic, tactical or functional directives with *only* the minimal aim of 'getting things done' in mind. But thinness does not simply respond to first principles concerned with respect for pluralism, but also with those concerned with respect for persons (unpacked from the *first* of the two general principles). The imposition of *thick* universal regulatory principles, which bear specific cultural traits and are evidently ethnocentric, not only violates a commitment to respect human cultures, but also violates the very

⁹² Rawls, *Political Liberalism*, pp.11-15, 95

⁹³ Rawls, *Political Liberalism*, p.95

commitment to respect persons which those universal regulatory principles are intended to safeguard. Where pluralism has not been respected – in historical instances of colonialism, imperialism, and mishandled ‘missionary’ work, modern intrusions of industrialism and capital into rural economies, or of values such as ‘liberal democracy’ and ‘human rights’ into potentially incompatible regimes⁹⁴ – persons have not been respected also. Such instances are failures by the standards of *many* of the first principles illuminated by considering pluralism.

Thinness and universalism are inextricably linked. It is problematic to discuss universalism apart from the concerns that motivate thinness, and similarly, the coherence of thinness so understood is dependent on its motivations being cashed out in a universal context. While they do *not* make claims about what can be considered ‘valuable’, they do posit that, given the plurality of values and judgements, there are certain minimal standards that *all* social arrangements must meet in order to meet basic human needs.⁹⁵ Thinness and universality can only properly be understood together as thin universalism: a *regulatory* ‘bottom line’, applicable to all and minimal in content. Thin universalism seizes the valuational concept, of a ‘moral minimum’, draws it into the regulatory sphere and establishes its form and content through a process of construction.

Further, it is ultimately *both* the facts of pluralism *and* a set of fact-independent first principles that underlie and shape thin universalism. Just as it is the underlying rock that provides the canvas, upon which act the forces of nature that shape a landscape. The mountains and valleys are carved by the elements: by the ice,

⁹⁴ Typically, strands of Muslim and Confucian thought have been cited here which may be fundamentally ‘moral’ and ‘decent’ but which do not appear immediately compatible with democratic values. ‘Democracy’ is now such an ‘empty signifier’ that to suggest that something is undemocratic is now often mistakenly taken to mean immoral, wrong, apolitical or similar.

⁹⁵ It may well be that very few societies actually meet this standard, liberal societies included (given some of the more disconcerting truths about capitalism). Thin Universalism, therefore, far from ends the practical or theoretical tasks of politics and morality, but rather fully engages and challenges them.

wind, and rain, and their form and nature come from *both* the rock *and* the elements. Different rock, different canvas, different landscape; different elements, different impact, different landscape. Just as the rock sets the terms by which a landscape may be sculpted, so our first principles shape the values at the end of a procedure of construction. Just as the elements carve and sculpt the rock to produce those mountains and valleys, so the facts sculpt our first principles into specific and applicable regulatory principles.

But does thinness do enough to overcome the crisis in universalism, bringing its assumptions into line with a complex plural world and render it useful again? A thin universalism certainly evades the more damaging problems associated with accusations of ethnocentrism and imperialism. Because thinness is constructed in accordance with the facts of complex pluralism, it is particularly sensitive to those aspects of cultural particularity which drive these charges. In this way thin universalism can weather the storm of criticism in a way the previous, thicker religious, metaphysical and rationalist universalisms cannot. In fact, *only* a universalism that is *so* sensitive to pluralism is capable of overcoming accusations of imperialism. Because of the way it understands complex pluralism, because of the way it evaluates and responds to the problems that complex pluralism engenders, because of the extent to which it is sensitive to and permits a wide diversity of social formations, and because it seeks to underdetermine the full moral content of any given set of social structures, a *thin* universalism is not hampered by the same objections as its thicker counterparts. Thus, the epistemological crisis of universalism is not a terminal decline; but it *is* a serious issue that must be addressed. The ‘problem’ is not in complex pluralism, but in universalism itself, and thinness in our practical principles goes a long way to rectifying that problem. While traditional,

comprehensive, thick universalisms face a world that they cannot explain, thin universalism is poised not only to confront the world as it stands, but to work effectively within it as a means of resolving violent conflict through a broad basis of consent to general regulatory principles.

Regulatory Political Principles

Previous chapters have discussed the distinction between first principles and principles of regulation, and within that discussion alluded to the character of regulatory principles *beyond* the focus on their constructed character and fact-dependence. I have suggested that the outcome of construction is *political* principles, rather than simply moral principles; a distinction requiring further substantiation.

Analytic philosophy tends to maintain an important distinction between ‘the moral’ and ‘the political’. That distinction permeates not only into understandings of what ‘the moral’ and what ‘the political’ might be, and what comprises them and makes them distinct, but also how they are studied and how they are utilised. The result is further distinctions between ‘moral philosophy’ and ‘political philosophy’, and ultimately ‘moral principles’ and ‘political principles’.

It is this final distinction that is of importance to the thin universalist project. Both moral and political principles can pertain to constructed regulatory principles, yet they are distinct. Moral principles can be the product of constructivism which results in a set of principles oriented towards a particular aspect of morality. Moral principles offer guidance on what one ought to do, given relevant circumstances and considerations. Moral principles *can* respond to facts of the world and to other principles, and hence they *can* be constructed and they *can* be thin and universal. Indeed, thin universalism is a *moral* project; its orientation is towards a specific

normative response to the fact of complex pluralism understood in a particular and equally normative way. What draws constructivism towards thin universal conclusions is its moral underpinnings of respect for persons and for pluralism; what motivates the concern for justification and for consent is these moral imperatives.

The outcome of thin universalism is indeed a set of *moral* principles. But it is *more* than that; it is also a set of *political* principles. The term ‘political principles’ is here understood in a particular, though not uncommon way. Political principles are those principles that can be, or ought to be imposed by the state or other justifiably empowered body. Given the nature of thin universal regulatory principles – they are constructed with the basic facts about pluralism and human beings in mind, in order to address serious issues which are the subject of shared concern – it seems logical to assert that they are not only moral principles, but enforceable political principles also.

But this leads to some concerns. Constructing regulatory principles may be all well and good, but concerns may remain about the implicit intentions behind the construction. We may wonder just how free from traditionally problematic conceptions of the source and authority of moral rules construction truly is. We may be reassured by the construction, rather than the discovery of these principles. They emerge *from* us, from our own knowledge and sentiments. But we might be slightly concerned about *how* they do so. For, thus far, I have demonstrated little more than a new procedure for determining and, seemingly handing down moral predicates from above. This chapter has been concerned with demonstrating how a set of regulatory principles might be constructed from the facts of the world as we confront them, and our first principles which an examination of those facts bring to light. The argument thus far is insufficient to fully dispel fears of ethnocentricity and imperialism. What

follows in chapter five is an attempt to allay these concerns through the assertion of a second dimension of construction, directly concerned with the *role* of the complex plurality of agents in the procedure.

Constructing Consent

The previous chapter concerned what I referred to in chapter one as the ‘object of construction’, being a set of regulatory principles which, given the ‘materials of construction’ – the facts of complex pluralism and the first principles which a consideration of those facts made apparent – are thin and universal in character. But one might suspect that the spirit of those first principles has become somewhat lost, and engagement with that complex plurality of agents is absent within a procedure intended both to respect them as individual human beings and to respect their collective cultural creations and endeavours. This is seemingly at odds with the remit to secure a ‘pluralistically enlightened universalism’, or a ‘principled pluralism’.¹

This chapter as such asserts that the construction of regulatory principles is but the first of *two* interconnected constructions, upon *both* of which the validity of thin universal principles rests. The first, the construction of the principles themselves, conducted through a philosophical engagement with points of view, arguments, ideas and controversies is only *part* of the full story. A further, ‘public’, construction is required where the regulatory principles developed in the first construction are subjected to public opinion and revision. It is only in the context of *both* procedures, and the checks that they provide for one another, that fact-dependent, regulatory principles can be considered legitimate. Regulatory principles

¹ See Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton: Princeton University Press, 2002), p.36; Bruce Haddock, Peri Roberts and Peter Sutch. ‘Introduction’ in Bruce Haddock, Peri Roberts and Peter Sutch (eds.), *Principles and Political Order: The Challenge of Diversity* (London: Routledge, 2006), pp.1-9 at p. 2

which struggle to elicit consent start to look at best alien, and at worst like absolutist dictates. But neither are regulatory principles simply those that can most easily be ‘sold’ to the public.

While it might *not* be possible to demonstrate empirically the process of constructing consent to thin universal regulatory principles, it *is* possible to sketch the kinds of considerations, arguments, and strategies that might be employed in order to realistically model the nature of consent and to outline what it is to *construct* consent to thin universal principles. The conditions and requirements under which consent might be constructed must be examined. This chapter, therefore, considers the notion of these two distinct yet powerfully interdependent constructions at work within the thin universalist project, considering how and why consent to thin universal regulatory principles might be secured. That consent, it will emerge, must also be constructed on the basis of both facts and principles.

The chapter considers arguments typically deployed by constructivist accounts of moral principles. It examines firstly the debate concerning the criterion of ‘acceptability’, rooted in the broadly Kantian tradition from which this variety of constructivism is derived. This acceptability criterion is most commonly presented as the “‘ought’ implies ‘can’” formulation.² Secondly, it considers critically other ideas, including ‘bootstrapping’ and ‘redescription’³ which, I suggest, must be adapted in order to engage sufficiently critically with their target disputants to avoid lowest-common-denominator approaches to regulatory principles or ‘unconstructive’

² I draw specifically upon an article by Julian Baggini which draws distinctions between the variously formulated relationships between ‘ought’ and ‘can’. See Julian Baggini, ‘Bad Moves: Ought without Can’, *Butterflies and Wheels* (<http://www.butterfliesandwheels.com/badmovesprint.php?num=46> January 14th 07)

³ See Barbara Herman ‘Bootstrapping’ in Sarah Buss and Lee Overton (eds.) *Contours of Agency: Essays on Themes from Harry Frankfurt*, (Cambridge MA: The MIT Press, 2002), pp.253-274. Richard Rorty, *Contingency Irony and Solidarity*, (Cambridge: Cambridge University Press, 1989), p.9

procedures.⁴ It also considers several dimensions to the consent which it might be plausible to construct around thin universal principles, including the extent of agreement, which agents are to agree and how agreement is most acceptable. Ultimately, thin universalism does not seek simply to minimise the controversy generated by universal moral principles. The task of a thin universalism is not merely to meet those minimum standards of morality found in the plurality of real world viewpoints, but to *challenge* and reform views through political debate.

Two Constructions

I begin with a more detailed consideration of this ‘two-dimensional’ constructive procedure. The construction of regulatory principles is closely connected to questions of consent. If the principles that emerge from construction are to be applicable to a cosmopolitan yet pluralized audience, and if those principles are to hold validity for that audience, questions of how they might elicit consent must be addressed. It is therefore important to understand construction as consisting of *two* closely connected but distinct and properly ‘constructive’ procedures.⁵

Seizing upon a more ‘critical’ approach to justification,⁶ the construction of regulatory principles must be developed partly as a defence against the criticisms which that procedure and those principles are bound to face, especially when confronted with complex pluralism. This defence is partly conducted in an initial

⁴ And, which in fact end up looking more like ‘re-decoration’! I am grateful to Mark Evans for helpful discussion of this extended building metaphor!

⁵ They should not, it is important to note, be confused with Peri Roberts’ distinction between ‘primary’ and ‘secondary’ constructivism which he uses to demarcate construction within and construction without ‘foundations’. His conclusion, it seems, is that what he calls ‘primary construction’ is akin to the kind of construction at work in the early Rawls of *A Theory of Justice*. ‘Secondary construction’ on the other hand has a more particular grounding and is dependent on construction of the first kind. My thanks again go out to Peri Roberts for his helpful discussion of these ideas.

⁶ See Carl Wellman, *Challenge and Response: Justification in Ethics* (London: Southern Illinois University Press, 1971), p.171. See also chapter three, above.

‘theory design’ phase where hypotheses, moral ideas and judgements, and surrounding metaethical debates, are scrutinised, problematised, defended and altered in light of new facts, arguments and objections. This procedure features many considerations from real people living real lives. But construction must also be conducted dialogically, in a second process between actual human agents,⁷ in the forum of public debate, where actual ideas are defended from critique and opposition.

In Rawls’ ‘two stages of theory formation’, the first stage of the formation of a theory of justice is the selection of principles of justice through reasoning within the veil of ignorance in the original position. Following this, ‘the principles justified at the first stage must be exposed to public discussion at the second stage.’⁸ Construction is a two-stage process akin to this: The first stage in the development of thin universal regulatory principles concerns the examination of facts and first principles and the construction of regulatory principles that adequately reflect them. Here conceptual and normative materials and considerations can be identified, clarified and justified. The content for the thin universal regulatory principles is worked out with the aim of making them logically coherent and morally acceptable, a process which appeals constantly to actual practices, beliefs and ideas. The first stage *begins* to shape the thinness and universality of regulatory principles.

At this stage, it would be implausible to assert that those principles could be worked out through a cosmopolitan dialogue between plural social groups. It would be unacceptable not to hold a conception of this dialogue in mind, but the dialogue

⁷ Again, be they individual people, cultural units, races, nations, states, religions or any faction or fragment thereof.

⁸ Rawls identified this in his exchange with Jürgen Habermas following the publication of *Political Liberalism*. See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993); Jürgen Habermas, ‘Reconciliation Through the Public Use of Reason: Remarks on John Rawls’ *Political Liberalism*’ in *The Journal of Philosophy*, Vol.92 (3), 1995, pp.109-131, at p.121; and John Rawls, ‘Reply to Habermas’ in *The Journal of Philosophy*, Vol.92 (3), 1995, pp.132-180

itself does not happen here. It *does* happen at the second stage, where strategies for generating a basis of acceptance towards thin universal regulatory principles can be outlined and criticisms addressed. While one construction is conducted through careful and reasoned philosophising, the other can only be achieved through debate over and exchange with the constructed principles. It is concerned with a more *public* justification, making thin universalism morally and politically workable, and working towards the construction of consent to thin universal regulatory principles. Importantly, the first stage of construction will take into account information pertinent to the second: about people and the values that they hold, and the social circumstances in which they find themselves. The two stages, while distinct, are *not* disconnected, and the back and forth between them is central to both.

Neither construction takes precedence as their roles are interdependent and both must be in place for constructed principles to be valid. The reasons for this are also grounded in the facts of complex pluralism and in first principles. Morally and pragmatically, constructed regulatory principles that simply court popular opinion will be inadequate. They are likely to represent a ‘lowest-common-denominator’: principles too thin to be of any great effect, crippled by their inability to tackle moral questions, or principles so hopelessly permissive that they must take the values of the Buddhist and the Nazi as equally valid. Justified regulatory principles are not simply those that can most easily be sold to the court of public opinion. Similarly, principles which are carefully constructed to be logically coherent and morally robust, but which pay no heed to *who* will be subject to them, and which cannot be consented to in any foreseeable circumstance will be invalid.⁹ Consent to universal principles of

⁹ Indeed, this is what tends to lead arguments against utilitarianism. Many of its conclusions often seem so counter-intuitive that they appear to bear no relation to us as people. It often appears forced to sanction problematic courses of action such as permission of suffering, potentially massive inequalities and human rights violations for the sake of the ‘greater good’. We must all ‘walk away

regulation is important, but equally important is full reflection on the circumstances of that consent, in order to fully grasp its terms.

If social agents do not accept the principles of a thin universalism, this does not necessarily mean that the principles themselves need to be altered. It may simply be the case that the *arguments in their favour* need to be altered. Construction is open-ended, but the process is not properly underway until the second stage of construction is established. Even then, regulatory principles will *always* be open to revision in accordance with the non-foundational nature and transience of the starting points of construction.

The analytic philosopher is not the lawmaker, or Rousseau's legislator, and certainly not 'God'. However, given that even the most empirically-minded study of morality could not engage with *every* agent whose input or consent is desired,¹⁰ the role of the philosopher, as a practitioner of political and philosophical arguments, is to filter and reflect upon arguments relevant to the issue. He or she must examine the past and the present, the politics and ethics of the situation, other cultures, perspectives, philosophies, and quantitative and qualitative data, testing the consequences of a theory in the confined environs of the academy. Therein evidence can be weighed, arguments tested, thought experiments conducted and conclusions drawn. The philosopher's position remains subject to the powerful checks provided by public discourse, and need not feature prominently at all. The philosopher may simply reflect on patterns of discourse and relationships of power and influence, offering critique and argument where possible. As such, Rawls' 'first' and 'second'

from Omelas' because the basis for its acceptability is so alien to us. See Ursula K. Le Guin, 'The Ones Who Walk Away from Omelas' in *The Wind's Twelve Quarters* (London: Harper Perennial, 2004)

¹⁰ Even if this were an anthropological study designed to find an empirically verifiable 'thin' commonality between cultural frameworks, it would not be possible to gather first person evidence for this in all cases – especially not in a project limited in the manner of PhD thesis.

stages suggest a privileged role for the philosophical stage which thin universalism rejects in order to properly respect pluralism. It is a two-stage process; neither stage precedes the other, causally or normatively.

These constructions are *never* fixed. Philosophical constructions will *always* be open to alteration by dialogue and consent-based judgments will *always* be open to the reflection of the individual philosopher, citizen, or group within society generally. Judgements made by academic, political or social bodies, by popular approval, or by other mechanisms and procedures of democratic society will always be open to challenge and critique from other sectors, including the judgements and principles of a thin universalism. This dimension of construction is retained from the Rawlsian account of reflective equilibrium. As Norman Daniels states, ‘there are no judgements on any level of generality that are in principle immune to revision’ and if any principles or judgements are to be regarded as valid in any given instance this can *only* be the outcome of an ongoing reflective process and *not* decided at the outset.¹¹ The task of construction is fluid and all judgements are open to critical reflection and revision. Thus far, then, my focus has been on the first construction of regulatory principles, on what Rawls called ‘the production of objects.’¹² I turn my now to the second, the construction of consent

Why Construct Consent?

Why might one seek to construct *consent* to regulatory principles? In the first instance consent is practically important; it provides regulatory principles with a

¹¹ See Norman Daniels, ‘Wide Reflective Equilibrium and Theory Acceptance in Ethics’ in *The Journal of Philosophy*, Vol.76 (5), 1979, pp.256-282 at pp.258-259. This paragraph, however, follows Peri Roberts’ thoughts on this matter. See Peri Roberts, ‘Identity, Reflection and Justification’ in Bruce Haddock and Peter Sutch (eds.), *Multiculturalism, Identity and Rights* (London: Routledge, 2003), pp.142-157 at pp.151-153.

¹² Rawls, *Political Liberalism*, pp.91-94

degree of stability and authority. Without consent, nothing but force remains to provide that stability and authority, which raises questions about the validity of the principles themselves. The thin universalist project is confronted by a complex plurality of agents at every social level, which it is committed to respect according to its first principles. While coercion on the part of the state may be a necessary part of the enforcement of any political principles instantiated into law, the simple imposition of those principles by force in the first place surely violates those first principles.¹³ Regulatory principles so established may lack authority and may require excessive force to maintain. The rumblings of discontent within the satellite states of the Soviet bloc, and the almost unequivocally positive response to the overthrow of the Soviet regime are testament to the instability of principles imposed and maintained coercively. Practically, principles that do not seek the consent of those concerned are, by their very nature, more unstable, and lacking in the authority required to be effective.

This pragmatic concern is also grounded in the construction of the regulatory principles themselves. Thin regulatory principles are intended to generate consent at a universal level and 'thinness' is partly a product of the need to minimise controversy in light of complex pluralism. The idea behind this is simply that the thicker, more substantive or culturally particular principles are, the more limited their potential audience. Thickness is *inversely proportional* to scope. Constructed regulatory principles are thin precisely *because* we want them to be universal; if they were not thin, universality would be out of the question. It is therefore tempting to suppose that the *sole* purpose behind constructing consent (and construction generally) is practical and pragmatic, to seek the least controversial standards that

¹³ Though the enforcement of those principles is not quite so troubling.

regulatory principles can demand. Both construction and thinness pursue and tend towards a lesser degree of controversy than more substantial and culturally specific ‘universalist’ moral claims. The virtues of this ‘tactic’ are clear: one stands a far greater chance of having one’s most fundamental beliefs respected if they are justified from a minimal (and consequently *less* controversial and *more* acceptable) starting point.¹⁴

As such, the lineage of constructivist thin universalism can in part be located within the social contract tradition.¹⁵ The emphasis placed on the consent of those for whom the principles are to be binding would seem to imply that the authority of the principles is created or bestowed, not assumed. Regulatory principles are *political* and intended to be enforceable and as such a binding contract *is* being proposed here. The links between the idea of a social contract and the idea of construction are strong and in places there is a significant overlap. Within contract theory principles are created *by* the contract,¹⁶ and in an important way thin universal regulatory principles are created by both philosophical construction *and* construction through public discourse. The consent of the affected parties, where constructivism comes close to a ‘contract’, in part *creates* the thin universal regulatory principles. The construction of consent also plays a vital role in the *validation* of the regulatory principles, and once

¹⁴ This, it has been argued, is especially the case when it comes to universal human rights. See Michael Ignatieff, *Human Rights as Politics and Idolatry* (Oxford: Princeton University Press, 2001). See also Joshua Cohen, ‘Minimalism About Human Rights: The Most We Can Hope For?’ in *The Journal of Political Philosophy* Vol.12 (2), 2004, pp.190-213, for a rebuttal of the minimalist argument.

¹⁵ Typically the terms contractarianism and contractualism are used, and used interchangeably, but there is a subtle distinction between them. The *Stanford Encyclopaedia of Philosophy* entry on the subject states that ‘contractualism ... holds that persons are primarily self-interested [and this] will lead them to act morally.... Contractualism ... holds that rationality requires that we respect persons, which in turn requires that moral principles be such that they can be justified to each person.’ As such we can see Hobbes and Gauthier as the key figures in the contractarian tradition, while Kant, Rawls and Scanlon form the pillars of the contractualist variant. See Ann Cudd, ‘Contractarianism’ in Edward N. Zalta (ed.), *The Stanford Encyclopaedia of Philosophy*, Summer 2005 Edition (<http://plato.stanford.edu/entries/contractariaism/> May 1st 2005)

¹⁶ See for the most prominent example, Thomas Hobbes, *Leviathan*, (Cambridge: Cambridge University Press, 1996). See also David Gauthier, *Morals by Agreement* (Oxford: Clarendon, 1986)

more, both constructions are equally weighted, neither fully makes sense without the other, and the constructed regulatory principles are only fully justified through *both* constructions.

Moreover, the touchstones of this thesis have been the relationship between facts and principles, the need to recognise complex pluralism, and the value of construction. This trajectory is grounded in *more* than a pragmatic need to persuade others to agree. Consent is about more than the practical task of getting people ‘on board’ with a particular set of judgements. It is about the moral demands that an analysis of complex pluralism makes. It is about ensuring that the first principles that such an analysis brings to light are followed through in such a way as to ensure reflective coherence. It is an explicitly *moral* concern that pushes us to construct regulatory principles, and to concern ourselves with consent for them.

Thinness and consent are clearly intertwined on a number of levels. While thinness does help to generate consent to regulatory principles intended to be universal, and while thinness is indeed intended in part to have such a pragmatic effect, it is more importantly intended to fulfil a moral requirement. Consent is an important result of the first principles that an examination of complex pluralism illuminates. The thinness of constructed principles is a result of the *moral* concern to respect persons and their social and cultural creations, rather than a mark solely of the need to have people agree. Without consent, claims that thin universal regulatory principles are so respectful seem meaningless. How can one claim to hold such respect if one blithely imposes ones own values on others? The authority of regulatory principles is derived more from this moral maxim than from the pragmatic need for consent.

If it is moral reasons that drive the need for consent, it is presumably a similar set of moral reasons that drive the need to *construct* consent. I have established that it is problematic to defend regulatory principles as manifestly ‘out there’ waiting to be discovered by human beings. They are constructed by them in order to have certain effects upon the world.¹⁷ It follows that consent requires similar construction, as a pre-existing basis of consent for constructed regulatory principles does not necessarily already exist, though the *potential* for such a basis may be available within already existing value systems. Furthermore, it is problematic to ground thin universal regulatory principles in a single set of religious or metaphysical claims (which may be particular to a single group). Because an examination of complex pluralism illuminates first principles requiring us to respect persons and to respect pluralism, the consent of a complex plurality of groups and individuals cannot be presumed and would need to be ‘constructed’, if those first principles are to be observed.

For Richard Rorty, political philosophy is *entirely* about the construction of consent, whose chief task is a matter of making our own ‘human rights culture’, which he considers to be genuinely ‘superior’, ‘more self-conscious and more powerful’. He suggests that

The most philosophy can hope to do is summarize our culturally influenced intuitions about the right thing to do in various situations. The summary is effected by formulating a generalization [which] ... is not supposed to ground our intuitions, but rather to summarise them. John Rawls’s “Difference Principle” and the U.S. Supreme Court’s construction ... of a constitutional “right to privacy” are examples of this kind of summary. ... [They increase]

¹⁷ Though, of course, this does not imply that *all* principles are not so discovered, merely that regulatory principles, being dependent on facts and further principles are *not* so discovered but are, as I make clear, constructed.

the predictability, and thus the power and the efficiency of our institutions, thereby heightening the sense of shared moral identity that brings us together in a moral community.¹⁸

He suggests that political philosophy is ‘the ethnocentrism of a ‘we’ (in his case ‘we liberals’) which is dedicated to enlarging itself, to creating an ever larger and more variegated *ethnos*.’¹⁹ Bringing the world into sympathy with one’s own beliefs sets political philosophy the task of establishing consent to a human rights culture. His essentially ‘groundless’ approach is oftentimes beguiling. What happens when political philosophy fails is not always clear, and Rorty’s arguments are not always satisfactory.²⁰ Bruce Haddock notes that Rorty advocates ‘the *de facto* extension of a human rights culture globally, without supplying the arguments that might justify that enthusiasm.’²¹ Rorty’s approach denies many of the argumentative and justificatory resources we might find valuable in dialogues with others. Without those reasons and resources, consent slips further and further away and what remains is Norman Geras’s critique that Rorty’s approach leads to a ‘strange humanism’, a ‘strange human rights’.²²

Detached from construction and from first principles, concern with consent seems empty. Without supplying the arguments for why we might want to construct consent and without recognising and acknowledging the deeper moral commitment which underlies the pragmatic necessity, the need for consent is lost. We need to

¹⁸ See Richard Rorty, ‘Human Rights, Rationality and Sentimentality’ in *Truth and Progress: Philosophical Papers Vol.3* (Cambridge: Cambridge University Press, 1998), pp.167-185, at pp.170-171

¹⁹ Richard Rorty, *Contingency, Irony and Solidarity* (Cambridge: Cambridge University Press, 1989), p.198. Steven Lukes confronts this argument in *Liberals and Cannibals*, p.19

²⁰ See Mark Evans, ‘Pragmatist Liberalism and the Evasion of Politics’ in Mark Evans (ed.), *The Edinburgh Companion to Contemporary Liberalism* (Edinburgh: Edinburgh University Press, 2001), pp.148-161 at pp.156-157

²¹ See Bruce Haddock, ‘Practical Reason and Identity’ in Bruce Haddock and Peter Sutch (eds.), *Multiculturalism, Identity and Rights* (London: Routledge, 2003), pp.10-24 at p.21-22

²² See Norman Geras, *Solidarity in the Conversations of Humankind: the Ungroundable Liberalism of Richard Rorty* (London: Verso, 1995). See again, Lukes, *Liberals and Cannibals*, p.19

regard the world in a certain way in order to identify the problems we need to address. Practicality is simply *one* concern: a starting point for asking these deeper questions. Consent requires a constructive approach for the sake of validity. But how does one go about attempting to construct it?

Acceptability: “‘Ought’ Implies ‘Can’”?

The construction of consent implies the constructions of principles that those to whom they are to apply *can* on some level follow. Questions of construction are often connected to questions of ‘acceptability’, what makes a principle ‘acceptable’, and what characteristics an ‘acceptable’ principle possesses. They are often addressed towards the ‘Kantian’ maxim of “‘ought’ implies ‘can’”.²³ Put simply, this is the imperative that if we insist that someone morally *ought* to do something it must at least be *possible* for them to do it. As Julian Baggini points out, how can one have a duty to do what is impossible?²⁴ While it might seem at first glance to be a fundamental, even obvious requirement for a coherent thin universalism which claims to be motivated by a concern to respect persons and cultures, it is not clear what ‘can’ refers to. The character of possibility is contested and ambiguities may be problematic for constructivism conceived in certain ways.

Most variants of constructivism are premised on some version of the “‘ought’ implies ‘can’” formula. Onora O’Neill’s constructivist position demands that an account of practical reasoning should ‘*at least aim to be followable by others for*

²³ The statements origin within Kant is somewhat ambiguous, but he is generally attributed with its origin. He refers to some notion of “‘ought’ implies ‘can’” in several places of his work, too many in fact to warrant listing them in full here. However, Robert Stern provides an authoritative list of 11 key passages from Kant, several of which are from the *Critiques*, where the formulation is employed. See Robert Stern ‘Does “Ought” Imply “Can”? And Did Kant Think it Does?’ in *Utilitas*, Vol.16 (1), 2004, pp.42-61 at pp.53-55

²⁴ See Julian Baggini, ‘Bad Moves: Ought without Can’

whom it is to count as reasoning.’²⁵ For O’Neill, a reason to act in a certain way is not a reason *at all* unless it is oriented by the capacity of the recipient to follow it. Similarly, for Thomas Scanlon, ‘an act is wrong if its performance under the circumstances would be disallowed by any system of rules for the general regulation of behaviour which *no-one could reasonably reject* as the basis for informed, unforced general agreement’.²⁶ The inability to reasonably reject general rules of behaviour is key to their validity. For Rawls, ‘it is only by affirming a constructivist conception ... that citizens generally can expect to find principles they can all adopt.’²⁷ Constructivism asserts that the legitimacy of principles of social cooperation is established through the ability of those principles to be followed by those to whom they are to apply. At a seemingly fundamental level, to posit an ‘ought’ at the same time implies a ‘can’. *One cannot be obligated to do that which is impossible*. It is therefore incoherent of me to insist that you ought, at the same time, to endorse two contradictory moral ideas. To do so would be *logically* impossible. It is further incoherent of me to insist that you ought to be nine feet tall. To do so is to demand of you the *physically* impossible. As Bagginis points out, these two seem to be corollaries of the same basic principle: that one cannot be expected to do what one simply cannot do.²⁸

Importantly however, constructivism is premised on an *adjunct* of this principle, and not simply on a corollary of it. It is premised on a version of “‘ought’ implies ‘can’” which is far more indistinct. Typically, constructivist arguments revolve around the insistence that, in order to be considered ‘reasoned’, ‘objective’, ‘right’ or ‘true’, a principle must be accessible to those to whom it is to apply in such

²⁵ O’Neill, *Towards Justice and Virtue*, p.51, also, more generally, pp.49-53 [Author’s emphasis]

²⁶ T.M. Scanlon ‘Contractualism and Utilitarianism’ in *The Difficulty of Tolerance: Essays in Political Philosophy* (Cambridge: Cambridge University Press, 2003), pp.132-133 (emphasis added)

²⁷ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp.97-98.

²⁸ Bagginis, ‘Bad Moves: Ought without Can’

a way that they are *able* to follow it. Whatever it is deemed that they *ought* to do, it must necessarily follow that they *can* do it. But how are we to define what an agent can or cannot do, beyond the physical and logical limitations imposed by the most basic understanding of the “‘ought’ implies ‘can’” rule? While it is certainly true that a principle that demands that all citizens be nine feet tall, or believe logically contradictory ideas, is incoherent as these are *physical* and *logical* impossibilities, it is unclear how one forms an idea of what is *realistically* possible.²⁹ There is a gap between what it is logically and physically possible to do and what it is realistically possible to do. While it is not logically or physically impossible for certain courses of action to be pursued, ‘real world’ conditions might prevent the realistic pursuit of that action. This is especially so in the political arena where objectives might be logically and physically attainable while their achievement might be politically, economically or morally impossible. What is more, where political, economic and moral limitations are discarded, where the logically or physically possible are pursued unrestrained, politics tends to lapse, at best into invective and at worst into absolutism. It might, for example, have not been physically or logically impossible for backbench and opposition MPs to prevent the Labour cabinet from taking the UK to war in Iraq in 2003, to do so may well have contravened politically and morally realistic courses of action, rendering them ‘impossible’. What is realistically possible is very different from what is logically or physically impossible and when “‘ought’ implies ‘can’” is applied, a characterisation of ‘can’ is essential.

At first glance this focus on “‘ought’ implies ‘can’” seems like a natural consequence of construction from the fact of pluralism: basic standards of reasoning must surely be met to ensure the validity of constructed regulatory principles.

²⁹ Baggini, ‘Bad Moves: Ought without Can’

As Evans points out, this, one might suppose, is simply a natural consequence of being rigorously respectful of pluralism.³⁰

The problem is that excessive emphasis on acceptance leads to an intellectual malaise at the limited possibilities presented by what others *could* accept. It is therefore liable to lead to favouring of the status-quo over superior alternatives. It also veers dangerously towards a lowest-common-denominator approach to construction of consent. If concern is simply with constructing principles which can appeal to as broad an audience as possible, constructivism remains in danger of having to incorporate perspectives that deny those first moral responses to pluralism that orient construction. Inflated concern with acceptability precludes the possibility of critical engagement with those who disagree with us. In such cases all we need do is find principles that others can accept, rather than engage with those others in critical dialogue and exchange, in order to secure standards which actually follow through on our first principles. Focus solely on acceptance does not do the critical work necessary, and leaves us wondering whether we ought to change how we go about constructing our regulatory principles in order to incorporate the unrepentant Nazi and the paedophile. How one balances the importance of acceptability and the implications of ones first principles is essential for the legitimacy of constructed regulatory principles.

How one defines the parameters of “‘ought’ implies ‘can’”, and how one defines what is meant by ‘can’ is therefore central to establishing principles that are genuinely ‘acceptable’. Does the term ‘can’ cover anything more than the intelligibility of the communication? It would certainly be a violation of “‘ought’ implies ‘can’” if one insisted upon a set of obligations expressed in a different

³⁰ Evans, ‘Thin Universalism and the “Limits” of Justification’, p.78

language, for example. But this is perhaps too minimal to stave off concerns of coercively imperialistic ‘moralising’³¹. Telling someone what to do, but doing so in their own language and in a way they can understand, is still telling someone what to do. It precludes only the most incoherent attempts at communication, and hence only the most culturally insensitive ‘thick’ universalisms could be critiqued according to its terms. Simple ‘intelligibility’ is therefore excessively permissive of doctrines that avowedly deny, oppose and have historically attempted to eradicate complex pluralism. The consent of such doctrines to thin universal regulatory principles brings the principles *themselves* into question.

Could ‘can’ be applied to the metric of value by which an obligation is potentially measured? Appeal to God’s will, or to some transcendental metaphysical principle would likely contravene what one ‘can’ do if one did not recognise them as sources of value or authority. This concern with ‘applicability’ is similar to ‘intelligibility. If we take O’Neill’s point, that we must reject as unreasoned principles we know cannot be followed by those who are to follow them on the grounds that they appeal to unacceptable, inapplicable, foreign, or alien metrics, it becomes clear that this too is but a minimal condition for the giving of coherent reasons.³² Appeal to a relevant authority or metric is alone *also* insufficient to construct consent to a set of regulatory principles.

Arguments that do not meet these basic criteria need not be accepted, for if they do not it can truly be said that they cannot be followed. If ‘ought’ implies ‘can’ then what follows in converse terms is that ‘cannot’ implies ‘need not’.³³ To

³¹ Intended here in its negative sense, where ‘moralising’, ‘moralism’ and ‘moralistic’ and are used as pejorative terms. See for some interesting examples, C.A.J. Coady (ed.), *What’s Wrong With Moralism?* (Oxford: Blackwell, 2006)

³² See O’Neill, *Towards Justice and virtue*, p.51

³³ And perhaps even ‘ought not’, though this may be pressing the point too hard as it might be conceivable that while one might recognise that one need not act in a certain way because of a lack of

genuinely have a duty one must be able to perform that duty. If one cannot perform that duty, one cannot have that duty. Similarly, one might return to Baggini's point and insist that logical coherence and physical possibility also be minimal criteria of consent.³⁴ There is no obligation to accept arguments that fail simple tests of logic. Those that demand blatantly contradictory behaviour cannot logically be acted upon and hence can be scrutinised and ultimately discarded. Similarly, predicates that are physically impossible – that we 'solve the problem of world poverty by dinner-time' – can be discarded as equally incoherent.³⁵

Could 'can' be applied to the actual physical, social and psychological ability of *all* relevant persons to adopt the principles on offer? O'Neill suggests that some principles could not be adopted *universally* for the simple reason that such an adoption would be logically and physically impossible. For example, one cannot will oneself into slavery and will that such a maxim be universal because if we were all slaves, there would be no slave-owners to whom to be enslaved.³⁶ It is reasonable to insist that we need only appeal to those that can fulfil these criteria and this, in turn, provides some guidance on what an 'acceptable' principle might have to look like and exactly to whom it would have to be 'acceptable'.

Further familiar problems arise where it is claimed that the substantive content of a set of principles must be thinned to such an extent that they cover *all*

justification, this does not bind one to an obligation not to act in the required way if, for example one realised that it was in one's interests or in the interests of 'acting morally' to so act.

³⁴ For an alternative perspective here see Harry G. Frankfurt, 'Alternate Possibilities and Moral Responsibility' in *The Journal of Philosophy*, Vol.66 (23), 1969, pp.829-839; see also Frankfurt, 'What We are Morally Responsible For' in *The Importance of What We Care About* (Cambridge: Cambridge University Press, 1988); and David Widerker, 'Frankfurt on "Ought Implies Can" and Alternative Possibilities' in *Analysis*, Vol.51 (4), 1991, pp.222-224

³⁵ Baggini, 'Bad Moves: Ought without Can'

³⁶ See here, Onora O'Neill, 'Consistency in Action' in *Constructions of Reason: Explorations of Kant's Practical Philosophy*, (Cambridge: Cambridge University press, 1989), pp.81-104 at p.96. See, for other examples, Onora O'Neill, 'Kant: Rationality as Practical Reason' in Alfred J. Mele and Piers Rawling (eds.), *The Oxford Handbook of Rationality* (Oxford: Oxford University press, 2004), pp.93-109

plausible thick valuational viewpoints, and *all* first principles of every kind.³⁷ In order to be fully acceptable to *all*, thin universal principles would have to be hopelessly permissive. The moral pitfalls of a lowest-common-denominator approach are clear, not least because it would force us to accept doctrines which are clearly in violation of the first principles which motivate constructivism and thin universalism in the first place.

So how and in what circumstances could people genuinely be expected to consent to thin universal regulatory principles? Consent is important to the concern to respect pluralism *and* individual persons. Care must therefore be taken over what is posited as ‘acceptable’ to a complex plurality of agents. However, if we seek more than a set of empty guidelines that do not in any sense actually guide action, we may need to alter our understanding of “‘ought’ implies ‘can’” and develop a more pluralised approach to acceptability and consent.

Bootstrapping and Redescription

In reconsidering what an altered “‘ought’ implies ‘can’” actually entails for construction, I now consider some of the key strategies of discourse and argumentation which might be of use to the constructivist in pursuit of a basis of consent. I begin with the concept of ‘bootstrapping’ and Rorty’s notion of ‘redescription’.

Complex pluralism renders the construction of consent problematic at best. How one goes about persuading others of the validity of thin universal principles must take pluralism into account. An argumentative strategy often associated with construction and which is cited as valuable tool for addressing this problem, and in

³⁷ Including, presumably, those that Berlin, Galston and Gray would want to argue are precluded by an account of value pluralism. Again, see chapter two on the distinction between value pluralism and complex pluralism of actually-held world views.

philosophical discourse generally, is the notion of ‘bootstrapping’. The Oxford English Dictionary definition of the term runs thus:

bootstrap, *v. trans.* 1. To make use of existing resources or capabilities to raise (oneself) to a new situation or state; to modify or improve by making use of what is already present.³⁸

Barbara Herman defines philosophical bootstrapping as follows:

The attraction of bootstrapping is that you use a bit of what you already have to get some place you haven’t been before, but need to go. As a strategy of argument, it is environmentally neutral. No new resources – new entities or capacities – are called for; little of what you start with is wasted.³⁹

When valuational and non-valuational frameworks – through which agents, situated within complex pluralism, processes courses of action – are analysed carefully, external challenges to those frameworks or complexities within them often arise. These may threaten the capacity of those frameworks to properly account for the facts of the world in which they operate.⁴⁰ For example, complex pluralism may well pose an external challenge to, or reveal an internal complexity of frameworks which *deny* that plurality by asserting maximal or thickly universal principles. A challenge or complexity may also be revealed in frameworks which deny the interconnection and hybridity of those frameworks by asserting a strong particularism or relativism of social, cultural and moral arrangements.

³⁸ *Oxford English Dictionary Online*, Second Edition, 1989, at (<http://www.oed.com> January 11th 2007). See Barbara Herman, ‘Bootstrapping’ in Sarah Buss and Lee Overton (eds.) *Contours of Agency: Essays on Themes from Harry Frankfurt*, (Cambridge MA: The MIT Press, 2002), pp.253-274 at p.253

³⁹ Herman, ‘Bootstrapping’, p.253. Also referenced by Mark Evans in ‘Thin Universalism and the “Limits” of Justification’, p.85

⁴⁰ In a similar manner to the ‘epistemological crisis’ identified by Alasdair MacIntyre, mentioned in the previous chapter.

A bootstrapped argument is one which, in order to address those complexities or challenges, makes an appeal to *nothing more* than that which the recipient of the argument *already* accepts. A procedure intended to address complex pluralism and elicit consent to thin universal regulatory principles is 'bootstrapped' if it firstly demonstrates how a framework is challenged or compromised by its denial of complex pluralism or of framework-transcending criteria of judgement. Bootstrapping continues where the procedure seeks to sufficiently *rearrange* and *develop* the materials *within* those value frameworks to demonstrate how the incorporation of thin universal regulatory principles into that framework can help to overcome the challenges posed by complex pluralism to its original configuration of principles.⁴¹

One could appeal to the arguments presented earlier pertaining to interconnectivity, globalisation, or the significance of moral language in order to construct consent from the particularist or relativist. The bootstrapping move is made where those arguments seek only to rearrange the judgments that the agent already holds in order to construct that consent. When the appeal is to principles or other materials already contained within a moral framework, but which need simply to be viewed slightly differently, an argument is 'bootstrapped'. Conversely, a bootstrapped argument might seek to rearrange the materials of a *thick* universalism in light of the facts of complex pluralism with the aim of proposing more characteristically *thin* universal regulatory principles. Such a procedure might suggest that much of what was perceived to be 'universal' within the original account is in fact far more historically contingent and culturally particular upon re-examination.

⁴¹ This is a heavily modified version of Herman's account, making use of language more closely related to the subject matter at hand. See Herman, 'Bootstrapping', p.253

If the construction of consent through bootstrapping requires nothing more than that which can already be found within a valuational viewpoint, this provides bootstrapping with a powerful appeal. This appeal is valuable for the constructivist who is concerned with the pragmatic need to secure consent, and with the moral issue of respecting persons and the plurality of worldviews to which they actually adhere. Thus, the constructivist might surmise that one can attempt to ‘pull others up’ to a new moral perspective by their own bootstraps, to construct a shared viewpoint, using nothing more than premises already available to them from their own worldview. One could, therefore, bootstrap adherents of a plurality of thick, culturally particular, perspectives up to a single, thin, minimal, moral point of view. In this way, the task seems simply to make an appeal to the content of each thick moral viewpoint which resonates in the content of the thin universal regulatory principles. This would, in theory, provide all the materials necessary for the construction of consent to take place. But Herman asserts that bootstrapping is an ontologically and theoretically abstemious, if not abstentious, philosophical manoeuvre,⁴² and this might lead one to wonder whether bootstrapping really *constructs* anything substantially new or different.

In order to supplement these arguments, the constructivist might follow Richard Rorty and employ ‘redescription’. Similar to, but conceptually and genealogically distinct from bootstrapping, it might be possible to construct consent by seeking to ‘redescribe’ the content of thin universal regulatory principles in such a way as to appeal to a given audience on its *own* terms, making construction

⁴² While this provides bootstrapping with broad appeal and a robust remit, Herman refers to it as ‘prestidigitation’, or ‘sleight of hand’, suggesting that a less-than-honest move is being made when one ‘bootstraps’. Herman, ‘Bootstrapping’, p.253

possible.⁴³ Regulatory principles free from religious or metaphysical content may be redescribed to be more palatable to different audiences. This may mean providing them with theistic content compatible with a given religious doctrine, or making use of the language of a philosophical doctrine. This technique has a certain resonance with discourse theorists, among others. Jurgen Habermas, for example, suggests that religious groups may need to ‘translate’ their views in order to make them accessible at the level of public debate.⁴⁴ The construction of consent through redescription might require the reverse: the ‘selling’ of the thin universal regulatory principles in such a way that adherents of religious and philosophical doctrines can find them ‘acceptable’. By selling principles in a variety of ways, the nature of complex pluralism is not denied, hidden, or corroded by principles that are universal in scope. Forcing all social groupings to adopt a mode of public discourse which is potentially alien to them is both practically problematic and morally questionable. To what extent could constructed regulatory principles be considered respectful towards persons and pluralism if they insist that public discourse be conducted in such a way as to supersede the already existing discourses of each particular value framework? Moreover, if principles are redescribed, as much of the onus is on the thin universalist as is on the adherent of a particular doctrine to demonstrate how it adequately accounts for the world to which it is addressed.

That said, bootstrapping and redescription alone begin to look somewhat vague as methods of ‘construction’ when one considers what they involve, and the potential gap between that and what ‘construction’ is intended to denote. If bootstrapping seeks simply to *rearrange* already existing views, and if redescription

⁴³ See here Richard Rorty’s account of philosophical ‘redescription’ in *Contingency Irony and Solidarity*, (Cambridge: Cambridge University Press, 1989), pp.xvi, 9, and elsewhere

⁴⁴ See Jurgen Habermas, ‘Religion in the Public Sphere’ in *European Journal of Philosophy* Vol.14 (1), 2006, pp.1-25

seeks to alter the way they are *conveyed*, we may wonder how and in exactly what way they are ‘constructive’. Surely the idea behind the construction of consent is not simply to change the way principles are expressed or arranged in order to get people to agree to them, but to persuade others that those principles are worth holding and sometimes even superior to ones they already hold. Both redescription and bootstrapping might look like little more than telling people what they want to hear – more like ‘re-decoration’ than ‘construction’!

Bootstrapping seeks to construct *solely* from agents’ already-held views, and so appears to be a robust means of bringing about new states of affairs. But the constructivism of this project has sought to emphasise not simply the pragmatic necessity of getting people to agree, but also the importance of taking adequate account of both persons and pluralism in accordance with our first principles. Bootstrapping and redescription struggle to engage in a sufficiently critical way with agents who would be hostile to thin universal regulatory principles. The task, when dealing with the Nazi or the paedophile is *not* simply to redescribe or rearrange their beliefs in order to draw them towards a shared viewpoint. We might find any number of ‘universal’ and ‘thin’ value judgements within their networks of principles, but many, perhaps all, of them will be in violation of the first principles which form the starting points for construction. Without further considerations or procedures, these tactics will not lead to a form of consent compatible with the moral conditions upon which thin universalism is predicated.

But with some alteration both bootstrapping and redescription may be of greater use than this critique suggests. Beyond simply modifying how a principle is presented to an audience, redescription may also prompt a *conceptual* change which could genuinely be considered constructive. Indeed, when we look for a shared

perspective between divergent cultural frameworks it is frequently necessary to alter the way in which we view that culture. This change may lead to a different conception of or way of viewing that cultural system that neither we nor the culture itself had previously recognised. In redescribing, it is possible to come to recognise how a set of arguments or terms, or a vocabulary,⁴⁵ can be altered to make them more coherent and accessible to us. Redescription, then, is another valuable tool available to the constructivist to secure consent. Alone, it might be too weak to construct the basis of consent of a complex plurality of agents, but when used alongside other techniques it may have sufficient leverage to construct the consent of certain audiences.

Bootstrapping may also yield substantively different outcomes from the initial content of the materials; it need not simply prosaically rearrange existing ideas. Evans suggests that one could employ a more critical bootstrapping technique by pursuing a reformation of the beliefs of a 'justifinee' (such as to fulfil the necessary critical role required) through *primarily* their own beliefs only adding new premises or critical engagements where necessary. Relevant *new* premises perform the reformative role lacking in the standard bootstrapped argument, and allow a particularist viewpoint to be 'pulled up' to the constructed thin moral perspective. Abstraction may be a valuable tool in this kind of bootstrapped argument. It isolates concepts and ideas, providing scope for re-evaluation. As a part of bootstrapping or redescription, it throws a concept into a new light, allowing it to be reviewed and regarded differently. It isolates, for instance, what a plurality agrees upon, allowing other beliefs to be brought to cohere through argument where possible. This allows the constructivist to hold the first principle to respect persons without being forced to

⁴⁵ Rorty, *Contingency, Irony and Solidarity*, pp.8-9. See also Keith Topper, 'Richard Rorty, Liberalism and the Politics of Redescription' in *The American Political Science Review*, Vol.89(4), 1995, pp.954-965 at p.954

adopt a lowest-common-denominator approach to the construction of consent. Evans refers to this as a ‘bootzipping’ or, in more complex cases, ‘bootlacing’ justification.⁴⁶ In this way, bootstrapping arguments, while potentially insufficient on their own, can provide the framework for a more complex set of arguments where only one new premise is required in order to make the agents already existing beliefs more coherent and more able to address the challenges of pluralism. This lifts an ‘acceptable’ argument into an argument that can be accepted. It lifts an abstracted, reasoned construction to a point of actual acceptance.

Construction demands a re-evaluation of the nature of consent that can, and ought to be pursued in a world marked by complex pluralism. If it takes something *more* than simply that which agents already accept in order to construct consent to a set of thin universal regulatory principles, what is required in order to do so? Construction also requires a heightened awareness of the many ways in which moral arguments must vary if consent is to be adequately constructed. If it is not plausible to construct consent through a *single* justification, but according to a plurality of argumentative tactics what is now required of the constructivist account of consent?

‘Patchworking’

Consent premised on strict yet critical acceptability demonstrates the willingness of the thin universalist to engage with others on terms *other* than their own. It also demonstrates an ability and willingness to revise one’s own sentiments, should reason to do so be found. It avoids the insistence that criticisms against it must be levelled in its own terms. It is concerned to engage not in lawmaking, but in critical discourse, not to assert dogmatic claims to truth or transcendent metaphysical ideals,

⁴⁶ Evans, ‘Thin Universalism and the “Limits” of Justification’, p.85

but ideas which are reasoned, and dependent on the facts of pluralism. The criticism that universalisms are ‘rebranded’ variations on past imperialistic moral projects, or that they remain ethnocentric,⁴⁷ can in part be circumvented by the thin universalist’s commitment to these practices.

This pragmatic, flexible and contingent approach to justificatory philosophy and moral discourse, together with the basic commitments of construction provide a significant feature of the justificatory arguments used by the thin universalist project. Much of the secondary literature on constructivism and thin universalism has pointed towards the availability and necessity of what is referred to as a ‘patchwork’ of justifications and arguments when addressing complex pluralism.⁴⁸ Not only must we recognise a complex plurality of audiences for our arguments, but we must also recognise that our relationships with those audiences vary greatly. This also impacts upon how thin universal regulatory principles, and their background and justification must be conveyed. It is probable that the argumentative strategies of a constructivist thin universalism will need to be as pluralised as its audience. And given that its audience potentially extends to the whole of humanity, whose interactions are characterised by complex pluralism, it seems likely that a discourse over thin universal regulatory principles will be enormously varied, and *always* open to renegotiation. This is not of concern to the thin universalist, concerned to see regulatory principles respond as fully and as appropriately as possible to the facts of the world.

Redescribing and restructuring ones arguments, offering a variety of justifications, and critically engaging with existing beliefs, in order to draw a plural

⁴⁷ Who, we will remember, described ethnocentrism and the unreasoned favouring of ones own in-group over all others – as seeing yours as ‘right’ and all deviation by out-groups as ‘wrong’ – as Herodotus noted, a common attribute indeed.

⁴⁸ See here Evans, ‘Thin Universalism and the “Limits” of Justification’, p.85 and Roberts, ‘Why Thin Universalism Needs Conceptions of Society and Person’, p.116

audience up to a shared thin viewpoint is something the thin universalist not only needs to be aware of, but also to embrace and celebrate. Only then can construction, and the character of thin universal regulatory principles, properly reflect their basic commitment to respect persons and to respect pluralism.

A *single* universal justification is simply not called for in this situation. While one might hope to generate universal *acceptance* for a set of regulatory principles intended for a plural world, this does not commit one to a single justificatory argument or construction. This is both difficult and undesirable. Peri Roberts notes that Rawls' acknowledgement of pluralism leads him to offer a *variety* of conceptions of society and the person, depending on context. Starting points may vary and we need to select the correct ones in order to construct a justifiable set of principles. Justifications will also vary. Different justifications will be appropriate for different audiences, not least because our relationships with different audiences will similarly be different. Our reasons must fit a plurality of political and social worlds.⁴⁹ O'Neill recognises that 'audiences for reasoning are multiple and diverse, so if the scope of some practical reasoning is to be inclusive, it must be followable on the basis of minimal assumptions about the characteristics of those for whom it is to be followable'.⁵⁰ It must at least be possible for others to follow the reasons that we offer to them. They may well *not* follow them, as Roberts points out, but it must be possible that they will.⁵¹ The intention is to use diverse justificatory arguments to draw a diverse audience towards a single conclusion.

⁴⁹ This perhaps echoes strongly Walzer's 'spheres' of justice and this is a means by which they can be respected. See Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (New York: Basic Books, 1983)

⁵⁰ O'Neill, *Towards Justice and Virtue*, p.57

⁵¹ Roberts, 'Why Thin Universalism Needs Conceptions of Society and Person', p.116; See also O'Neill, *Towards Justice and Virtue*, p.57

Justificatory arguments are therefore contingent and shifting, not foundational; their procedures are heuristic guidelines not strict algorithmic rules. The arguments at the disposal of the thin universalist are inherently tied to time, place and circumstance and will inevitably vary according to these factors. This yields few, if any, inherent problems for thin universalism, which is sensitive to the necessity of such techniques. ‘Patchworking’, Evans suggests, may be the best way (and perhaps even the only way) to draw a diverse audience to a single conclusion. Bootstrapping, abstraction and redescription provide only some of the required tools to achieve its task.⁵²

Dimensions of Consent

What remains for construction to address is the nature of the consent that it seeks. While the emphasis on consent suggests that concrete agreement is sought, the extent to which it could be constructed theoretically or hypothetically, remains unclear. Constructivism has traditionally asserted that, while the plausibility of a complex plurality of agents agreeing universally to observe the regulatory principles that issue from construction is perhaps slim, construction must be premised on the notion that they at least *can* observe them and *can* respond to the justifications and arguments on offer.⁵³

Once we recognise that it is a plurality of justificatory procedures that construction must employ, other requirements of a morally and pragmatically acceptable consensus around thin universal regulatory principles become clear. First and foremost is the recognition that, even with a patchwork of justificatory arguments, the consent in practice of *all* concerned will be impossible. Some

⁵² Evans, ‘Thin Universalism and the “Limits” of Justification’, pp.85-86

⁵³ See again, Peri Roberts, ‘Why Thin Universalism Needs Conceptions of Society and Person’, p.116; See also Onora O’Neill, *Towards Justice and Virtue*, p.57

individuals or groups will be utterly unswayed by *any* justificatory arguments while others will be unable to engage in coherent argument. But there are ways in which legitimate limiting factors can be placed on the conditions of agreement.

Construction need not rely solely on the *actual* consent of *every* party to the construction. Consent of this extent is impossible. The constructivist would be forced to accept that no such principles could be constructed, or to accept *every* conceivable moral viewpoint, however despicable, rendering constructed regulatory principles devoid of any moral or practical value (not to mention excluding those decent people of *all* cultures, perturbed by the content and permissiveness of any principles to which the Nazi could readily agree). Consent, then, might plausibly be in some cases 'hypothetical', while in others offered by proxy, and in others simply not required.

There are several groups often regarded as of special ethical status when it comes to moral and political deliberation. Children are perceived to have all the basic rights of adults, but are denied just as many political, economic and social rights on the grounds that they are not fully capable of making use of them. Other groups, such as coma patients, possess these rights but lack the faculties to use them. Premising agreement on the consent of those persons who simply cannot give it seems counterproductive and pedantic. *Who* is to be included in the second construction, then, is an important and unavoidable question.

Alongside these issues is a further question. Equally important in understanding the consent pursued by construction, is the *extent* of the consensus we need to construct, given the pragmatic and moral remit of the thin universalist project. What kind of consensus must construction pursue? There is a conceptual continuum of consensus, where agreement over moral and political principles can range from 'substantive consensus', where all but the most personal and private

issues are to be agreed upon, to outright cultural and moral relativity, where universal consensus on *anything* is regarded as impossible and undesirable. In between lie several *degrees*, advocating agonistic conceptions of politics, consensus around core values, constitutions or religious principles. The extent of the consent to thin universal principles sought by construction lies somewhere on this continuum. I draw the themes of this chapter together by considering these observations about the nature of the consent that constructivism needs to seek.

Acceptance and Acceptability

Firstly, I consider the difference between ‘acceptance’ and ‘acceptability’. Is acceptance the aim of the construction of consent, or merely acceptability? How far can consent be abstracted from actual acceptance in order for it to function practically? As I have suggested, “‘ought’ implies ‘can’” is a particularly vague maxim which is perhaps premised too strongly on a worryingly uncritical notion of acceptability. The difficulty, of course, is that the more ‘real’ we demand that consent be, the more likely we are to be left wanting. Positing that validity can only come from the acceptance of *all* agents involved in a cosmopolitan domain seems excessively demanding, even morally problematic. We seem forced to defend either a set of principles that not all can accept, or a set of principles so thin that they would be absurdly permissive.

Typically, this problem is overcome by suggesting an alternative to Evans’ “‘outright actual agreement’”, which is often a ‘little-more-than-notional conception of “what one *might* accept under some counterfactual ideal condition.”⁵⁴ Most constructivist accounts fall somewhere between these two points, drawing on

⁵⁴ Evans, ‘Thin Universalism and the “Limits” of Justification’, p.78

modelled conditions under which we can or could consent to regulatory principles. Constructivism has long enjoyed close ties with social contract theory, which also seeks to examine the conditions of unforced agreement to regulating ideas. Rawlsian constructivism uses a familiar thought experiment – the veil of ignorance within the original position – in order to model what agents would reasonably consent to in a hypothetical and counter-factual scenario where particular interests and knowledge are withheld.⁵⁵

In spite of this, contractualism has been criticised as excessively reliant on *actual* agreement, making consent unlikely and its procedures and principles *too* thin, a problem opponents of traditional contract theory have also encountered. The empirical search for existing commonalities of response, found in Walzer and other convergence theories, seems equally unlikely to yield universal principles. And even if it does, those principles are likely to be so thin as to be hopelessly permissive. It is often suggested that, rather than an insistence on an impossible level of actual consent by all real people that some form of hypothetical consent might be more realistic. That, rather than rely on what people might actually believe, which may be based on incomplete knowledge, error, or a lack of agency, we can grasp what it takes for principles to be followable or acceptable *hypothetically*. While hypothetical consent may be based on counterfactual conditions, the motivation behind it is based in the urgency of the need to find a basis upon which action in order to address the conflicts engendered by complex pluralism can proceed. Indeed, for William James, the will to believe stems in part from the urgency of the moral dilemmas we face.

⁵⁵ See Rawls, *A Theory of Justice*, pp.17-21, ch.2, particularly pp.136-141; *Political Liberalism*, pp.22-28, ch.2, particularly pp.72-80

Intervention in a systematic genocide would seem to be a prime case of this kind of judgement.⁵⁶

But this view is also fraught with concerns. Acceptability (rather than acceptance) is a de facto ‘thin’ argument, but in a particular sense. It seeks to address pluralism by reducing the substance of the agreement which we might require in order to give principles their authority. But acceptability *also* demonstrates implicitly *thick* tendencies. O’Neill suggests that construction ought to reject attempts to answer the question, ‘what principles *would* a plurality of agents, with imperfect rationality and indeterminate capacities for mutual independence choose to live by?’⁵⁷ Instead it can inform an answer to the question, ‘what principles *can* a plurality of agents, with imperfect rationality and indeterminate capacities for mutual independence choose to live by?’⁵⁸ O’Neill is here making a case for the kind of consent it *might be possible* to construct. But in doing so it gives significant ground to the pragmatic urge to secure consent, and so opens the door to smuggle in far more substantive content that many *would not* accept, but, it claims, they *could*, if circumstances were different. This significantly increases the tendency towards unacceptably culturally particular principles, which it is claimed that others *could* accept, though they certainly *would not*, and perhaps even *could not*.

‘Acceptability’, while thin in one respect, and while it perhaps increases the probability of developing a coherently constructed basis of ‘consent’, alone undermines the thin universalist project’s commitment to respect pluralism. While it might appear *more* demanding, the thin universalist project seeks actual *acceptance*. It must not settle for acceptability, for acceptability points to thickness where

⁵⁶ See William James, ‘The Will to Believe’ in *The Will to Believe and other Essays in Popular Philosophy* (London: Longmans, 1917), p.39

⁵⁷ And by ‘hypothetical’ she is referring to the Rawlsian question posed in *A Theory of Justice*.

⁵⁸ Onora O’Neill, ‘Constructivism in Ethics’ in *Constructions of Reason: Explorations of Kant’s Practical Philosophy* (Cambridge: Cambridge University Press, 1989), pp.212-213

acceptance does not. Acceptability implies that we have not constructed truly universal principles, but rather particular principles, dressed in universal attire. Actual agreement – acceptance, not acceptability – must be the aim, even where in all cases it may not be possible.

In some cases, substantive actual agreement will be possible. In many Western democracies this ‘substantive acceptance’ is present on numerous issues. The ‘constitutional consensus’ in the United States is a good example. While there may be debate about its interpretation, there is broad acceptance of the constitution itself as a platform for legislative, executive and judicial action. Substantive acceptance is actual agreement on numerous issues; not just plausible or reasonable expectation of agreement, but actual agreement. In most cases, however, substantive acceptance will be improbable, unnecessary and problematic. It would almost certainly violate respect for pluralism to push for a cosmopolitan transposition of a ‘constitutional consensus’, which equally casts doubts on the viability of its realization and it is further clear that substantive consensus is *not* required to address the problems raised in this project. As such a far thinner basis of acceptance is required.

Complex pluralism may well result in a healthy scepticism about what kind of acceptance we can expect. Indeed, universally we may be inclined to wonder if actual agreement is possible at all, even on seemingly basic judgements, like prohibition of murder. We may *sometimes* therefore seek not acceptance, but acceptability. Now, we should not be surprised that through a patchwork of justifications, a patchwork of approaches to acceptance may be required. In situations addressed to the Nazi and the paedophile, the seriously mentally ill, the coma patient and the very young, *acceptance* will be physically, practically, or logically

impossible. Here ‘acceptability’ is a valuable tool. For those whose role in the constructive process is already curtailed, it cannot be assumed that acceptance is appropriate. For those morally ‘beyond the pale’, or matter-of-factly unable to participate in construction, the demands of acceptance are weaker. The justification for this lies in part within the first construction of the regulatory principles themselves and within the characteristics that it constructs: thinness and universalism. They are constructed to respect persons and their cultural creations; this provides the key starting point from which consent can be constructed. It is precisely *because* principles are thin and universal, and it is precisely *because* they are so for pragmatic and moral reasons that they can be deemed ‘acceptable’ where necessary.

In other cases, acceptance by actual people, leading actual lives and engaged in actual relationships of interdependence and conflict will be the *only* acceptable and truly ‘thin universal’ means of consent. Respect for persons and for pluralism demands that we do not subsume certain differences into a false account of what is ‘acceptable’ in unacceptably counter-factual circumstances. The thin universalist project must pursue thin acceptance, and not thicker acceptability as its aim, even if, in some cases, it is only the potential for eventual agreement that we can see.

The Consent of Whom?

If construction is premised on an altered conception of “‘ought’ implies ‘can’”, what is then required is an account of whose consent can be constructed. And, conversely, it is important to establish the impact on the legitimacy of a thin universalism of those whose consent *cannot*. There are two interrelated questions at work here. The first is whether the construction must attend to *every* valuational perspective. This

restates the recurring problem: is the validity of constructed regulatory principles dependent upon the consent of the Nazi and the paedophile, and those unable to give their consent? There are many groups categorised in the literature on this subject, such as the ‘unreasonable’, ‘irrational’, ‘amoral’, ‘fanatical’ and ‘mad’.⁵⁹ All form part of the complexity of pluralism. Below John Rawls’ and Joshua Cohen’s ‘reasonable pluralism’, which accounts for the ‘reasonableness’ of diversity,⁶⁰ there lies a ‘simple’ and undeniable plurality of views which must be addressed by any theory which identifies pluralism as an unavoidable feature of thinking about morality.

Do constructed regulatory principles require the consent of these groups in order to be valid? What reasons could we offer to those others, in answer to the question of why we should consent to principles of regulation, and why we should have such principles in the first place? What can you say to someone who doesn’t see the need to be moral? Does construction bind us to incorporating the values of the racist, the terrorist, and the hate-monger, and must we be responsive to the ‘rogue state’ and the fanatical religious sect? Many people might seek in some way and for various reasons – and not just because they are unreasonable, irrational, amoral, fanatical or mad – to ‘opt-out’ of universal regulatory principles. We must answer the question of *why be moral*.

⁵⁹ See, for examples, Rawls, *Political Liberalism*, pp.xvi-xvii; Ronald Dworkin, ‘The Amoralist’ in Garrett Cullity and Berys Gaut (eds.), *Ethics and Practical Reasoning* (Oxford: Oxford University Press, 1997); Jonathon Quong, ‘The Rights of Unreasonable Citizens’ in *The Journal of Political Philosophy* Vol.12(3), 2004, pp. 314-335; Marilyn Friedman, ‘John Rawls and the Political Coercion of Unreasonable People’ in Victoria Davion and Clark Wolf (eds.), *The Idea of a Political Liberalism: Essays on John Rawls* (Oxford: Rowman and Littlefield, 2000), pp.16-33; and Joshua Cohen, ‘Moral Pluralism and Political Consensus’ in David Copp, Jean Hampton and John E. Roemer (eds.), *The Idea of Democracy* (Cambridge: Cambridge University Press, 1993), pp. 270-291; R.M. Hare, *Freedom and Reason* (Oxford: Clarendon, 1963), especially ch.9 on ‘Toleration and Fanaticism’, pp.157-185.

⁶⁰ See Rawls, *Political Liberalism*, pp.xvi-xvii; Cohen, ‘Moral Pluralism and Political Consensus’, p.281

The response to these issues within analytic political philosophy, and within constructivism, has been somewhat inarticulate and occasionally problematic. Rawls and O'Neill have suggested that there may be little to say to the religious fanatic or the genocidal maniac. Rawls struggles to address the challenge of the religious fundamentalist within the parameters of his political liberalism. He retreats to a 'comprehensive liberalism' in order to deal with those unwilling to pursue their interests through 'reasonable' means.⁶¹ Richard Rorty has basked in this admission, suggesting that we would never secure consent from such people, whatever arguments we were to offer. The 'madman' is, after all, mad!⁶² For Rorty, our efforts are better spent elsewhere, in the persuasion of those who *could* conceivably consent to our position.

If we are to construct a broad basis of consent for thin universal regulatory principles, certain perspectives may indeed have to be scrutinised and perhaps excluded. But it must be made clear why such groups are or ought to be excluded from this dialogical construction. After all, is constructivism not premised on the notion that all could consent to the constructed thin universal regulatory principles? To deny or ignore this question of how to address the issues posed by those who will not or cannot consent to thin universalism is to fail in a project intended to construct universal principles for a complex plurality of social actors.

The key problem facing the constructivist here is that even if we rely on a *very* thin conception of consent, some individuals and groups will *still* be unable or

⁶¹ See here the somewhat infamous 'pages 152-153' of Rawls' *Political Liberalism* for this problem.

⁶² See Richard Rorty, 'The Priority of Democracy to Philosophy' in Richard Rorty, *Objectivity, Relativism and Truth: Philosophical Papers Vol.1* (Cambridge: Cambridge University Press, 1991), pp.175-196. See also Mark Evans, 'Pragmatist Liberalism and the Evasion of Politics' in Mark Evans (ed.), *The Edinburgh Companion to Contemporary Liberalism* (Edinburgh: Edinburgh University Press, 2001), pp.148-161 at p.156

unwilling to accept thin universal regulatory principles.⁶³ We might therefore justifiably seek to limit consent to a group which excludes those unable or utterly unwilling to do so. But the narrower the scope of consent gets, the more problematic (and the less universal) thin universal principles become. Furthermore, the construction of a thin universalism is supposed to set those limitations, through the articulation of a set of regulatory principles. It might also be the case that the perspectives of some of these people are able to tell us things about the kind of social world that produced them, which is extremely valuable to the procedure of construction.⁶⁴ So, how do we decide who to include in what Marilyn Friedman calls the ‘legitimation pool’?⁶⁵

How does the constructivist determine who is to be included, and how some can legitimately be excluded? The first concern is that, in order to determine the parameters of the legitimation pool we must resort to a set of fact-based principles about which doctrines are acceptable, whose moral frameworks must be party to construction, and whose consent must be secured. The problem of course being that such a reasoned set of principles is *what is being constructed*. This results in the circular claim that that the best way to determine who should be party to the construction of a thin universalism would be to apply the principles of that thin universalism itself. We cannot, therefore, apply regulatory principles to the determination of the legitimation pool, because the relevant regulatory principles are not sufficiently independent of the outcomes of the procedure to avoid the *petitio principii* fallacy.

⁶³ This is adapted from Marilyn Friedman, ‘John Rawls and the Political Coercion of Unreasonable People’ in Victoria Davion and Clark Wolf (eds.), *The Idea of a Political Liberalism: Essays on John Rawls* (Oxford: Rowman and Littlefield, 2000), pp.16-33 at p.21

⁶⁴ Friedman, ‘John Rawls and the Political Coercion of Unreasonable People’, p.18

⁶⁵ Friedman, ‘John Rawls and the Political Coercion of Unreasonable People’, p.19

Similarly, appeal to first principles will also leave the constructivist wanting. The exclusion of all perspectives that do not endorse the first principles of respect for persons and respect for pluralism would leave out many crucial moral, political, religious and social groups, many of whom do not share the constructivist's predilection for the complexities and benefits of pluralism.⁶⁶ Many groups deny the importance of respect for persons outside of their own particular groups; many more deny respect for pluralism. What basis can be used, then, to establish a legitimation pool that excludes the worst of what some human beings consider to be morally acceptable, without excluding the majority of humanity's many somewhat insular, confrontational, even outwardly intolerant groups?

It is worth noting firstly that the problem of who to include in the legitimation pool highlights the potential limitations of this kind of project. The constructivist, the thin universalist, and the philosopher more generally do not hold all the answers to these questions. Far from undermining the project, however, this helps to demonstrate the *strength* of thin universalism's claims. It points towards the flexibility and contingency of the procedure of construction and of the constructed and fact-dependent thin universal regulatory principles. Those concerned about universalist philosophies, however 'thin' they are, can find some reassurance that thin universalism does *not* profess to hold the answers to all our moral problems. It is not an all-encompassing account of the world and how we should act within it, like many universalisms have been, and have proudly professed to be. These limitations add weight to the claim that construction is ongoing, that the tasks of the constructivist and the thin universalist will never fully be done, and that the

⁶⁶ In chapter two I suggested that the thin universalist takes regard of complex pluralism, rather than value pluralism, as the latter requires burdensome metaphysical evidence that adherents of many moral frameworks would find inaccessible or unacceptable.

outcomes of construction, the thin universal regulatory principles themselves, are not, and can never be realised as fixed, transcendental, moral algorithms.

Nonetheless, the argument about limitations may not alone be terribly satisfactory. Further insight might be found by considering the *significance* of consent. Consent to thin universal principles is constructed from the commitments within our first principles to respect pluralism and to respect persons; consent is what is *morally* required. It is required precisely because there is a sense in which we simply *have* to live together peacefully. The world is a finite, bounded sphere from which there is little means of ‘escape’. It is almost impossible to opt out from social life entirely. Thin universalism proceeds from the assumption that we *have* to find some way to live together peacefully, and that it is plausible to do so according to certain politically enforceable principles. The project proceeds according to the belief that those principles must be constructed according to the facts, that they must therefore bear certain characteristics, and that the legitimacy of those principles is in part premised on consent to them by those to whom they are to apply. Construction proceeds on the understanding that there might be sufficient others who agree with this minimal idea of peaceful coexistence. It recognises that while different frameworks may radically vary, there is a sufficiently powerful compulsion towards the need for peaceful coexistence in order for individuals and societies to flourish. John Gray claims that ‘nearly all ways of life have interests that make peaceful coexistence worth pursuing.’⁶⁷

⁶⁷ See John Gray, *Two Faces of Liberalism* (Oxford: Polity, 2000), p.135. In this way, the thin universalist project differs from John Gray’s account of *modus vivendi* in as much as Gray never seeks to move beyond the idea of peaceful coexistence. It is not always clear how Gray would seek to address those who reject the idea (aside from his commitment to a moral ‘bottom line’ in accordance with Berlin’s value pluralism, which as I have asserted leaves the question of justification with which I am concerned unaddressed). See again, *Two Faces of Liberalism*, ch.4; see also *Enlightenment’s Wake*, ch.6, pp.80-85

The thin universalist project begins with this ‘primordial’ commitment simply to the idea of living together. Fundamental opposition to this *extremely* thin starting point of continuing peaceful coexistence is deeply problematic and provides some guidance as to who might be included in the legitimation pool. Inability to accept *any* notion of peaceful coexistence surely renders a worldview sufficiently problematic as to legitimate its exclusion from the construction of consent to regulatory principles designed to allow a complex plurality to live together peacefully. *Living* together is central to this notion: groups, be they ethnic, social, economic or religious encompass modes of *living*. This allows us to see relatively clearly certain cases of whose consent the constructivist might be seeking and whose consent the constructivist might not. Groups or individuals who reject the notion of a mode of living, advocating instead death – the suicide bomber, the genocidal maniac – make the decision about their inclusion for us.

We may be unable to engage in a procedure of construction with many of those who lack full moral agency. We may not need to include children under a certain age in construction, for example. Similarly, while coma patients and the seriously mentally ill are possessive of all the rights and benefits that ‘being human’ entitles one to, they lack the full moral agency to participate in construction. It may therefore be less important to garner their consent to thin universal regulatory principles. We might not be able to engage in construction with such agents, but we *can* coexist peacefully with them. The case of the violent racist, religious fundamentalist or suicide bomber may be different. Where agents utterly lack the impulsion to pursue peaceful coexistence of *any* kind, there is little cause for concern at the exclusion of them from the construction of consent. We cannot live with the

suicide bomber or the warmonger because they are unwilling to live with us. How can they participate in the negotiation of terms of shared, peaceful coexistence?

What constructivism urges, however, is the importance of engagement with such agents in the first instance. Construction is not committed to a *de facto* rejection of these problematic worldviews without *any* discussion of the matter. The recognised contingency and openness to renegotiation of thin universal regulatory principles mean that engagement with frameworks that reject peaceful coexistence is positively encouraged. It is urged that such tactics are periodically revisited. But such groups *can* legitimately be excluded from the legitimation pool precisely because their frameworks preclude the idea of peaceful coexistence, which we are in no way committed to accept.

The ‘Limits’ of Consensus

Central to a thin universalism is the idea that there are definite limits to the consensus that we can, and indeed ought to seek. The point of a *thin* universalism in this context is to show that we only need consensus around a limited number of fundamental⁶⁸ moral regulatory principles. Beyond that, consensus and the pursuit thereof has only contingent and limited value. So what is the extent of that consensus? Where are its ‘limits’?

The thin universalist project is, in a very significant way, about consensus. In one respect, the whole project is about redrawing the boundaries of universal consensus in light of the facts of pluralism. It asks where the legitimate limits of consensus lie, and ought to lie, given our experience of a complex plurality of social, moral, cultural and political viewpoints, not all of which coincide in *any* significant

⁶⁸ In terms of their importance, rather than their epistemic status.

way with our own. Conversely, it asks where the limits of that complex plurality might be found, and where perhaps they ought to be drawn. But 'consensus' can denote a variety of perspectives ranging from a deep-rooted social homogeneity to near-relativism. Where the *limits* of our constructed consensus lie, and the extent of the consensus that we ought to seek, is located firstly within the facts and first principles of construction. Consensus is determined by complex pluralism, and our response to it; how one views complex pluralism will determine in part the full extent of the consensus one pursues.

For thin universalism, complex pluralism is not localised or temporary, it is not inert or benign, nor is it destructive and corrosive. Importantly though, while the *fact* of pluralism cannot be denied, which would require countering *overwhelming* empirical evidence, universal recognition of its *value* would be highly unlikely. Pluralism is widely challenged on various levels; many, perhaps even a vast majority, of the actors in a plural world believe that 'their way' is the 'right way'. Construction is committed to respect pluralism, but in so doing it is also committed to the recognition that not every political, religious, cultural and social framework possesses a similar respect. An adequately constructed consensus therefore will have to properly reflect the realities of complex pluralism.

Consent can be positioned somewhere upon a continuum or typology which also ranges from 'thick' to 'thin', with relativism as the thinnest extreme and social conformism or radical social homogeneity as the thickest. Moving from thin to thick, relativism sits on the thinnest edge. I suggested in chapter two that relativism is premised on a single, extremely thin yet absolute assertion that all practices, or truths, or principles are relative to the cultural, social or historical context out of

which they arise.⁶⁹ A relevant ‘popular’ expression of relativism might be that we can agree on nothing more than ‘to disagree’.

A close counterpart of ‘absolute’ relativism is what Benhabib refers to as ‘framework’ relativism, which she identifies with Richard Rorty’s notion of competing vocabularies⁷⁰ and with Jean-Francois Lyotard’s concept of the *différend*.⁷¹ Both place ‘context’ or ‘framework’ at the forefront of accounts of human communication.⁷² Notions of ‘the universal’ are not precluded, but are cast into serious doubt, along with universal consensus. Framework relativity would produce a deeply pluralised account of consensus, which some would claim is *too* deep and therefore too thin.⁷³

Beyond these relativist accounts, which are scarcely concerned with consensus at all, strong pluralism and pluralisation come into sharper focus. These include accounts of political and ethical life which reject the pursuit of consensus advocating instead the need to pursue *dissensus*, difference or pluralism itself as political and moral goals. Many such accounts attack thicker conceptions of consensus on the grounds that they seek to preclude political discourse and pursue extensive falsified metaphysical agendas.⁷⁴ Less thinly-conceived are accounts of agonism, urging *against* a perceived overwhelming Enlightenment trend towards the eradication of cultural and social differences. Agonism warns of the dangers of insisting on consensus beyond what Isaiah Berlin referred to as ‘minimal standards

⁶⁹ The literature here is vast. For a good summary see Gilbert Harman and Judith Jarvis Thompson, *Moral Relativism and Moral Objectivity* (Cambridge MA: Blackwell, 1996) and David B. Wong, *Moral Relativity* (Los Angeles, University of California Press, 1984)

⁷⁰ See Rorty, *Contingency, Irony and Solidarity*

⁷¹ See Jean-Francois Lyotard, *The Différend: Phrases in Dispute* (Manchester: Manchester University Press, 1988)

⁷² Though neither would be eager to endorse the notion of ‘principles’ at work here.

⁷³ Benhabib, *The Claims of Culture*, ch.2, particularly pp.29-33

⁷⁴ Again, the literature here is burgeoning. See, of particular note, Nicholas Rescher, *Pluralism: Against the Demand for Consensus* (Oxford: Oxford University press, 1993) and William Connolly, *Pluralism* (Durham, NC: Duke University Press, 2005). See also Connolly’s *Why I am Not a Secularist* (Minneapolis: University of Minnesota Press, 1999)

of moral decency.’⁷⁵ Typically, what flows from agonism is a concern to establish a *modus vivendi* which secures no more than peaceful relations between social actors.⁷⁶ Within agonism and *modus vivendi*, little consensus is demanded above the bare minimum conditions of decent conduct, be they formulated as human rights or other standards. Problematically though, most accounts of agonism neglect the workings of this basic minimum, and how its standards are arrived at is often left unaddressed.

Closely related to these accounts, though thicker still, can be found pluralistic notions of consensus, where agreement is premised on a few minimal standards which find different expression and justification depending on context but which are, nonetheless, ‘universal’ in scope. Many tenets of a constructed thin universalism may find themselves amongst this cluster of ideas. Consensus over such regulatory principles must be pluralistic and minimalistic.

The key alternative to this approach is the thicker, Rawlsian notion of ‘overlapping consensus’. As a result of the free exercise of human reason over time, Rawls argues, it is likely that a variety of comprehensive religious and moral doctrines will emerge – Rawls’ ‘fact of reasonable pluralism’. This in turn poses a ‘problem’ for theories such as justice as fairness. Rawls’s answer to this problem is based on the idea that divergent moral and religious conceptions of the good could converge on *some* common ground. Citizens who hold a plurality of religious and moral beliefs can nonetheless agree on the basic principles necessary for a society to satisfy the demands of justice as fairness. This means that different citizens, be they Catholics, Protestants or secular humanists, can consent to the same principles from

⁷⁵ See here Gray, *Enlightenment’s Wake*, ch.6. See also Isaiah Berlin, *The Crooked Timber of Humanity* (Princeton: Princeton University Press, 1990), ch.4

⁷⁶ See here John Gray, *Two Faces of Liberalism* (Cambridge: Polity, 2000)

different perspectives. Although a deep consensus might be impossible, an ‘overlapping consensus’, Rawls argues, *is possible*.⁷⁷

Beyond overlapping consensus can be found thicker accounts of consensus ranging from ‘constitutional’ and ‘universal’ consensus over the key institutions of the basic structure of society,⁷⁸ to thicker consensus over the ‘good life’ found in religious moral frameworks, or comprehensive social philosophies. Presumably the thickest form of consensus is totalitarianism, which insists upon an Orwellian level of consensus and unanimity within all aspects of public and private life.

Rawls’ overlapping consensus, the key contemporary account of consensus, struggles to adequately account for complex pluralism. The outcome is non-, even anti-pluralistic because its procedural approach continues to insist upon the construction of consent based upon a *single* public language. Because of the ‘patchworked’ argumentative strategies of a constructive approach as I have sought to establish it, thin universalism rejects the notion that all could accept its regulatory principles, however thin they may be, on the *same* basis. Patchworking provides for a far more plural approach to the acceptance of universal principles.⁷⁹ Overlapping consensus is unable to provide such a pluralistic approach.

In his critique of Rawls, George Klosko offers an alternative method of determining moral principles from the ‘convergence’ of comprehensive views in society. The aim of convergence is to minimise controversy over these fundamental principles thus generating a genuine consensus based on the actual views of citizens

⁷⁷ Rawls, *Political Liberalism*, Introduction, ch.4

⁷⁸ Which we find in Rawls’ earlier work, typified by *A Theory of Justice*. And in certain comparable examples such as the constitutional consensus of George Klosko. See his ‘Political Constructivism in Rawls’ Political Liberalism’ in *The American Political Science Review*, Vol.91 (3), 1997, pp.635-646

⁷⁹ And, indeed, the idea of a patchwork of justification allows for potentially wide variances in how regulatory principles can be expressed and implemented. There are limitations to this variation, which will also be explored.

within a given society.⁸⁰ Klosko likens his view to that forwarded by Kurt Baier, of a ‘constitutional consensus’, an interpretation of the prevailing view within modern American society whereby general agreement on procedures of law provide stability and civic virtue, performing the same function as overlapping consensus.⁸¹ Rawls’ position, he suggests, is difficult to defend because it lacks convincing evidence for its plausibility. Nonetheless the success of convergence is dependent upon widespread agreement, and while Klosko maintains that such agreement *can* be empirically verified, it remains doubtful, given complex pluralism, that such agreement is possible without leaving further work to be done. Global constitutional consensus suffers from just that same problem of plausibility that it levels against Rawls’ overlapping consensus. Convergence is also dependent upon a modern liberal democratic context and is therefore open to claims of ethnocentricity and is hence potentially unsuitable to adoption on a wider or higher level. On this count, the idea of convergence seems irretrievably ‘thick’ in its cultural particularity. The kind of convergence we might seek, while it might not be possible *only* in liberal democracies, will suffer from a limited practical scope.⁸²

Nonetheless, convergence recognises that consent is necessary to provide validity and form to our constructed principles. What is also apparent is that different forms of consent have roles to play in the construction of consent to thin universal regulatory principles. This plurality of forms is connected to the distinction drawn between agreement *upon* a set of principles and agreement *to* a set of principles. Seeking agreement *upon* a set of principles involves finding principles that all who agree to them actually hold. Seeking agreement *to* a set of principles involves securing agreement to abide by those principles *without* the need for the holding of

⁸⁰ Klosko, ‘Political Constructivism in Rawls’ Political Liberalism’, pp.635-646

⁸¹ Klosko, ‘Political Constructivism in Rawls’ Political Liberalism’, pp.638-639

⁸² See O’Neill, *Towards Justice and Virtue*, pp.52-53

those principles on the part of all concerned. While many universal moralities strive for agreement *upon* a set of principles, a constructive thin universalism need only pursue and, in line with the moral considerations of the project, is morally committed only to pursue agreement *to* a set of thin universal regulatory principles.

This, in turn, allows for a plurality of forms of consensus which include agonistic relationships, strong pluralization, and *modus vivendi*. *Modus vivendi*, for example, has many applications in cases where a principled consensus is thoroughly impracticable. It is likely that, thin as thin universal regulatory principles may be, some moral frameworks, cultural systems or political regimes will only consent with deep reluctance. The expectation of agreement *upon* thin universal principles by such systems is pragmatically unlikely and morally problematic. But agreement *to* those principles may, in the fashion of a *modus vivendi*, provide a means of getting others on board whose consent is valuable, but whose values diverge strongly from our own. A good example might be North Korea, or other states that have sought to exempt themselves from international and cosmopolitical systems. Other, more localised agreement might be implausible if their basis is 'upon' rather than 'to' regulatory principles. The relationship between Israel and its Arab neighbours might never progress if it is explicit consensus upon a single set of principles which is required or desired. Many violent conflicts are between groups simply *not interested* in principled agreement. *Modus vivendi* might be the most we can ask for, and the most morally acceptable means of securing consent in such cases. And as a result construction further pluralises political and moral discourse.

Towards Consent

Consent is fundamental to the form, legitimacy and application of regulatory principles constructed to have an impact on the interactions of a complex plurality of agents. It is insufficient to premise consent simply on acceptability, nor is it enough to assume that one can pull a complex plurality up to a shared thin viewpoint using nothing more than the beliefs agents already possess. A more critically *constructive* approach is required which makes use of a variety of justificatory strategies and which recognises the practical and moral constraints which any doctrine that takes consent seriously must face.

Given that many of the motivations of a thin universalism *are* strongly political, the mechanisms and procedures of a thin universalism cannot be *purely* moral in content. The need to apply standards in justificatory argument, to approach pluralism sensitively, to incorporate participants into the mechanisms of construction and the initial instinct that thicker conceptions of universalism are inappropriate in a plural world, all point to political as well as moral motivating features of this project. And, indeed, it is the intention of the constructivist that there be something in a set of thin universal regulatory principles that is available to everyone. But it is important to remember that the purpose of construction is not simply to have people agree. It is also to ensure that certain minimal standards, determined by our first principles to respect persons and to respect pluralism, are met. Neither is met without construction. Construction is therefore a two stage process. Each contributes to the form and legitimacy of thin universal regulatory principles, and any such principles will be found to be lacking if either construction is defective or deficient. It is through construction, therefore, that thin universalism is provided with its key features.

I go on now to consider the nature of an international political culture which draws upon the notions and ideas of thin universalism. I look at what attitudes might best represent the thin universalist project, and how that project might best be followed through. I seek to utilise the most powerful and potent popular ideas which can most plausibly be grounded in both constructed thin universal regulatory principles, and in a constructed consensus: those of 'human rights' and 'toleration'. What I suggest in the next chapter is that a conception of human rights offers an acceptable, legitimate and powerful means of expression for a set of thin, universal, fact-dependent, regulatory principles. It considers these features and how we might engage with the current trends in human rights discourse in order to render them more coherent, more powerful and more able to respond to the requirements of complex pluralism in the modern world.

The Role of Thin Human Rights

Thus far, the thesis has explored the causal relationships between the various stages of construction within thin universalism: from the object of construction in chapter one, the materials of construction in chapters two and three, to the construction of regulatory principles and the construction of consent in chapters four and five. Each stage has built on those that preceded it and has yielded a case for a set of thin universal regulatory principles. In chapters six and seven I consider the character of those thin universal principles. In this chapter I propose a thin conception of human rights as a plausible and persuasive expression of thin universal principles, while in chapter seven I propose a conception of toleration and its limits. While they overlap, their substantive content reveals distinctly different dimensions to how thin universalism can be cashed out.

This chapter concerns itself with the connection and engagement between thin universal regulatory principles and a conception of human rights. Its purpose is to define, characterise and justify that connection, demonstrating what thin universalism might look like in practice. Why might the language of human rights be suitable for the expression of thin universal principles? What might a constructed 'thin universal' conception of human rights look like? What sets the thin universalist conception of human rights apart from others?

The chapter begins by connecting thin universalism with a conception of human rights. Just as constructed regulatory principles cannot be regarded as ‘first’ principles, neither can human rights. They are themselves responsive to facts and other, more basic moral considerations. They need not be a response to a metaethical plurality of values, but *can* be regarded as responsive to a complex plurality of social, political, moral and cultural systems. This, however, leaves important issues unaddressed. For instance, even if my account of thin universalism has been acceptable thus far, many will still doubt the validity of *rights* as a means of its expression. Indeed, Onora O’Neill proposes that we overhaul the concept of rights in favour of an account of *obligations*, their importantly asymmetrical corollaries.¹ Further, and more damning critiques of rights have also emerged, such as those of David Chandler, who critiques rights discourse as being little more than the abstract philosophising of liberal elites.² The chapter acknowledges these issues but asserts that, if a conception of human rights is grounded in construction, it can demonstrate a reflexivity, sensitivity and self-awareness which overcome them. Human rights have a powerful moral and philosophical appeal, as well as political and practical leverage, and they continue to grow in terms of their international prowess and their argumentative sway.

Nonetheless, human rights are deeply problematic, in how they are codified within international legal structures and in their role within academic and popular discourse. Human rights have frequently fallen prey to many of the problems which have beset attempts to establish universal principles. Many accounts are unacceptably ethnocentric and hence not universal at all. Many grossly misrepresent

¹ See Onora O’Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996), ch.5

² David Chandler, *From Kosovo to Kabul: Human Rights and International Intervention* (London: Pluto, 2002), ch.4 in particular.

other cultural and moral systems, insisting that the values of one culture, 'our culture',³ are either superior to others, or so sufficiently similar as to co-opt them into the realm of authority of a set of principles which are alien to them. Many more have been accused of outright moral imperialism and of the frequently disastrous consequences that flow from it. Only a conception of human rights that can overcome these difficulties can assist in arbitrating and alleviating violent conflict within a complex plurality. What I propose in this chapter, then, is a *thin* human rights or a human rights *minimalism* as an expression of constructed thin universal regulatory principles.

In so doing, the chapter addresses three key objections to such a conception of human rights. The first being that the account of principles outlined thus far proposes nothing more than disconnected, abstract principles which exist only in the discussions of the academy and which have no bearing on the *actual* conflicts and suffering of *real* people. The second being that a culmination of the thin universalist project in a conception of rights amounts simply to a defence of the status quo in theory and in practice. Thin Universalism must be more than a new defence for traditional human rights doctrine; more than a conservative approach to a system desperately in need of reform. The third being that minimalism strips all substantive content out of human rights, leaving nothing to defend but a desire to pursue peace at *any* human cost.

Human rights are, I argue, an extremely useful way of expressing a thin universalism in its most explicit sense. I close the chapter by taking up a further theme of the thesis: to draw a thin universalism from a deeply abstract account of the nature of 'principles', into an increasingly explicit expression of thin universal

³ See Richard Rorty, 'Human Rights, Rationality and Sentimentality' in *Truth and Progress: Philosophical Papers Vol.3* (Cambridge: Cambridge University Press, 1998), pp.167-185

regulatory principles. Thin human rights are one such expression; the other is a clearly drawn conception of toleration. These bicameral notions are the outcomes of construction, and the answers to an important set of moral questions, but they also inform questioning about a number of *other* moral and political problems. I begin by considering the connection between fact-dependent thin universal regulatory principles and a conception of human rights.

Thin Universalism and Human Rights

‘Human rights’ are *one* explicit expression of thin universalism. Thin human rights are part of the final distillation of ideas which began with an account of the nature of construction and the relationship between facts and principles, progressing through the materials and procedures of construction. The narrative created by considering the thin universalist project in this increasingly specific way has sought to show how analytic philosophy of this kind can draw a deeply abstract, even metaethical account of features of the world towards controversies which engage with powerful currents in political debate. This demonstrates how consideration of general moral principles need not lack a sense of connection with the ‘real’ world and ‘real’ people. The use of human rights and toleration are themselves deeply significant with this in mind.

The primary concern of the chapter is thus how one understands the relationship between regulatory principles and a conception of human rights. What is the nature of that relationship? Are rights the outcome of construction? Is it that thin universal principles can be *expressed* as rights? Are rights thin universal principles *redescribed* in the language of a particular moral culture?

What human rights *are* is a particularly useful way of expressing and articulating, and a particularly forceful way of seeking to instantiate, constructed thin

universal regulatory principles. They are a useful vehicle for their packaging, presentation and achievement in the complex plural world to which they are a response. They are a most persuasive form for principles intended to have universal scope.

In chapter four I suggested that the thin universal regulatory principles that emerged from construction are, in fact, *political* principles. They are moral principles of a particular kind which lent heavily to their pursuit and enforcement by the state, or other relevant authority. *Rights*, and particularly *human rights*, by their very nature suggest themselves as those aspects of our moral and social interactions that we turn to the state, or other authority to enforce. A set of thin human rights, as expressions of thin universal regulatory principles present themselves as the most compelling moral principles we might want to see enforced politically.

Of course, the very notion of rights ascribable to all human beings is formally universal in the sense that they extend to all persons, and characteristics such as race, sex, religion, social position and nationality are irrelevant to whether one possesses them.⁴ Human rights have on occasion even been used to express *thin* universal sentiments.⁵ This debate over thinness has been a part of the more general debates on human rights since they were conceived, but has become particularly prominent since the inception of the United Nations *Universal Declaration of Human Rights* in 1948. Thin universalism finds powerful modes of expression, within 'Western' political discourse and Anglo-American philosophical discourse, when formulated as human rights.

⁴ Here I paraphrase James Nickel, though this notion of universality extends across most accounts of human rights. James W. Nickel, *Making Sense of Human Rights*, Second Edition (Oxford: Blackwell, 2007), p.9

⁵ As I sought to show in my review of current literature on this topic. See my introductory chapter.

But the ostensibly ‘Western’ character of human rights means that *universalism* about human rights shares the problematic history of other universalisms. As such, human rights debates have frequently been accompanied by attention to issues of justification and questions of scope. It is notable that I established the dilemma, recognised by Onora O’Neill, posed to universalism by pluralism in terms of right: ‘On the one hand we want to respect cultural diversity ... On the other hand ... we want to insist that all people of whatever background and wherever they are have certain basic rights.’⁶ Other expressions have used human rights language to defend a set of moral ‘fundamentals’ or ‘basics’ for a meaningful human existence. Henry Shue argues that human rights claims are ‘*everyone’s minimum* reasonable demands upon the rest of humanity’.⁷ Rex Martin makes a similar case in favour of what they both call ‘basic rights’ and Michael Ignatieff makes a case for what he calls ‘human rights minimalism’.⁸ Joshua Cohen suggests that the practical role of human rights

... is to provide a broadly shared outlook, across national boundaries, about the standards that political societies ... can be held to with respect to the treatment of individuals and groups; and correspondingly, the treatment that individuals and groups can reasonably demand, and perhaps enlist assistance from outside in achieving. Or, if not a shared outlook, at least a broadly shared terrain of deliberation about the standards to which political societies can reasonably be held, and when they are appropriately subject to external criticism or interference. Because [international] society comprises adherents to a wide range of distinct ethnic and religious outlooks ... minimalism ... is

⁶ Onora O’Neill, ‘Kantian Universalism in a Culturally Diverse World’, speaking on the BBC World Service in May 1999, *Cambridge University Website* (http://www.phil.cam.ac.uk/u_grads/Triplos/Ethics/course_material/1a_kant_s_ethics_05.pdf November 1st 2004)

⁷ Henry Shue, *Basic Rights: Subsistence, Affluence and US Foreign Policy* (Princeton: Princeton University Press, 1996), p.19 (emphasis added)

⁸ See Shue, *Basic Rights*, Introduction; See also Rex Martin, *A System of Rights* (Oxford: Oxford University Press, 1993), esp. chs.2 and 4; Michael Ignatieff, *Human Rights as Politics and Idolatry*, (Princeton: Princeton University Press, 2001)

an intuitively plausible desideratum. And its point is not simply to avoid a fight where none is necessary; the point is to embrace the value of toleration.⁹

A conception of ‘thin’ human rights must be sufficiently sensitive to complex pluralism to offer the kind of respect encapsulated by the first principles outlined in chapter three. But it must also offer a genuine standard by which human societies can be deemed fit to support the worthwhile existence of human beings, in both their individual and collective endeavours, prompting action in circumstances where such standards are not met.¹⁰

Human rights, however, do not provide a blank canvass onto which thin universal principles can be painted; human rights have a long history, with strong ties to Judeo-Christianity and the Natural Law tradition. They are instantiated into international covenants, declarations and laws and hence a thin universalism that seeks expression through human rights must engage with an already burgeoning body of normative and empirical literature. There are numerous conceptions of human rights; many are strong, comprehensive lists of what every society owes its citizens. The *Universal Declaration*, which codified the concept of human rights into international covenant, provides just such a list, ranging from the strong civil and political rights to life and liberty, to more complex social and economic rights to education, social participation and leisure time.¹¹

⁹ Joshua Cohen, ‘Minimalism about Human Rights: The Most We can Hope For?’ in *The Journal of Political Philosophy*, Vol.12 (2), 2004, pp.190-213 at p.194

¹⁰ Action of course, should not be limited to armed intervention – humanitarianism surely begins with aid and the provision of means for a society to support itself. ‘Action’ therefore, is not limited to coercive measures.

¹¹ See United Nations Department of Public Information, *Universal Declaration of Human Rights* (New York: United Nations Department of Public Information, 1948). Article 3 of the *Universal Declaration* outlines the ‘fundamental’ rights to life, liberty and bodily integrity, articles 4-21 outline what have come to be known as the ‘first generation’ of civil and political rights, articles 23-27 outline the ‘second generation’ of social, economic and cultural rights.

By a different metre, further conceptions of rights take a more or less *substantive* approach, asserting more or less human rights, or placing them more or less central to discussions of international ethics. Other conceptions of, or claims to respect human rights reinterpret and redescribe non-rights-based discourse in human rights terms. Many proponents of Asian and African conceptions of human rights have sought to do this with the aim of demonstrating these cultures' ability to embrace what is becoming a human rights hegemon.¹² Joshua Cohen uses Confucian and Islamic texts to demonstrate how what he refers to as 'the terrain of human rights' can be traversed by doctrines that are not founded on, or embrace, human rights.¹³ Cohen seeks to 'construct', through techniques similar to bootstrapping and redescription, means by which proponents of diverse doctrines who *must* share a bounded world *can* do so. He does not seek to show that Confucianism and Islam contain conceptions of human rights where they do not, merely that each contains the materials required to engage in a debate over them.¹⁴

There are ways of elaborating a moral outlook that is fundamentally non-liberal in its conception of the person and political society, which is consistent with a conception of *minimal standards* to which political societies can be held. It is not that we can 'find' a conception of human rights in moral traditions that do not affirm them,¹⁵ simply that a two-way process of redescription, bootstrapping and other

¹² See Jack Donnelly, *Universal Human Rights in Theory and Practice* Second Edition (Ithaca: Cornell University Press, 2003), pp.71-83. It is worth noting that Donnelly himself is not persuaded by these assertions, asserting that while they respect the basic conditions of human existence, they are not rights claims which in turn leaves them open to abuse, circumvention and arbitrary violation and withdrawal.

¹³ Cohen, 'Minimalism about Human Rights: The Most We can Hope For?', p.203. Part of achieving this is in establishing the distinction between 'agreement upon' and 'agreement to' a principle or idea, covered in the previous chapter.

¹⁴ Cohen, 'Minimalism about Human Rights: The Most We can Hope For?', pp.203-210

¹⁵ As we might suspect is the project under way in Walzer's minimalism and his notion of 'reiterative universalism'. See Michael Walzer, 'Nation and Universe' in Bruce Haddock, Peri Roberts and Peter Sutch (eds.), *Principles and Political Order: The Challenge of Diversity* (London: Routledge, 2006), pp.10-41 and *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame: University of

techniques can create a ‘terrain of deliberation’ about those standards accessible to a complex plurality of traditions.¹⁶ Many normative stances in international politics may be able to engage with the discourse of human rights. Implicit recognition of them in the denial of their violation, by dictators and democratic governments alike, only serves to strengthen their discursive dominance.¹⁷

Thin universalism can help to sort through these various conceptions of, and claims to respect human rights, separating out the genuine from the fallacious. Its sensitivity to cultural, social and political pluralism means that a great deal of diversity in conceptualising human rights can be permitted without concern. But the concern to respect the normative significance of persons means that thin universalism can inform *how much* variation in the interpretation of human rights doctrine can be tolerated. This allows the thin universalist to assure the Serb soldiers (featured in Richard Rorty’s account of their acts of sexual sadism upon Muslim prisoners) that they, in fact, *were* violating human rights, in spite of their insistence that Muslims were not human beings.¹⁸ A thin universalism must be able to distinguish between genuinely differing conceptions of rights and those that deny them all together.

Human rights are used for powerful practical and moral reasons. They do a better job than many other forms of expression here, and they capture how regulatory principles ought to be recognised and realised. The case for expressing constructed

Notre Dame Press, 1994), particularly chapter 1. See also the literature review in my introductory remarks.

¹⁶ Cohen, ‘Minimalism about Human Rights: The Most We can Hope For?’, pp.194, 207

¹⁷ For example, Saddam Hussein’s persecution of the Kurds, Marsh Arabs, Shias and Kuwaitis throughout the 1980s and 1990s were all denied in rights-based language – they were rejected as abuses of human rights. For a counter example, ‘mistreatment’ of prisoners in Camp X-Ray at Guantanamo Bay is also address using rights-based language. It is denied that human rights are being abused, because the prisoners fall outside of the Geneva Conventions and other human rights statutes.

¹⁸ See Richard Rorty, ‘Human Rights, Rationality and Sentimentality’ in *Truth and Progress: Philosophical Papers Vol.3* (Cambridge: Cambridge University Press, 1998), pp.167-185 at pp.167-168

thin universal regulatory principles as human rights is strengthened when one considers the powerful status that human rights claims have, both academically and politically. Amartya Sen notes:

Few concepts are as frequently invoked in contemporary political discussions as human rights. There is something deeply attractive in the idea that every person anywhere in the world, irrespective of citizenship or territorial legislation, has some basic rights, which others should respect. The moral appeal of human rights has been used for a variety of purposes, from resisting torture and arbitrary incarceration to demanding the end of hunger and of medical neglect.¹⁹

The appeal of human rights is all too apparent. The language of rights is everywhere and they hold true to how many people view their own moral commitments. The culture of human rights, and its proliferation even provides reason to think that the construction of consent is, and has for a long time, been at work on precisely this issue. The construction of consent to human rights could be said to be well under way. Like 'universality' itself, 'rights' can comport comfortably with the way we think moral principles should be expressed. They have a more personal, psychological appeal. Rights are something that many people may well want to have, unlike duties, which may be considered irksome. They serve to protect us from harm or loss and ask no more of us than of others.

However, rights have been problematised from beyond and within the constructivist tradition. For O'Neill, preoccupation with rights is in part responsible for the disengagement between theorists of justice and theorists of virtue, which her own project seeks to repair. Because rights and obligations tend to be regarded as

¹⁹ Amartya Sen, 'Elements of a Theory of Human Rights' in *Philosophy and Public Affairs*, Vol.32, (4), 2004, pp.315-356 at p.315

corollaries, the focus on rights is typically asserted to be unproblematic. But, O'Neill claims, some obligations present themselves within social relationships *without* corresponding rights and that some special relationships, such as that of parent and child, present obligations *without* corresponding rights.²⁰ This leads her to an 'obligation-centric' account, where the structure of our ethical interactions is focussed not on what we are owed, but on what we owe.²¹ She argues that:

The most significant structures of ethical concern can be expressed in linked webs of requirements, which are better articulated by beginning from the perspective of agents and their obligations rather than of claimants and their rights.²²

But this too readily does away with the powerful rhetorical sway that human rights hold. Even those who would deny human rights to many *still* implicitly acknowledge their existence. Whether they set much store by that is of course another matter. But the moral language at work within thin universalism, and especially the language of human rights is far more accessible for many people than the language of duty and obligation. Of course, duties and obligations come as part and parcel of the thin universal conception of human rights. But while 'obligations' *can* encapsulate more about our moral ties to others than 'rights', we must use caution when suggesting that we turn away from rights, and the *language* of rights in particular. Many of the relationships O'Neill discusses as being characterised by duties that lack corollary rights are those to which the concerns of a thin universalism are not addressed. They are of course important, but they are similar to those 'natural' relationships identified

²⁰ O'Neill, *Towards Justice and Virtue* pp.136-137

²¹ O'Neill, *Towards Justice and Virtue*, p.141

²² O'Neill, *Towards Justice and Virtue*, p.4

by Rorty as not requiring *principles* to morally bind us.²³ As such, the focus of a thin universalism on human rights is intended to be more outward-looking; moving beyond those ties to the more complex and sometimes tenuous relationships beyond familial, social and national ties which must surely be recognised in the modern world.

Furthermore, human rights can deflect related accusations that regulatory principles of this kind are excessively individualistic. Human Rights *are* individualistic in that they conceive of individuals as primary rights-holders and they offer a defence of the interests of those individuals. But human rights theory is not committed to seeing individuals as the spontaneous originators of their thoughts and desires. It recognises the constituent nature of social context and the contingency of historical circumstance.²⁴ Human rights can be thought of as conditions for fulfilling the obligations associated with human relationships. They are part of what Rawls called 'an associationist social form' which regards persons as members of groups. 'As such members, persons have rights and liberties enabling them to meet their duties and obligations.'²⁵ Violations of human rights, such as threats of slavery, torture and arbitrary arrest, poor health and education, and deprivation of sufficient economic means will impair the ability of people to enjoy the benefits of living in a society, but also to fulfil the obligations that flow from their relationships. People can demand a certain level of treatment as a condition for fulfilling the obligations that they are deemed to have.²⁶

²³ Richard Rorty, 'Ethics without Principles' in *Philosophy and Social Hope* (London: Penguin, 1999), pp.72-90

²⁴ See, for more, J.L. Mackie, 'Can there be a Right-Based Moral Theory?' in Jeremy Waldron (ed.), *Theories of Rights* (Oxford: Oxford University Press, 1984), p.179

²⁵ John Rawls, *The Law of Peoples*, (Cambridge MA: Harvard University Press, 2002), p.68

²⁶ Cohen, 'Minimalism about Human Rights: The Most We can Hope For?', p.205

Human Rights and Thin Universal Regulatory Principles

‘Thin universal human rights’ bear a number of characteristics; some are generic to conceptions of human rights, and some are not, but will be familiar to those who have followed the narrative of the thesis thus far. I now consider the characteristics that human rights must bear if we come to regard them as expressions of thin universal regulatory principles.

Firstly, they are *not* expressions of what I refer to, with G.A. Cohen, as ‘first principles’. In chapter one I characterised first principles as those principles ‘that inform our more substantive choices whilst remaining unaltered in light of changing empirical circumstance’.²⁷ First principles remain ultimately *independent* of factual considerations. Human rights, however, are expressions of what I have referred to, again with Cohen, as ‘principles of regulation’, established and adopted specifically to regulate our affairs. They represent ‘a certain type of social instrument to be legislated and implemented, whether by a government itself or within social consciousness and practice.’²⁸

In this way, human rights are consciously adopted by social agents, be they individuals, groups, societies, clubs, religions, or states, in order to have a desired impact on the world. A human right is therefore a *regulatory* device, which is adopted or rejected in light of an evaluation of its likely and intended effects and, therefore, in light of the facts of the world, understood in a particular normative way.²⁹ They are not the basic principled responses which arise from tracing our judgements about specific instances through a chain of reasoning, though they may become apparent somewhere along such a chain. Human rights will *always* fall

²⁷See here Cohen’s account of ‘facts and principles’. G.A. Cohen, ‘Facts and Principles’ in *Philosophy and Public Affairs* Vol.31 (2003), pp.211-245, (d), at p.214, fn.5. See also chapter one, above.

²⁸ Cohen, ‘Facts and Principles’, (s), p.241

²⁹ Cohen, ‘Facts and Principles’, (s), p.241

within the regulatory sphere. They are *designed* in order to secure, politically, basic standards of treatment in an imperfect world.

Secondly, therefore, human rights will *always* be fact-dependent. The very existence of ‘human rights’ is contingent upon factual conditions. They are dependent upon the factual existence of violent conflict, in conjunction with a specific normative response to that conflict – our fact-independent first principles. *Dealing* with violent conflict in a particular way is dependent upon those fact-independent principles. In a world without violent conflict we need not construct principles to be expressed as human rights. *Particular* human rights are also adopted in response to facts about the world in order to have certain effects upon it. Human rights will always have a certain degree of factual content within their justification. Consider the following example, grounded in the procedure outlined in chapter one.³⁰

Let *F* equal the factual claim that in order to lead a meaningful life, one requires access to such basic goods as food, shelter and good health. Without such goods *any* kind of life would be impossible. Call this the fact of the necessity of basic subsistence. On the basis of this factual necessity, it is possible to affirm principle *P*, namely that everyone should have access to sufficient food, shelter and good health. Call this the *human right* to subsistence. *P* is a ‘human’ principle because it is required by any notion of ‘human existence’. In this sense it is universal. Because it

³⁰ We will remember that the logic of the procedure is as follows:

1. Let *F* equal a factual claim
2. On the basis of *F*, I affirm principle *P*
3. It is then reasonable to ask: Why does *F* affirm *P*?
4. Any answer to why *F* affirms *P* will include the affirmation of a more ultimate principle *P*₁
5. *P*₁ holds regardless of whether *P* holds
6. *P*₁ also holds regardless of whether *F* is true
7. *P*₁ is therefore *insensitive* to *F*
8. *P*₁ may, however, be sensitive to *other* facts, hence
9. *P*₁ may be sensitive to factual claim *F*₁
10. But *F*₁ only support *P*₁ in light of more ultimate principle *P*₂
11. *P*₂ may not be grounded by fact
12. If it is, the process recedes until a more ultimate principle than all that precede is revealed, be it *P*₃, *P*₄ or *P*₁₀.³⁰

See chapter one p.51 and Cohen, ‘Facts and Principles’, (e), pp.215-6

is a necessary, but clearly not a sufficient principle by which it is possible to live a meaningful human existence, it *underdetermines* the full content of that existence. It is, in this sense, a thin principle.

A regulatory principle expressed as a human right can thus be derived from a consideration of fact. But how can such a principle *necessarily* be derived from fact in all cases? Because the factual considerations of the necessity of food, shelter and good health (as well as certain freedoms and securities) are *so* basic, *no* human rights principles could emerge *without* consideration of those facts. This may be the case, but it does not fully demonstrate the *necessity* of the factual content of human rights. This is shown by following Cohen's logic through to a second stage, which demonstrates that all regulatory principles expressed as human rights are also derived from further, more basic principles which are not dependent on facts. By showing this, it becomes clear that human rights are necessarily fact-dependent because they will always respond to more basic fact-independent principles as well as the facts themselves. They *cannot* be 'first principles'.

To continue, ask: why does the fact of the necessity of basic subsistence (F) affirm principle P , the right to basic subsistence? Any answer to why the fact of the necessity of basic subsistence (F) affirms a right to basic subsistence (P) will include the affirmation of a more ultimate principle P_1 , namely that we ought to facilitate the living of meaningful lives wherever possible, or that we ought not to scupper the living of meaningful lives through direct action or neglect. The notion that we ought to facilitate meaningful lives (P_1) holds regardless of whether the right to basic subsistence (P) holds. The notion that we ought to facilitate meaningful lives (P_1) also holds regardless of whether the fact of the necessity of basic subsistence (F) is

true.³¹ The notion that we ought to facilitate meaningful human lives is therefore insensitive to the fact of the necessity of basic subsistence, while the human right to basic subsistence is dependent on that fact, for were it not a fact, there would be no cause to affirm such a principle.³²

Of course, the notion that we ought to facilitate meaningful lives may be sensitive to *other* facts, perhaps pertaining to the integral importance of meaningful lives for individuals and societies, but these facts only support the principle in light of further, higher principles, concerning the *value* of those individuals and societies. This process can again be shown to recede until a principle is reached which is not ultimately dependent on fact. Such a principle will *not* be what we recognise as a 'human right'. Regulatory principles expressible as human rights will always have both factual content *and* normative content in their justification. Human rights are rightly described as 'fact-dependent', but they are not *solely* dependent on fact. Cohen's thesis demonstrates that human rights cannot be determined purely by reference to the facts, but that they must too be determined by reference to fact-independent first principles. Facts alone cannot move us to assert human rights. This is crucial to the proper understanding of them.

Thirdly, human rights are essentially *constructed*. They need not enjoy a kind of objective existence in the realist sense, waiting 'out there' to be discovered.³³ Human rights can be constructed by human beings in order to have certain effects on the world. Human rights do not need to be understood as fixed algorithms grounded in *a priori* moral categories. They are dependent on the factual conditions of that

³¹ Even if we could not conceive of circumstances where it might not be true.

³² See Cohen, 'Facts and principles', (c) and (e), pp.213, 215.

³³ If realism is as follows: **MR**: (1) There are moral facts or truths, and (2) these facts or truths are independent of the evidence for them (where **MR** represents the formulation of moral realism). See David O. Brink, *Moral Realism and the Foundations of Ethics* (Cambridge: Cambridge University Press, 1989), p.17

world and on the first principles that motivate responses to it. They are also dependent on changes and developments both of the factual conditions of the world and of those principled responses. They are therefore far more reflexive and contingent than many of their detractors would be willing to concede. Human rights can be rightly referred to as expressions of ‘constructed fact-dependent regulatory principles’. At the same time, advocates need not deny that human rights *could* be grounded objectively, and exist externally of how we come to regard them.

In order to fulfil their practical and moral remit, constructed regulatory principles expressed as human rights must speak both to people who are *not* committed to their objective existence, and, importantly, to those who *are*. Human rights that are constructed are, and must be, compatible with realist and religious perspectives.

The character of the facts and first principles to which human rights are a response leads to two further characteristics, which are central to how we ought to regard human rights. First, the first principles outlined in chapter three result in expressly *universal* principles that can be regarded as human rights. It is not my intention here to return to the arguments of chapter four in order to make the case for ‘universality’, but they offer justifications sufficiently robust to bring a conception of rights that apply to the category of ‘human’ into our moral deliberations. First principles, which ask that we respect persons and we respect pluralism, prompt the construction of regulatory principles that are in this way universal. Because human rights are an expression of constructed regulatory principles, their universality is inherently tied to the universality of the principles that ensue from the construction.

Second, the facts as identified in chapter two refer to the facts of complex pluralism. Again, I will not retread ground already covered within chapter four, but it

is the facts of complex pluralism which feed into the construction and which lead to human rights bearing thin characteristics. The *thinness* of rights expresses their *minimal* content. Human rights are minimal standards; they do not attempt to describe an ideal social or political world. They leave most political decisions to other decision-making bodies, and personal decisions to the individual or group.³⁴

This is not an exhaustive account of the characteristics of a thin universalist account of human rights. Other, more immediately familiar characteristics remain present. Human rights can and still do bear a force that does not require their expression in enforceable law, for example. They are particularly urgent requirements of what Joshua Cohen and Amartya Sen call 'political morality'.³⁵ They are not 'absolute', but they are stronger than James Nickel wishes to characterise them, as 'high priority norms'.³⁶ They are strong enough to win over in all but exceptional cases when they compete with other considerations. I now consider the specific features of a 'thin universalist' account of human rights.

Minimalism about Human Rights

At the close of *Human Rights as Politics and Idolatry* Michael Ignatieff states:

We may not be able to create democracies or constitutions. Liberal freedom may be some way off. But we could do more than we do to stop unmerited suffering and gross physical cruelty. That I take to be the elemental priority of all human rights activism: to stop torture, beatings, killings, rape and

³⁴ Nickel, *Making Sense of Human Rights*, p.10

³⁵ See Joshua Cohen, 'Is there a Human Rights to Democracy?' in Christine Sypnowich (ed.) *The Egalitarian Conscience: Essays in Honour of G.A. Cohen* (Oxford: Oxford University Press, 2006), pp.226-248 at pp.229-230; Amartya Sen, 'Elements of a Theory of Human Rights' in *Philosophy and Public Affairs*, Vol.32, (4), 2004, pp.315-356

³⁶ Nickel, *Making Sense of Human Rights*, p.9

assault and to improve as best we can, the security of ordinary people. My minimalism is not strategic at all. It is the most we can hope for.³⁷

Ignatieff's objective is to clear away the misrepresentation of human rights as a 'secular religion'. His concern is that the fervour and ease with which human rights are furnished with potentially problematic metaphysical backing, far from securing for human rights a guaranteed basis of consensus, merely adds to their contestation. Minimalism seems again to be a 'strategic' issue; the idea that 'you cannot impose human rights values: they will not take hold if you do.'³⁸ Ignatieff's project shares the thin universalist's pragmatic disposition, overlaying it with the discourse of human rights. He states that

shared belief in human rights ought to be compatible with diverging attitudes concerning what constitutes a good life. In other words a universal regime of human rights protection ought to be compatible with moral pluralism ... The universal commitments implied by human rights can be compatible with a wide variety of ways of living only if the universalism implied is self-consciously minimalist. Human rights can command universal assent only as a decidedly 'thin' theory of what is right, a definition of the minimum conditions of any kind of life at all.³⁹

His project is motivated by similar concerns to those of thin universalism. Universal principles still have a role to play in our political and philosophical discussions but, for pragmatic and moral reasons, those principles must be 'thin'. For Ignatieff human rights matter because they protect each individual's basic agency – their capacity to act to achieve ends. Thin human rights, like all expressions of thin universal

³⁷ Michael Ignatieff, *Human Rights as Politics and Idolatry*, (Princeton: Princeton University Press, 2001), p.173

³⁸ Ignatieff, *Human Rights as Politics and Idolatry*, p.170

³⁹ Ignatieff, *Human Rights as Politics and Idolatry*, pp.55-56

principles, must *necessarily* underdetermine those ends and the full moral character of any society in which they apply.

But in spite of the near-hegemonic status of human rights in international political discourse, the contestation surrounding them, as well as their form, content and scope is fierce. In fact, because the increasing prowess that human rights doctrine has held since the Second World War, it 'is now so powerful, but so unthinkingly imperialist in its claim to universality, that it has exposed itself to serious intellectual attack'.⁴⁰ What Ignatieff refers to as 'rights inflation' forms the core of that attack:

Those who insist that civil and political rights need supplementing with social and economic ones make a claim that is true ... [but] the tendency to define anything desirable as a right – ends up eroding the legitimacy of a defensible core of rights. That defensible core ought to be those that are strictly necessary to the enjoyment of any life whatever.⁴¹

The more rights we might want to argue for, the more problematic those arguments become. We must focus our concern, therefore, on a minimal *core* of human rights claims, and distinguish these from more expansive statements about the content of human rights which might extend the core beyond that minimum. This implies an 'instrumental' minimalism, suggesting further that if we *could* argue for more human rights, we probably *would* and *should* do so. But thinness is not simply an instrumental concern. Though it forms part of the motivation, it is not the case that thin principles are pursued because it is all that we think we could get others to agree with. Thinness is pursued in accordance with the demands of the first principles of

⁴⁰ Ignatieff, *Human Rights as Politics and Idolatry*, pp.57-58

⁴¹ Ignatieff, *Human Rights as Politics and Idolatry*, pp.89-90

the project; with powerful *moral*, not just pragmatic, urgency. It is a specifically moral commitment that drives the ‘thin’ project forwards.

These moral and pragmatic aims dovetail without difficulty. Respect for the moral integrity of cultural systems, and the construction of a set of regulatory principles, share common materials, procedures and aims. Joshua Cohen suggests that what he calls ‘justificatory minimalism’, the presentation of a conception of human rights in such a way as to be responsive to a pluralised world, is premised on an acknowledgement of pluralism and a commitment to toleration.⁴² A constructive thin universalism is ‘justificatory minimalist’ in this respect and employs similar normative materials: recognition of complex pluralism, and the first principles that animate our response to it.

Given these considerations, some form of minimalism about principles, and about human rights, is an appealing and powerful idea. There are a number of further arguments for resisting more demanding sets of rights.⁴³ Firstly, more demanding lists threaten to sap resources from the monitoring and enforcement of human rights generally. Secondly, it is unlikely that thick, maximal, or substantive lists of rights could be fully realised because they are too ‘costly’, both in terms of financial and political capital, to implement. We may suspect that they are not therefore ‘rights’.⁴⁴ Thirdly, many more expansive rights have a problematic and asymmetrical relationship with any corresponding obligations which could be placed on others.⁴⁵ This may be acute in the case of some social and economic rights in societies where

⁴² Joshua Cohen, ‘Minimalism about Human Rights: The Most We can Hope For?’, in *The Journal of Political Philosophy*, Vol.12 (2), 2004, pp.190-213 at pp.192, 199

⁴³ This list is a modified version of that offered by Cohen in ‘Minimalism about Human Rights: The Most We can Hope For?’, p.193

⁴⁴ Though this does not preclude us from asserting more substantial lists of universal principles as aspirational goals. I consider this in more detail below.

⁴⁵ For more here see Onora O’Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*, (Cambridge: Cambridge University Press, 1996), ch.5

resources may be insufficient to fulfil them. Fourth, more expansive lists risk negating political deliberation, replacing it with a 'liberal legalism' where 'rights' are not debated or questioned, simply applied.⁴⁶ Fifth, more expansive accounts of human rights also threaten to do away with political self-determination and sovereignty in favour of an 'interventionist' human rights 'culture'.⁴⁷ 'Thicker', maximal, or more comprehensive, expansive, or substantive conceptions of human rights are unlikely to be validated through the construction of consent outlined in chapter five. But at the same time, thicker conceptions of human rights are also likely to find themselves in violation of the first principles of the thin universalist project. In order to remain valid in a plural world, human rights can be cast as expressions of *thin* universal principles, rendering them more accessible *and* morally acceptable.

The potential to truly regard human rights minimally may come from an examination of their negative corollary, the concept of 'human wrongs'. Ken Booth notes:

the argument for a universalist approach to human rights rests upon the universality of human wrongs; the latter are universal social facts that derive from our animal nature and social character to date.⁴⁸

What Booth, along with Nicholas Wheeler, Robert Falk and others stress is that a normative discussion of international ethics is animated by a discussion of human rights, importantly contrasted with a notion of human wrongs. Their objective in the late 1990s was to establish a normative dimension with which to study international

⁴⁶ On 'liberal legalism' and the risk of precluding politics by encoding moral principles within devices such as law see, for example, Roberto Alejandro, 'What is Political about Rawls' Political Liberalism?' in *The Journal of Politics*, Vol. 58, (1), 1996, pp. 1-24

⁴⁷ Indeed, this final suspicion is aired by David Chandler in the closing pages of chapter four of his book *From Kosovo to Kabul*. See pp.114-115

⁴⁸ See Ken Booth, 'Three Tyrannies' in Tim Dunne and Nicholas Wheeler (eds.), *Human Rights in Global Politics*, (Cambridge: Cambridge University Press, 1999), pp.31-70 at p.64. See also Chandler, *From Kosovo to Kabul*, p.89

relations, placing the ‘mitigation or elimination’ of these wrongs centrally to its aims.⁴⁹ The validity of using rights language in conjunction with a conception of human wrongs helps both to capture accurately the nature of the thinness of the thin universalist project and to provide a common ground upon which divergent approaches to rights, and to thin universal principles more generally, can meet.

Human wrongs capture the ‘thinness’ of thin universalist project. The project itself is animated by a sense that some actions cannot be permissible in any context and in all circumstances human beings should be treated with a certain level of respect. It is in response to this impulse that construction is mobilised in order to determine a set of universal regulatory principles. At the same time it is recognised that, in a complex plural world, substantive agreement on what positive principles best ‘mitigate and eliminate’ those categories of action will be hard to find. Again, it is to this issue that construction is addressed. We may, then, find ourselves in agreement with Mary Midgley’s eloquent summation that ‘whatever doubts there may be about minor moral questions and whatever respect each culture may owe its neighbours, there are some things that should not be done to anybody anywhere’.⁵⁰

Through a focus on human rights in contrast to human wrongs, it is easier to illustrate how construction is intended to underdetermine the moral character of the societies in which it is applicable. A conception of ‘the wrong’ or ‘the bad’ allows for a strong and careful underdetermination of ‘the right or ‘the good’. A thin universalism will look to what must *always* be *excluded* from a conception of a decent society, *as well as* what must always be included within it.

⁴⁹ See Robert Falk, ‘The Challenge of Genocide and Genocidal Politics in an Era of Globalisation’ in Dunne and Wheeler (eds.), *Human Rights in Global Politics*, pp.177-194 at p.191; Chandler, *From Kosovo to Kabul*, p.91.

⁵⁰ Mary Midgley, ‘Towards an Ethic of Global Responsibility’ in Dunne and Wheeler (eds.), *Human Rights in Global Politics*, pp.160-174 at p.160; Chandler, *From Kosovo to Kabul*, p.96

As Booth, Midgley and others point out, a conception of human rights underpinned by a universal conception of human wrongs is likely to be thinner and therefore more sensitive to pluralism than a conception of rights alone. Wrongs may generate broader and more powerful agreement in the first instance, providing a valuable starting point for the construction of rights. If those who would dissent can be shown the universality of wrongs then the task of constructing rights designed to mitigate and eliminate those wrongs will seem far less alien than they might otherwise do. A pluralistic, *patchworked* approach to rights could even be used to tackle the *same* wrongs in a variety of *different* ways.

The identification of rights and wrongs helps to fulfil the thin universalist commitment to properly respect persons and pluralism, holding constructed regulatory principles in line with the first principles out of which they are constructed. This internal coherence lends further weight to the plausibility of the claim that rights can adequately express a thin universalism. But the fact that the identification of human wrongs necessarily underdetermines the full content of a conception of rights equally acknowledges that when we become lacklustre with what we seek to assert universally we not only risk the commitment of the like minded within a complex plurality, but we also jeopardise the coherence and moral validity of our *own* arguments. Where this occurs, where rights are inflated beyond the mitigation and elimination of human wrongs, a different dynamic is actually invoked.

Rights and Aspirations

In *The Law of Peoples*, Rawls describes human rights as a ‘proper subset’ of the rights embraced by, and of the reasonable view of justice for, a democratic society.⁵¹

There are good reasons for thinking that standards of human rights should in some sense differ from, and be less demanding than, the standards of justice or morality that we endorse for our own society. In other words there are good reasons for endorsing the Rawlsian ‘proper subset view’, and the idea that human rights (and thin human rights in particular) *should* underdetermine the full moral character of any society, even our own.⁵² Perhaps, concern with thinness and universalism leads to what Joshua Cohen refers to as ‘substantive minimalism’, which is the further assertion that the *content* of human rights claims should be limited to protections of negative liberty.⁵³ It may indeed be tempting to endorse this substantive minimalism from the constructivist perspective and a thin universal conception of human rights might be the best scenario that constructivism can realistically aspire to.

Cohen rejects this, arguing that it is simply not the case that substantive minimalism is ‘the most we can hope for’. Rather we can *hope* that different traditions can find resources for fresh elaboration that support a conception of human rights. This is a *plausible* common standard of achievement with global reach, even if we might not *expect* this to be the case. Indeed, he suggests that ‘wide acceptability is something we may reasonably hope for, consistent with a theoretical knowledge of human pluralism and a moral commitment to respecting it.’⁵⁴ And, therefore,

the world that the minimalist imagines – a world without torture and with genuine assurances of bodily security for all – is no small hope ... But I do

⁵¹ See John Rawls, *The Law of Peoples*, (Cambridge MA: Harvard University Press, 2002), pp.78-81

⁵² Cohen, ‘Minimalism about Human Rights: The Most We can Hope For?’, p.210

⁵³ Cohen, ‘Minimalism about Human Rights: The Most We can Hope For?’, pp.192, 211

⁵⁴ Cohen, ‘Minimalism about Human Rights: The Most We can Hope For?’, p.213

wish to dispute the idea that human rights minimalism is ‘the most we can hope for’. Minimalism may be more than we should ever reasonably expect. But hope is not the same as expectation. And human rights minimalism draws the boundaries of hope too narrowly.⁵⁵

The *danger* of human rights minimalism, therefore, is that it expects too little and aspires to little more. It suggests that there is almost nothing we can hope for or aspire to beyond that which we construct as rights. Thin universalism is rightly concerned about how ‘thick’ contemporary human rights doctrines are, and the extent to which they present the values of a particular, Western culture as universal. But does it not leave too little scope for actually seeking to secure the standards for properly just social relations? Similarly, while thinness might rightly be regarded as an important moral and pragmatic position, does it not leave many things of moral concern open to systematic disregard, even abuse?

Conversely, when we turn our attention to contemporary human rights doctrines, the force and validity of genuinely universal concerns to secure basic conditions of life are sapped by the universalisation of unashamedly particular, ethnocentric content; content which tends overwhelmingly to be Western in character. Upon only a cursory glance at the *Universal Declaration of Human Rights* much of its content seems very much oriented towards particular kinds of society, particular norms of personal and social behaviour, and particular modes of economic organisation. Encoded within it are norms pertaining to family life (‘The family is the natural and fundamental group unit of society and is entitled to protection by society and the State’⁵⁶), norms pertaining to modes of economic organisation (‘Everyone has the right to rest and leisure, including reasonable limitation of

⁵⁵ Cohen, ‘Minimalism about Human Rights: The Most We can Hope For?’, p.191

⁵⁶ See *Universal Declaration of Human Rights*, (New York: United Nations Office of Public Information, 1948), Article 16 (3)

working hours and periodic holidays with pay'⁵⁷), and norms pertaining to the organisation of government ('Everyone has the right to take part in the government of his country'⁵⁸). There is therefore cause to suspect that contemporary human rights doctrines do not fulfil the demands of thinness as required. The substantive content of doctrines such as the *Universal Declaration* and the *International Covenants on Civil and Political Rights*, and on *Economic, Social and Cultural Rights*⁵⁹ is expressive of thicker conceptions of rights than a constructed thin universalism could sanction. Indeed, as David Beetham points out, much of what is contained within the more expansive sets of rights within the Covenants 'confuse[s] the fundamental with the merely desirable or with that which is specific to the advanced economies'.⁶⁰ Many accounts suffer from Ignatieff's 'rights inflation'; they fail to take seriously the charges of ethnocentrism and imperialism that animate critiques of universalism. However, there is much within those doctrines which we might rightly hope *could* be universal, but which falls outside of the remit of a thin universalism.

A *critique* of contemporary human rights doctrines that also aims to secure a *thin* set of constructed human rights must, therefore, distinguish between three categories of claim which all claim status as human rights. The first is those claims to 'human rights' that are truly 'human' and truly 'rights'. These are determined by their full correlation to constructed, fact-dependent regulatory principles. They are substantively thin and universally applicable, and are designed to secure the

⁵⁷ See *Universal Declaration of Human Rights*, Article 24

⁵⁸ See *Universal Declaration of Human Rights*, Article 21 (1). I shall return to this particular set of norms in due course.

⁵⁹ See United Nations Office of Public Information, *International Covenant on Civil and Political Rights*, United Nations Website (<http://www.hrweb.org/legal/cpr.html> May 19th 2007) and *International Covenant on Economic, Social and Cultural Rights*, United Nations Website (<http://www.hrweb.org/legal/escr.html> May 19th 2007)

⁶⁰ See David Beetham, *Democracy and Human Rights* (Cambridge: Polity, 1999), p.116. Cited in Chandler, *From Kosovo to Kabul*, p.110

minimum conditions required to live a worthwhile human life: security of the person, basic freedoms and sufficient food, shelter and resources to live.

Claims that fall within the second category are not candidates for the title of 'human rights'; in fact, they are perhaps unsuitable for categorisation as 'human'. They are, rather, misguided attempts to codify as universally *human* the civil, economic and political rights of a particular culture, class or society. They may make the kind of assumptions found in the *Universal Declaration* which normalise particular modes of personal, social, cultural, or economic organisation, presenting them, erroneously, as universally applicable.

But there is a third category, falling between the first two and concerning those claims that are perhaps 'human', and may even be 'rights' but are not 'human rights' as such. Claims that fall within this third category are better classed as 'human aspirations' because they may well be in some sense unrealisable as *rights* within the *universal*, human domain. We cannot, for example, construct a *human right* to paid holiday. But this, in turn, does not mean that a realist about human rights who *does* believe in a right to paid holiday has an inherently flawed conception of rights. The thin universalist and the realist alike may have cause to join Cohen and suggest that we can perhaps *hope* that such principles may one day have universal credence, but their attainment is too deeply problematic, morally or pragmatically to refer to them both as 'human' and as 'rights' here and now. They may be encoded into the 'rights' of a particular society and that society may understand them as a part of their own human rights, but their genuine universal applicability may well be beyond the remit of a constructed thin universalism. Human aspirations are perhaps also unlike rights in that we do not perceive them to

be enforceable *political* rights, at least not universally. They do, however, have a certain *moral* weight, and remain moral concerns.

Human rights are *thin*, but this does not rule out the possibility that other commitments we might have can also be universal. Thin universalism need not be the only universalism we hold and many liberals within the constructivist tradition have suggested or implied that there can be more to one's universalism, derived from one's comprehensive commitments. We can hold these commitments as *aspirations*, reserving the stronger language of *rights* for those constructed regulatory principles outlined in this thesis. Such principles cannot be merely aspirations.

These considerations bear strongly upon the thin universalist concern with the established 'thick' human rights doctrines I have been discussing. The *Universal Declaration* was designed to be freestanding upon its inception, making no reference to God, or to specific religious-philosophical viewpoints. This left the task of understanding the relationship between a substantive philosophy of the good life and an account of human rights to the adherents of the philosophies themselves. Thus, significantly, the *Universal Declaration* was, in its presentation, also *intended* to underdetermine the full moral content of those societies for whom it could be a standard. However, a thin universalist critique of the *Universal Declaration* can be animated by the distinction between thin universal human rights and thicker universal aspirations. While the content of doctrines such as the *Universal Declaration* may be comprised of things we would wish to regard as universal, they are not made up solely of things we ought to regard as rights. They are made up of a combination of rights and aspirations⁶¹ and as such serve to summarise both those

⁶¹ And the *Universal Declaration* is also comprised of some things that are neither rights nor aspirations.

constructed fact-dependent regulatory principles we wish to express as rights, and other principles which we might *aspire* to see observed universally.

There is a tendency to suggest that only negative rights to bodily integrity can be secured if this commitment is to be honoured. But this may leave us slightly perturbed about the conditions attached to certain positive rights, such as a potential right to means of subsistence. The language of rights is a useful way of expressing thin universal regulatory principles, but it is not the only way, nor the only useful way of expressing them. They are not solely accessible through the language of rights; they can be accessible through the language of duty or obligation, or toleration or multiculturalism. In a plural world, what a right is, and what a right *looks like* can and must vary from context to context. Construction can show which conceptions of rights are truly conceptions of rights, which encompass inflated aspirations, and which are neither. Human rights, so understood, are political concerns; they are expressions of moral principles that are politically enforceable. In many cases, we may not have worked out who owes them to us, or how they can be enforced. The correlative duties may not always be clear, as in the case of positive rights, such as to a basic level of subsistence. Who precisely is responsible for fulfilling the rights owed to us will, unsurprisingly, be as pluralized as the groups to whom they are owed. While negative rights such as to bodily security can be shown to be owed to all by all, positive rights are less obviously demarcated. We can say that there is a right to subsistence without necessarily having to answer the question of who owes us that right, or how it might be honoured. Human rights *are* political concerns, but they also remain fundamentally moral, because they are incomplete and the product of an ongoing and reflexive process.

The ‘most we can hope for’ is *not* a matter of what we believe can result from the construction of regulatory principles and as such it is less concerned with the practical problems of constructing consent to thin universal human rights. Rather, what we can hope for is constrained predominantly by moral limitations that impose thinness in the first place. We can aspire to many things beyond those constructed thin universal regulatory principles, within the constraints of what it means to respect persons and to respect pluralism. While they may be universal, these aspirations perhaps do not carry with them quite the same strength of conviction as do human rights.

Is Democracy a Human Right?

I now turn my attention to a question that is still only emerging in the literature on this topic, that of whether there exists a *human right* to democracy. The issue is complex, not least because the conception of human rights discussed thus far is firmly grounded in an account of thinness that does not necessarily advocate democracy as a universal value. Joshua Cohen suggests that, while plausibly desirable in itself, democracy *cannot* be the object of a human right.

In making this assertion Cohen considers the distinction between Rawls’ accounts of ‘justice as fairness’ and of the ‘law of peoples’. Justice as fairness includes a right to participate in the processes of authoritative collective decision-making. Rawls states in *A Theory of Justice* that ‘all citizens are to have an equal right to take part in, and to determine the outcome of, the constitutional process that establishes the laws with which they are to comply’⁶² A clear right to democracy is on display here. In *The Law of Peoples*, however, Rawls outlines only a short list of

⁶² Joshua Cohen, ‘Is there a Human Right to Democracy?’ in Christine Synowich (ed.) *The Egalitarian Conscience: Essays in Honour of G.A. Cohen* (Oxford: Oxford University Press, 2006), pp.226-248 at p.228; John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971), p.194

human rights which does not include a right to participation in political processes.⁶³

The justification for this more limited account of rights is that a 'decent hierarchical people' – that is, a state, society, or cultural system which respects human rights, possesses a developed sense of the rule of law, and embraces consultation within government that permits a plurality of views including dissenting views, but which is nonetheless avowedly *not* democratic – ought not to be subject to interference from international society.⁶⁴

The claim that there is a *human right* to democracy represents a distinctive normative case for democracy. For the thin universalist, this amounts to demonstrating that, in constructing a set of universal regulatory principles that establish those fundamental conditions required for the living of a meaningful human life, one would need to include a right to participation in formal decision making procedures. This would involve establishing that a society which lacks proper structures of democratic participation fails to facilitate meaningful lives. This, presumably, is refuted in the Rawlsian case by the existence of meaningful human lives lived in thoroughly undemocratic conditions. For the thin universalist, a case for a universal principle of democratic participation (at a cosmopolitical level, or based on an account of democracy within bounded states) would need to be a constructive one, as the case for thin human rights must be. While the case for the inclusion of democracy within a set of thin universal regulatory principles *must* be constructive, the case for democracy in a particular society may be far less

⁶³ Cohen, 'Is there a Human Right to Democracy?', p.228; John Rawls, *The Law of Peoples* (Cambridge MA: Harvard University Press, 1999), pp.78-81

⁶⁴ Rawls, *The Law of Peoples*, pp.59-61

problematic and as a consequence may, but just as easily may *not*, require constructive procedures.⁶⁵

So, is there a case for asserting a human right to democracy? Can democracy be an aspect of constructed, fact-dependent, thin universal regulatory principles expressible as human rights? Cohen identifies two accounts of rights: 'maximalist' and 'minimalist'. Maximalist accounts suggest that human rights are coextensive with an account of liberal justice, of which democratic participation is a key element. Democracy is therefore a requirement of human rights and by extension a human right itself. On the other hand, minimalism, exemplified in Michael Ignatieff's account of human rights minimalism discussed earlier, confines human rights to the protection of bodily security, thus denying a human right to democracy.⁶⁶ It would seem to follow that, as it is avowedly thin, thin universalism must reject the idea of a human right to democracy as part of its constructed principles. Thin universalism must indeed reject the idea that democracy could feature within its tenets, but on what grounds? And, if there is a *prima facie* case for rejecting a thin human right to democracy, what remains to be said here?

Two key objections underpin the thin universalist rejection of a human right to democracy. The first is that democracy often requires such vast institutional and social reform that it is practically unattainable. Democracy is a positive right: by whom is it owed? Whose responsibility is it to instantiate democracy where it does not presently exist? Who is responsible for the construction or rehabilitation of the vast apparatus of democratic government and participation, which extend from the apparatus required to run an election, to basic transport and communications

⁶⁵ In cases where, for example, democracy is well established, or where 'local' values are close enough to those of democracy to allow an easy transition.

⁶⁶ See Cohen, 'Is there a Human Right to Democracy?', p.230; Ignatieff, *Human Rights as Politics and Idolatry*, p.56

infrastructure? If we are owed democracy universally, as a matter of human rights, upon whom does the obligation to provide it fall? The viability of democracy is certainly *not* universal. But, as I have suggested, this ambiguity does not necessarily undercut the status of a right. Human rights possess a force that does not require their entrenchment in law, and the practical difficulties of determining a correlative duty does not mean that a rights claim fails. G.A. Cohen also notes that ‘it is not a constraint on a sound conception of justice that it should always be sensible to strive to implement it, whatever the factual circumstances may be.’⁶⁷ As with economic rights, a positive right *to* democracy may still be a human right. Even if we don’t know upon whom the obligation to provide democracy (like a basic level of subsistence) falls, it may still be a human right.

This leaves a second, more powerful, objection. Democracy is a highly demanding aspect of political morality. It requires certain entrenched conceptions of the person and society, not shared by all systems of social, cultural and political organisation. Many of those systems are recognisably and powerfully just.⁶⁸ The recognition of democracy as a human right is not about establishing its objective ‘truth’ value. To do so, Cohen notes, would be objectionably intolerant,⁶⁹ and contrary to the ideas of construction. This is the kind of difference-blindness that a universalism sensitive to complex pluralism must strive to reject. But we can nonetheless distinguish between what is true and what it is reasonable that we can expect people to believe. Far from being an objective ‘truth’, we have grounds to suspect that a human right to democracy or to direct political participation is simply *not* something that we can expect a complex plurality on a global level to believe in.

⁶⁷ G.A. Cohen, ‘Facts and Principles’ in *Philosophy and Public Affairs* Vol.31 (2003), pp.211-245 (t), p.244

⁶⁸ And, while many are not, it must also be noted that many recognised democratic, and not just quasi-democratic systems *fail* to be so just.

⁶⁹ Cohen, ‘Is there a Human Right to Democracy?’, p.243

A human right to democracy is not necessarily something we should expect people to agree *upon*, nor is it even something we should expect them to agree *to*.

The standards to which we hold all societies accountable, expressed as thin human rights, must, by definition, be less demanding than the standards of substantive morality or justice one endorses. Those standards of morality or justice are thicker, more maximal, more culturally specific and historically contingent. Minimal standards we expect to apply universally will, to reiterate, fundamentally *underdetermine* the full nature of morality or justice in any given society. Thin universal principles do not constitute *all* of what we expect of a conception of morality. An account of how political power is conferred and political obligation legitimated falls within a more substantive account of morality. It falls *outside* of the thin universalist project. It would seem therefore unreasonable to insist upon the instantiation of democracy in all places right here and now, an insistence we *may* make for human rights.

We should, Cohen suggests, therefore resist the inclusion of democracy within an account of human rights. For some further insight into why this is the case, it might be worth considering that it is precisely because human rights have a particular *urgency* which transcends the urgency that surrounds the considerations of thicker, particularist moral concerns, or the considerations of 'morality' or 'justice' more generally.⁷⁰ The recognition of human rights as compelling universal principles which constitute standards that all societies must meet in order to facilitate the living of meaningful human lives demands their pursuit and instantiation here and now. Democracy cannot be such a human *right*. It can, however, be an *aspiration*. It may be that democracy could improve the lives of many millions of people, as Cohen

⁷⁰ Cohen, 'Is there a Human Right to Democracy?', p.233

suggests, but that while this is a worthy aspiration, while we may be justified in hoping for such a scenario, it cannot be demanded as a matter of right.⁷¹ A human right to democracy, or at least a consideration of the nature of political participation, is a justifiable concern for any substantive conception of morality. Such a right is not a constitutive part of a thin universalism. But because thin universalism does not exhaust the possibilities of morality for us and human rights are not the *only* moral concerns we have, this does not require us to reject the possibility or the desirability of democracy.

Nonetheless, once democracy *is* established, or where it is *already* established, it may be possible to assert that a *right* to it emerges. We might be justifiably cautious to suggest that we can demand that a society radically overhaul its social structures and adopt democracy as a matter of human rights. We may, however, be far more comfortable to assert that the denial of democratic participation to a people or society where it is established constitutes a violation of the human rights of the members of that society. In such circumstances, this would most likely constitute an egregious violation of first principles demanding respect for pluralism and for persons, violations that would likely prompt action of some kind. While there may not be a human right to democracy, we might envisage a human rights case *for* democracy.

Rights, Morality and Toleration

Human rights are a powerful tool in cashing out thin universalism and, while they are clearly liberal in their origin, construction can furnish them with a genuine universality. It has been suggested by Evans that ‘human rights – fluid though their

⁷¹ Cohen, ‘Is there a Human Right to Democracy?’, p.246

iterations have been – are arguably the liberal tradition’s greatest bequest to the human race.’⁷² And this reaffirms what the thin universalist project insists upon: that we should not discard in the universal domain all that is characteristic of our own context-dependent moral frameworks. There may be many valuable facets to it that have some resonance within a broader context, and human rights, if constructed appropriately, might just be one such facet.

Human rights form part of a set of ‘conclusions’ to a procedure of moral discourse. John Gray maintains that human rights are not foundations for a conception of morality, but rather that they are the culmination of long chains of reasoning.⁷³ And, indeed, they appear to be part of the culmination of this account of thin universal regulatory principles. They constitute minimum standards of political legitimacy, to be applied to all regimes.⁷⁴ They are not first principles; nor are they immutable truths, though they may take on many characteristics thereof. This may help them to retain a broadly ‘realist’ character, which is important for their stability and credibility. What it is possible to assert most strongly, though, is that human rights can be a set of enforceable conventions, framed to give protection against the injuries to human interests that make worthwhile lives impossible, Gray’s ‘human evils’, or Chandler’s ‘human wrongs’.⁷⁵ A regime whose continued rule is dependent on the infliction of these evils or wrongs is illegitimate. Many types of regime, not just liberal regimes, fulfil the minimal requirements of legitimacy; many more, including many liberal regimes, do not. Such human rights standards are not simply

⁷² Mark Evans, ‘Pluralising Liberalism, Liberalising Pluralism’ in *Res Publica*, Vol.10 (4), 2004, pp.449-460 at p.453

⁷³ John Gray, *Two Faces of Liberalism* (Oxford: Polity, 2000), pp.84-85

⁷⁴ Gray, *Two Faces of Liberalism*, p.106

⁷⁵ Gray, *Two Faces of Liberalism*, p.66; Chandler, *From Kosovo to Kabul*, p.96

'liberal values writ large'.⁷⁶ This can, nonetheless, only be so if those rights are thin universal regulatory principles which are the product of construction.

Thin human rights provide a set of access points to other political and moral debates but they do not exhaust what we can say with regard to those debates. What the discussion of rights and aspirations further demonstrates is that 'morality' as we conceive of it is not composed entirely of 'rights'. While the thin universalist is committed to a set of constructed fact-dependent regulatory principles expressible as human rights, the possibility that there is *more* to a conception of morality than those rights is left open. Because thin universalism is a response to first principles which are committed to a respect for complex pluralism, and which lead it to underdetermine the moral character of actual societies, the content of that thin universalism does not comprise the whole of morality. As such, human rights are only a part of how we frame our moral commitments to others and, like thin universal principles, what these commitments actually are will remain open, reflexive and contingent. Human rights provide a *terrain* of 'deliberation and argument about appropriate norms ... not a determinate and settled doctrine awaiting acceptance or rejection.'⁷⁷ If human rights bear the characteristics of thin universal regulatory principles then they too are simply 'provisional fixed points', in the Rawlsian sense. It is important to remember, after all, the point of the whole project:

If people are not aware of the historical and contextual nature of human rights and are not aware that human rights become realized only by the struggles of real people experiencing real instances of domination, then human rights are all too easily used as symbolic legitimizers for instruments of that very domination.⁷⁸

⁷⁶ Gray, *Two Faces of Liberalism*, pp.109-110

⁷⁷ Cohen, 'Minimalism about Human Rights: The Most We can Hope For?', pp.194-195

⁷⁸ A. Belden Fields and Wold-Dieter Narr, cited in Chandler, *From Kosovo to Kabul*, p.112

We can argue for changes to the content of human rights directives, using reasoned discourse to critique over-inflated and excessively ‘thick’ human rights conceptions and, it must not be overlooked, adding to accounts of human rights where the need arises.

As this is the case we can, further, resist the complete collapse of complex pluralism into a form of relativism, or a preference-driven emotivism. If morality was made up entirely of human rights derived from constructed thin universal regulatory principles then we may well find ourselves facing something very close to them. If the only things morality concerns itself with are those actions that are so egregious as to warrant action with potentially far-reaching international consequences the conceptual space for non-moral actions is immense. But, because the thin universalist recognises that morality can accommodate thicker moral conceptions, particularist viewpoints and contextually-dependent moral frameworks it is not committed to saying that everything but genocide boils down to a matter of taste. Thicker concepts have a place in morality, but not in a thin universalism. Not all of morality is constructed. Not all of morality is encapsulated within human rights.

In the next chapter I consider the relationship between thin universal regulatory principles and concepts of toleration. I do not argue that “‘toleration’ plus ‘rights’ equals ‘morality’”, which would undermine the work done in this chapter. If human rights are not all that there is to morality, it is unlikely that a conception of toleration will fill in *all* of the blanks. I do want to suggest, however, that toleration is particularly suited to a discussion of thin universalism and that the thin universalist may have a great deal to contribute to contemporary discussions on toleration and how its limits can be determined. The purpose of a discussion of rights and

toleration, then, is not to show which parts of morality thin universalism can help us with, though this is true. Rather, rights and toleration help to illuminate the implications of a thin universalism, demonstrating where it fits into contemporary moral debate. They show precisely what thin universalism is concerned with, and help to justify that concern.

‘Thin human rights’ is one of two expressions of thin universal regulatory principles which have established reference points in popular moral and political discourse. This increasingly specific idea, which I have been tracing throughout the project finds one set of its conclusions in the idea of human rights. It comes to rest here precisely because, from the abstract consideration of construction laid out in chapter one, human rights provides that discussion with a point of leverage into more substantive academic and popular debate. The debate over human rights, which helped to frame the terms of the project in my introduction, is, for a great many people, the key way that they frame debates about moral problems. While we may find the universalisation of a thick set of rights deeply problematic, their role in global politics is growing. Attempts to find expressions of human rights that do not bear the trappings of Western liberal democracy are emerging at a phenomenal rate. Declarations of human rights are emerging in South East Asia, the Persian Gulf, Africa and South America. All of which have sought to cast off the avowedly Western character of the *Universal Declaration* whilst at the same time embracing the idea of rights as a dimension in the underpinning of a stable and just political society. Thin universal regulatory principles, when expressed in the form of human rights, can connect to popular patterns of discourse both in those places where the concept of rights is well established, and in the cosmopolitical arena, where its force is growing. Similarly, toleration provides a point of access into popular ‘real-world’

debates for what began as distinctly abstract discussions of the relationship between facts and principles. And it is *this* debate with which my final chapter is concerned.

- seven -

The Role of Toleration and its Limits

A useful and persuasive expression of thin universal regulatory principles can be found in a set of thin human rights, which I discussed in the previous chapter. This seventh and final chapter considers a different expression of those principles, which captures and promulgates them in the language of a different debate within popular and academic discourse. This is the debate over 'toleration' and its relationship with universalism. It is through this debate that I close the thesis and, further, through an investigation into its limits and its contemporary theoretical and philosophical critics, explore further means of examining and critiquing thin universalism.

The chapter begins with a more substantial characterisation of a thin universalist conception of toleration, moving from a classical view of what it means to tolerate, to consideration of how a conception of toleration emerges within the thin universalist project. Part of this discussion concerns the relationship between toleration and thin human rights, and the role they play together in the expression of thin universal principles. The chapter considers the relationship between construction and toleration and the impact of the facts of complex pluralism and our first principles on the latter. I suggest that toleration is a pragmatic, 'political' practice intended to accommodate and facilitate complex pluralism, and that it is a powerful moral 'ethos', motivated also by compelling moral arguments.

Thin universalism is a doctrine that embraces toleration; the thin universalist is deeply tolerant. Thin universalism can contribute to debates concerning toleration, and its relationship to similar concepts. It can offer valuable perspective on where the parameters of toleration can be drawn within a universal context. It offers an account of where the limits of toleration, legitimate diversity and complex pluralism itself can be established, and subsequently, what we can and ought to tolerate within a cosmopolitan domain. This can be contrasted with accounts of toleration within more restricted contexts in order to provide, like rights and aspirations, the possibility that there may be *more* to an account of toleration than that which we need not tolerate anywhere, at any time. Much of what an account of toleration is concerned with lies *outside* of the remit of a thin universalism. In what way and on what level do we engage with those practices we are reluctant to tolerate, and with those who practice them? Given the severity of the cases addressed by thin universalism, what options are available in the face of seemingly intolerable practices?

The second half of the chapter contrasts this conception of toleration with other approaches to this dimension of difference. I firstly contrast thin universal toleration with a more classically liberal conception, as espoused by John Rawls and Rex Martin. If toleration is prized equally by the thin universalist and the liberal, what is there to set them apart? I also ask whether there is a difference between a thin universalist and a *thin* liberal, and suggest that toleration may be key to disentangling them. I secondly contrast thin universal toleration with Charles Taylor's 'politics of recognition', which communitarians, and those outside Anglo-American justificatory philosophy have advocated as a plausible means of negating accusations of relativism which often accompany the rejection of universalism. I suggest ultimately

that the politics of recognition is too thick to be operationalised universally.¹ I thirdly contrast thin universal toleration with William Connolly's rejection of toleration in favour of a more expansive 'ethos of pluralization'. I ask whether toleration is too overtly judgemental about those practices that are alien to it. Should we not pursue a more *positive* approach to complex pluralism, given that it is central to moral deliberation in such a diverse world?

The chapter provides a closer look at the idea that morality is composed of *more* than human rights, of more than simply thin universal principles. It shows how thin universalism can help to orient and frame other dimensions of our moral deliberation, without superseding or displacing them. As such, this chapter not only offers a more substantive outline of the limits of toleration, but also of the limits of the thin universalist project itself.

The *Concept* of Toleration

Toleration, and an examination of 'tolerance' and 'intolerance', is explicitly concerned with which forms of expression, action, principle, behaviour, and which situations and circumstances, ought to be permitted and which ought to be curtailed. In homogeneous societies, with little or no diversity, the function of toleration is seldom apparent, and in practice is often limited to localised issues. Problems and issues of toleration tend to arise, and tend to be acute in conditions of complex pluralism, wherein competing and incompatible principles and practices must exist together. Some will be tolerable; others will be intolerable. The broad concerns of the thesis resemble closely debates within the broader literature on toleration. The connections between toleration and complex pluralism, pluralism and the limits of

¹ Though I make no claims that Taylor would object to this conclusion per se.

that toleration, and between toleration, its limits and the thin universalist project are clear if complex.

I distinguish here between the *concept* of toleration, and the various *conceptions* of it. The concept of toleration, what toleration is, what it involves and how it is understood, must be distinguished from the particular conception of toleration offered by thin universalism and construction. ‘Toleration’, the act of ‘tolerating’, and the state of ‘being tolerant’ or intolerant are often conflated; the Oxford English Dictionary makes no distinction and they are often used interchangeably.² However, the fact that toleration is a kind of action, and tolerance is a state of being, implies that one could tolerate something in a practical sense, without having to take on extensive re-evaluation of the integral aspects of ones self. This suggests that there is less ontological and epistemological baggage in making an appeal to toleration, the way we would want people to *act*, rather than tolerance, the way we would want them to *be*.

Toleration is broadly understood to contain a conjunction of three circumstances and attitudes. The first component is *objection*. Where beliefs or actions are ‘tolerated’ they are the subject of disapproval; they are considered objectionable, incorrect, bad or wrong in some way. This disapproval can range from simple displeasure to utter disgust. If those actions are not the subject of disapproval it is not ‘tolerance’ towards them of which we speak, but rather ‘indifference’.

The second component is *power*. It must at least be possible to act on ones disapproval and one must therefore have the *power* to do so. Where one lacks the power to actually prevent the practice of the act that is the subject of disapproval, the act is not truly ‘tolerated’. Its performance is accepted because there is no choice but

² See *The Oxford English Dictionary Online*, Second Edition, 1989, (<http://www.oed.com> June 4th 2007)

acceptance. In these cases ‘weakness’, ‘cowardice’, ‘powerlessness’ or ‘lack of agency’ are mistaken for toleration. Toleration therefore requires a degree of freedom or agency in order to be properly enacted.

The final component is *choice*. The disapproving and empowered agent must deliberately choose to refrain from preventing or negating a practice of which they disapprove and in which they have the power to interfere. This choice may be practical or moral, and an account of the justifications and motivations underlying it will vary according to the specific conception of toleration. In this ‘negative’ way, in choosing *not* to negate, toleration differs from ‘positive’ affirmation.³

To be tolerant is to take upon oneself a disposition which recognises, with construction, the powerful impact that pluralism has upon moral thinking whilst at the same time maintaining the importance of establishing reasoned limits to acceptable diversity. At its core toleration is an ‘ethos’, a virtue, a disposition possessed by those who hold a certain understanding about the importance of certain features of the world.⁴

A Constructivist *Conception* of Toleration

The significance of toleration arises from the concerns of the thin universalist project: respect for complex pluralism, and respect for persons. *Why* one tolerates,

³ This account is an amalgamation of various positions of what is involved in the practice of ‘toleration’. See, Preston King, *Toleration* (New York: St Martin’s Press, 1976), pp.44-54; Rainer Forst, ‘Toleration’ in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, Winter 2003 Edition, (<http://plato.stanford.edu/entries/toleration> June 30th 2007); Andrew Fiala, ‘Toleration’ in James Fieser and Bradley Dowden (eds.) *The Internet Encyclopedia of Philosophy*, (<http://www.iep.utm.edu/t/tolerati.htm> June 11th 2007)

⁴ Richard Rorty refers to tolerance as ‘rationality₃’ – the ability not to be disconcerted by difference and not to respond aggressively to it. Rorty distinguishes rationality₃ from rationality₁ – ethically neutral ‘technical reason’, skill at survival or adaptability, and rationality₂ – ‘humanity’, the added ingredient which separates us from animals. Toleration may embody a willingness to change, to reshape oneself for particular reasons. It embodies a reliance on persuasion rather than force and allows for peaceful coexistence between peoples and individuals and is often considered to be quasi-synonymous with a form of freedom. See Richard Rorty, ‘Rationality and Cultural Difference’ in *Truth and Progress: Philosophical Papers Vol.3* (Cambridge: Cambridge University Press, 1998), pp.186-201 at pp.186-187.

and why one *ought* to be tolerant can and, indeed, must be central concerns for the thin universalist project. The key themes of the project help to substantiate a 'thin universalist' conception of toleration. First, this account of toleration is grounded in construction and is therefore in the facts of complex pluralism and first principles of respect for persons and for pluralism. The thin universalist conception of toleration, and not the concept of toleration itself, is what is constructed. Second, toleration is a consequence of powerful moral requirements *and* of practical necessity. Toleration *is* a pragmatic consideration; diverse practices are often tolerated to allow for a basis of agreement and we are tolerant because we seek consent. But toleration is also a fundamentally moral commitment, grounded in the conditions stipulated by first principles advocating respect for persons and for pluralism. We are tolerant because our first principles require it, not simply because the pursuit of consent requires it. The conception of toleration that follows reflects these consideration and those of the project thus far.

Toleration is an expression of an essential aspect of the thin universalist character. It demonstrates recognition of an underlying social, moral and political validity to pluralism. It demands our respect for it. It captures the affirmation that pluralism rejects conformity as an ideal, that intolerance implies conformity and threatens pluralism, and that we should therefore practice toleration in order to secure pluralism. Constructed regulatory principles ought to reflect that respect, and thin universalism is therefore a tolerant doctrine because of its respect for pluralism. The thin universalist is virtuous because he or she is tolerant.

Toleration can and ought to be understood in the same terms as a constructive thin universalism. Construction concerns those actions, principles and practices which fall *beyond* that which we can tolerate. We construct, as regulatory principles,

means of engaging with, and in extreme cases, dealing with those who cannot be tolerated. We construct limits to toleration and, in so doing, a conception of toleration itself. What we can and cannot tolerate is *directly specified* by the constructed thin universal principles established in chapters one to five, and the thin account of human rights offered in chapter six. Violation of thin human rights cannot be tolerated, but this is not all that can be said on the subject of tolerance from the thin universalist perspective. Toleration is not simply what we do in all cases *not* covered by a thin universalism. Nor is toleration an afterthought to thin universalism, it is integral to the project. Toleration and how we come to draw a conception of toleration is ultimately what the project is about.

Thin universalism asserts first and foremost that its conception of toleration is the product of construction and therefore of deliberation over facts and principles. This may lead to the supposition that toleration can be constructed according to the facts alone. Albert Weale suggests the following:

Quite often the fact that different forms of life exist within a community is taken to be a reason for tolerating those forms of life. Individual differences are taken to imply social toleration. The commonly heard saying that one should live and let live expresses this viewpoint, as does the equally common view that individuals should be allowed to do what they like provided they do not harm others.⁵

But, of course, ‘the fact that different forms of life exist within a community’ or ‘the fact of complex pluralism’, is not by itself cause to endorse *any* principled claim and the need for toleration cannot arise out of the sheer fact of complex pluralism. But

⁵ Albert Weale, ‘Toleration, Individual Differences and Respect for Persons’ in John Horton and Susan Mendus (eds.), *Aspects of Toleration: Philosophical Studies* (London: Methuen, 1985), pp.16-53 at p.16

toleration will nonetheless be *fact-dependent*.⁶ It will respond to the facts of complex pluralism, without which we may find little need for toleration, but it will *also* respond to the first principles of the thin universalist project, which animate the ‘tolerant’ response to complex pluralism. Without those first principles, there would be no cause to tolerate that with which we disagree and are able to negate. Rainer Forst notes that:

toleration is a *normatively dependent concept*. ... It needs further, independent normative resources in order to have a certain substance, content, and limits – and in order to be regarded as something good at all. In itself, therefore, toleration is not a virtue or value; it can only be a value if backed by the right normative reasons.⁷

Where does this conception of toleration fit into thin universalism? In the previous chapter I suggested that, far from being the ‘be all and end all’ of how we need to think about morality as a whole, thin universalism, and human rights in particular, are designed to deal with *one* domain as a response to specific concerns. This allows the thin universalist to maintain that there is a great deal of room within moral deliberation for *other* dimensions to ‘morality’. These include further, more particular dimensions as well as further, potentially universal dimensions which do not make the same kinds of claim as those made by human rights. Toleration *can* be a part of our moral thinking without being a part of a thin universalism. But at the same time, the interactions between the content of a thin universalism and the content of a conception of toleration are fundamental.

⁶ See also G.A. Cohen, ‘Facts and Principles’ in *Philosophy and Public Affairs* Vol.31 (2003), pp.211-245 (d), p.214

⁷ Forst, ‘Toleration’

Toleration concerns both the thin content of constructed regulatory principles and the 'thick' space *outside* the remit of those principles. How the thick relates to the thin and vice versa is key to grasping this conception of toleration. Central to the distinction is the extent to which practices can or cannot be tolerated. Thin universal human rights establish, through construction, a thin but universal category of practices which cannot be tolerated *anywhere* in any context. By contrast, in more local contexts, in less-than-universal domains, in more particular frameworks, thicker accounts of toleration and perhaps greater restrictions on what is tolerated can and will be applicable. The reasons behind this will themselves be deeply pluralised, being political, social, moral, economic, and cultural in character. Thin universalist toleration specifies what is *intolerable universally*; it will not show how toleration operates locally. Just as thin human rights underdetermine the full moral content of any given society, so thin universal toleration underdetermines the full extent to which practices are tolerated in a specific local context.

But how do we negotiate those situations where thickly context-grounded toleration places pressure on the thin universal account given here, and vice versa? What happens where locally tolerated practices are in violation of a thin universalism; where what is tolerated is, by the standards set by constructed regulatory principles, intolerable? What follows attempts to navigate those tensions.

Toleration is not simply a thin universal principle; it does not emerge *only* when the most far-reaching moral questions are considered, though it certainly does emerge in those circumstances. Where there are a plurality of human societies entrenched in inegalitarian power relations there will always be cause for the more powerful to tolerate the practices of the less powerful. Toleration in this domain is frequently pushed to its limits. It is often taken too far for the sake of economic or

diplomatic relations, or other values or interests, and it frequently fails. Its presence, however, is undeniable in this universal domain, both as a part of a 'thin' moral minimalism, and in deliberation about others in 'thick' contexts.

Toleration arises *most* prominently in particular contexts. It frames a key principle of liberal impartiality and features in numerous other political and religious ideologies. Toleration is most prominent in those particular instances where practices which are disapproved of are allowed to continue unencumbered due to a conscious and principled, and moreover, context-dependent decision *not* to interfere. Such practices may vary widely, from treatment of animals in slaughter to compulsory protective clothing for certain activities. The crucial point here is that attendance to these practices is unlikely to be found within a set of thin universal principles. A thin universalist conception of human rights will want to say almost nothing about kosher or halal butchery, or the rights of Sikhs not to wear crash helmets whilst riding motorcycles.⁸ While it may be reasonable to regard things like animal rights and safety procedures as universal *aspirations*, it is certainly not sensible, or moreover morally acceptable to assert that all Sikhs *must* as a matter of upholding a set of constructed universal principles, discard their turbans in favour of approved safety headgear. Such issues are matters for thickly conceived particular values. These two examples are specific to the UK, where Jewish and Muslim butchers are excused from certain aspects of humane slaughter law and Sikhs are exempt from the wearing of crash helmets. These are *thick* practices of toleration and important moral questions. But they are not necessarily universal; toleration has a great deal to say within the realm of the particular.

⁸ I borrow both of these examples from Brian Barry, *Culture and Equality*, (Cambridge: Polity, 2003)

Further, just as thin universalism does not insist that all animals are slaughtered ‘humanely’ or that all people must wear motorcycle crash helmets, so it does not prohibit arranged marriage or, for example, the practice of dog fighting.⁹ Thin universalism does not find arranged marriage intolerable; it tolerates it in the name of respect for complex pluralism, according to its first principles. Similarly, thin universalism tolerates dog fighting, again out of respect for pluralism, but more pragmatically in order to avoid excluding those cultures where it remains an acceptable practice. However, in more local contexts, arranged marriage and dog fighting may be ruled out as tolerable practices and rejected as inappropriate on particularist grounds. This secures the integrity and complexity of pluralism by establishing the distinction between toleration in the thin universal domain and the thick particular domain. It is far from incoherent, however, to suggest that we can *aspire* to an end to such practices universally. To say that we can aspire to a world where marriages are not arranged, or where dog fighting is illegal, or where all animals are subjected to humane slaughter remains a possibility. Thin universalism is *thinly* judgemental about these things; it permits them in the name of respect for pluralism, but this does not necessarily dampen its capacity for disapproval of them. Negotiating thick and thin accounts of toleration is complex and I move on to a discussion of the limits of toleration, where the interplay between thick and thin becomes clearer in light of John Stuart Mill’s distinction between speech and action.

The Limits of Thin Universal Toleration

In his consideration of human rights, Joshua Cohen cites a central dilemma of the minimalist:

⁹ These practices are thoroughly inequivalent – I do *not* wish to equate legitimate and well-established religious and cultural practices with blood sports – they both, however, serve illustrative purposes.

We can be tolerant of fundamentally different outlooks on life, or we can be ambitious in our understanding of what human rights demand, but we cannot ... be both tolerant and ambitious¹⁰

In describing this dilemma, Cohen also provides insight into the relationship between thin universalist conceptions of human rights and toleration. In many respects they must be weighed against one another and yet they also describe flip sides of the same coin; different dimensions to the same set of moral problems. Both illustrate the role of thin universal principles, as reflecting the friction between the moral demands we can make universally and how we ought to follow through on the commitment to respect complex pluralism. The resultant balancing act between a set of forceful thin human rights on the one hand, and a robust, yet limited conception of toleration on the other, is framed by construction. How deep does complex pluralism go? Where should a line be drawn under that pluralism? *Where* we draw that line is the focus of construction. What falls beneath it is intolerable anywhere and everywhere prohibited, and is consequently addressed under the remit of thin universalism and human rights. Above it, a characterisation of toleration and its many complex and plural dimensions and limits can be found.

What of these limits? Initially, it seems intuitively wrong to suggest that someone who claims to be tolerant, and yet refuses to tolerate child abuse is speaking incoherently or hypocritically. And there is nothing inherent within sensitivity to complex pluralism that insists that we treat toleration as open-ended. In fact, one of the core claims of the thin universalist is that toleration *cannot* be open-ended. To suggest as much would contradict the project thus far, and would fly in the face of

¹⁰ Joshua Cohen, 'Minimalism about Human Rights: The Most We can Hope For?', in *The Journal of Political Philosophy*, Vol.12 (2), 2004, pp.190-213 at p.192

our lived experience, and the social history of that experience. The most horrific events of the twentieth century – genocide, ethnic cleansing, mass rape, suicide bombing, as well as famine, pestilence and AIDS – are clear cases where we ought to draw the line under toleration. Thin human rights are intended to specify that just such events, crimes and practices must not be tolerated anywhere.

But matters are complicated when we consider the variety and complexity of expressions, actions and situations to which toleration can be applied; many are considerably less serious. It seems somewhat more difficult to claim to be tolerant and at the same time to refuse to tolerate, for example, religious hate speech. The issue is complicated further when epistemological questions are raised, for example when we claim to be tolerant and yet seek to assert an account of ‘truth’ or ‘the good’ which insists that all other such accounts are objectively incorrect.¹¹ This complexity results in a pluralized account of toleration; that which we find intolerable will not *always* be met with the same response. We can construct limits to toleration, but our responses to some things we might find *intolerable* must vary greatly according to what they are.

Construction concerns the point at which toleration becomes objectionable, when it becomes a greater evil than that which is being tolerated. It concerns where the line is to be drawn under complex pluralism, and what determines that which is to be tolerated. What are these limits and how are we to engage with those whose practices or attitudes lie beyond them?¹²

¹¹ As many argue is the case, for example, with Richard Dawkins, *The God Delusion* (London: Bantam, 2006). And, indeed, secularism in general has long since had to counter the claim that it has an undercurrent of intolerance which is deeply embarrassing. See, for example, Alister McGrath, *The Twilight of Atheism: The Rise and Fall of Disbelief in the Modern World*, New Edition (London: Rider and Co, 2005), chapter 9, pp.230-236

¹² Here see Jonathon Quong, ‘The Rights of Unreasonable Citizens’ in *The Journal of Political Philosophy* Vol.12(3), 2004, pp. 314-335; Marilyn Friedman, ‘John Rawls and the Political Coercion of Unreasonable People’ in Victoria Davion and Clark Wolf (eds.), *The Idea of a Political Liberalism: Essays on John Rawls* (Oxford: Rowman and Littlefield, 2000), pp.16-33; and Joshua

We are simply not required to tolerate practices which violate thin universal principles. Violations of bodily security, attacks upon whole ethnic groups, acts of genocide, torture and abuse demand outright condemnation in all instances and mandate action wherever possible. Such acts ought to be, and often are, legally prohibited. Nonetheless, it does not necessarily follow that we must tolerate all practices which do *not* violate thin universal principles. The dynamic of thick and thin conceptions of toleration negates this claim. Thin universalist principles stipulate what we cannot tolerate universally; not what we must or must not tolerate in more specific contexts. Were this the case, we would be left with far more to tolerate than could be mandated by practical acceptability or our first principles. There are many categories of action which fall outside of the remit of a thin universalism but which should not necessarily be tolerated unquestioningly.

We may well feel deeply conflicted by the problems posed by the likes of 'hate speech'. While John Stuart Mill informs us that we must tolerate hate speech,¹³ we may feel that it is something so powerfully troubling that we would never affirm that we are prepared to do so. As such, our response to hate speech may not be legal prohibition, but a commitment to engage those who perpetrate it; hate speech seems in many ways to demand response or counterattack. And while such counter attacks may fall upon deaf ears, we might be equally pessimistic about the impact that even legal prohibition has on hate-mongery.¹⁴ The thin universalist, who advocates coercive action against violations of thin human rights, need not shy away from *other* kinds of action when impositions on universal aspirations, for example, are

Cohen, 'Moral Pluralism and Political Consensus' in David Copp, Jean Hampton and John E. Roemer (eds.), *The Idea of Democracy* (Cambridge: Cambridge University Press, 1993), pp. 270-291. See also Joseph Raz, 'The Amoralist' in Garret Cullity and Berys Gaut (eds.), *Ethics and Practical Reason* (Oxford: Clarendon Press, 1997), pp.369-398

¹³ Except for that which perhaps calls directly for violent action, which Mill does not want to permit.

¹⁴ My thanks here go to Alex Jakle, whose discussion of this matter has helped me to greatly clarify my position.

threatened. Thin universalism is not confined to an 'intervention or inaction' dichotomy and, given the nature of complex pluralism, it is unsurprising that our responses are often multiple, diverse and shifting.

Rival accounts of truth will motivate some of the strongest calls for toleration. Where conceptions of what is 'true' contrast strongly, toleration becomes operative in order to prevent difference escalating into violent conflict. Where no serious, egregious, widespread or systematic harm is being inflicted, the toleration of rival viewpoints is an essential feature of thin universalism. Because it is committed to recognising only the observable fact of complex pluralism, and not the valuational claim of value pluralism, a principle of toleration that issues from thin universalism will remain epistemologically abstinent with regard to rival truth claims. But because it is intentionally 'thin', it does not preclude a concurrent pursuit of truth on the part of its adherents, provided those truths comport with the minimal demands of the constructed regulatory principles. It may be the case that there exist one or many gods, or that there is a single ordering principle informing all our moral decisions. Thin universalism agrees that these possibilities are just that: perfectly possible. The purpose of the constructive project is to allow those who anticipate them to be more than possibilities to have access to the principles that it yields.

This is directly linked to the explicit recognition of complex pluralism which underpins the thin universalist project. Complex pluralism, understood in light of first principles, provides materials out of which are constructed principles that are deeply tolerant in their attitude towards the various epistemological and valuation rivalries which exist within the world. Moreover, the contingency and reflexivity of those principles mean that what is to be tolerated, and how we are to respond to that

which we choose not to tolerate, are *never* permanently fixed. They must undergo *constant* scrutiny and revision by those who are party to the constructive process.

It follows, then, that the thin universalist must confront those with whom consent cannot be constructed: the *intolerant*. This issue is often presented as a 'paradox' within toleration. How can we be tolerant and, at the same time, adequately confront the intolerance that surrounds us? Are we forced to say, with Bernard Williams that 'we need to tolerate other people and their ways of life only in situations that make it very difficult to do so. Toleration ... is required only for the intolerable. That is its basic problem'?¹⁵

The claim of a paradox within toleration is premised on an open-ended commitment to it which is precluded by the thin universalist project. Karl Popper argues that we are simply *not* required to tolerate the intolerant. He recognises the paradox:

If we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them... I do not imply, for instance, that we should always suppress the utterance of intolerant philosophies; as long as we can counter them by rational argument and keep them in check by public opinion, suppression would certainly be unwise. But we should claim the *right* to suppress them if necessary even by force; for it may easily turn out that they are not prepared to meet us on the level of rational argument; they may forbid their followers to listen to rational argument, because it is deceptive, and teach them to answer arguments by the

¹⁵ Bernard Williams, 'Tolerating the Intolerable' in Susan Mendus (ed.), *The Politics of Toleration: Tolerance and Intolerance in Modern Life* (Edinburgh: Edinburgh University Press, 1999), pp.65-75 at p.65

use of their fists or pistols ... We should therefore claim, in the name of tolerance, the right not to tolerate the intolerant.¹⁶

One might even suggest that to be tolerant of all viewpoints, including the fundamentally intolerant, is in fact, passive *approval* of intolerance, and *not* therefore tolerance at all. For action which permits the oppression of tolerance, in the name of tolerance, condones its rejection. If it does so in the name of tolerance it is incoherent also.

Further consideration of what we might be called upon to tolerate – beliefs, principles, thoughts, expressions, actions or situations – is now required. Classically a distinction is drawn between toleration of the *expressions* of an agent and toleration of the *actions* of an agent. This distinction is important to any discussion of toleration, and specifically toleration of the intolerant, and it is particularly important for the thin universal conception of toleration.

Questions of toleration, and when we ought and ought not to interfere with the liberty of others, are central to Mill's *On Liberty*. Mill's 'harm principle' – 'the only purpose for which power can be exercised over any member of a civilised community, against his will, is to prevent harm to others' – is in part an attempt to demonstrate the limits of toleration.¹⁷ It attempts to define a category of action to which others should not be subjected, exposing in turn a domain of action governed by law-like principles. However, central to the work is a strong distinction between liberty of thought, conscience and speech on the one hand, and liberty of action and association on the other. The former

¹⁶ We can 'claim, in the name tolerance, the right not to be tolerant of the intolerant'. See Karl Popper, *The Open Society and Its Enemies, Vol. I*, p.265, fn.4 (Princeton: Princeton University Press, 1971)

¹⁷ John Stuart Mill, *On Liberty* (London: Penguin, 1974), p.68

comprises first the inward domain of consciousness, demanding liberty of conscience in the most comprehensive sense, liberty of thought and feeling, absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological.¹⁸

This evidently covers an unlimited freedom of thought and conscience, as instantiated in the *Universal Declaration of Human Rights*¹⁹, but he continues:

The liberty of expressing and publishing opinions may seem to fall under a different principle, since it belongs to that part of the conduct of an individual which concerns other people, but, being almost of as much importance as the liberty of thought itself and resting in great part on the same reasons, it is practically inseparable from it.²⁰

Freedom of speech is as essential to individual and social well-being as freedom of thought and conscience. For this reason, Mill claims, they should be considered together. There is almost no justification for silencing opinion, be it of a single individual, a group, or the whole of mankind. The pursuit of truth is dependent on this freedom, and silence can only hinder it. Opinions known to be false must not be negated, as ‘complete liberty of contradicting and disproving our opinion is the very condition which justifies us in assuming its truth for purposes of action’.²¹ But Mill makes a crucial distinction between expression and action, and he asks ‘whether the same reasons do not require that men should be free to *act* upon their opinions’.²² Mill’s insistence on an almost unlimited freedom of thought, conscience, discussion

¹⁸ Mill, *On Liberty*, p.71

¹⁹ See *The Universal Declaration of Human Rights* (New York: United Nations Office of Public Information, 1948), Article 18: ‘Everyone has the right to freedom of thought, conscience and religion’

²⁰ Mill, *On Liberty*, p.71

²¹ Mill, *On Liberty*, p.79

²² Mill, *On Liberty*, p.119 [Emphasis added]

and expression is counterbalanced by a careful elucidation of what must be observed in the *conduct* of members of a society, to which the harm principle is central.

This conduct consists first in not injuring the interests of one another, or rather certain interests which, either by express legal provision or by tacit understanding, ought to be considered as rights; and secondly, in each person's bearing his share ... of the labours and sacrifices incurred for defending the society or its members from injury or molestation.²³

Going further, he states that acts injurious to others 'are fit object of moral reprobation and, in grave cases, of moral retribution and punishment.'²⁴ While, for Mill, there are almost no limits to what we ought to tolerate with regard to the speech and expressions of others, there are clear, powerful, and moreover legally enforceable limits to what we ought to tolerate with regard to their actions. Freedom of action, while it provides means of accessing truth also provides enormous capacity for causing harm to others. Speech is less ambiguous, allowing the pursuit of truth with more limited potential to cause genuine and direct 'harm'.²⁵

However, as with the example of hate speech above, while racism, sexism, homophobia and such need *not* be tolerated, our responses to them need not be confined to simply making such prejudices illegal. Intolerance, like hate speech, but perhaps unlike full-blown violations of thin human rights, prompts engagement with the proponent. This plurality of demands placed upon us by a commitment to toleration is again unsurprising. Practising toleration will seldom require a single course of action for those things we choose to tolerate and another course for those

²³ Mill, *On Liberty*, p.141

²⁴ Mill, *On Liberty*, p.145

²⁵ And, while it may be protested that speech can cause social and cultural harm to certain groups within society – for example to minority cultures, ethnic groups or sexualities – on Mill's account, the falsity and damage of these claims can only be negated through further discussion.

we choose not to. It may not be a case of claiming a right to suppress intolerant attitudes, but a thin universalism must be aware of the social power that intolerance can wield.

Arguments for toleration cannot, therefore, show that *all* of what Kant called 'private uses of reason' must be tolerated.²⁶ Some deeply intolerant doctrines may, in their 'private' discourse hinder broader 'public' moves towards greater tolerance. There are strong reasons not to tolerate such doctrines, and it is not necessarily intolerant not to tolerate the intolerant. T.M. Scanlon goes so far as to suggest that it may, in certain contexts, be appropriate to *enforce* toleration, and even to teach it in schools.²⁷ This, however, remains a question for *local* contexts, where issues beyond those of thin universalism are more prominent. To insist upon universal toleration education may demand a thicker set of commitments than respect for pluralism can countenance. To demand such a deep commitment to toleration is perhaps an unattainable approach to the issue, both practically and morally. Nonetheless, we might agree with Scanlon that to unreservedly accept deep social intolerance is to demand an equally unattainable attitude:

If a group maintain that I and people like me simply have no place in our society, that we must leave or be eliminated, how can I regard this as a point of view ... that is equally entitled to be heard or considered in our informal (or even formal) politics?²⁸

Intolerance is incompatible with thin universalism because of the corrosive effect it has on the practices of discourse that help to construct, establish and validate it.

²⁶ See Immanuel Kant, 'An Answer to the Question "What is Enlightenment?"' in Hans Reiss (ed.), *Kant's Political Writings* (Cambridge: Cambridge University Press, 1970), pp.54-60 at pp.55-56

²⁷ He suggests that, provided it is voiced with caution, the apothegm 'In Tolerance We Trust!' See T.M. Scanlon, 'The Difficulty of Tolerance' in *The Difficulty of Tolerance*, (Cambridge: Cambridge University Press, 2003), pp.187-201

²⁸ Scanlon, 'The Difficulty of Tolerance', p.197

Conversely, a spirit of accommodation, what Scanlon calls 'the spirit of tolerance',²⁹ a desire to find a framework of principles that others could also be asked to accept, is one of the key characteristics of thin universalism. Without toleration, an account of action-guiding principles, and the basis for their justification is somewhat incomplete. Toleration is not just a political virtue or a simple practice within a just polity, it is a key matrix within which a plurality of social, political, religious, philosophical, economic, ethnic and national groups can constitute the full authority of their own shared judgements and so be able to debate how the universal and the particular are to interact in a given context.³⁰

It is not the case that toleration succumbs to paradox when faced with intolerance. While intolerance provides new dilemmas, we need not say with Williams that we need toleration *only* in intolerable circumstances. Toleration is required in circumstances that arise long before a situation becomes intolerable, and our actions concerning what we tolerate and what we do not will rarely be the same. It is therefore essential that the limits of what we are prepared to tolerate are as reflective and contingent as the principles that we construct.

Toleration: Classical Liberal or Thin Universal?

But we may wonder whether, in its approach to toleration, thin universalism does not strongly resemble *precisely* that from which it seeks to break. I draw the discussion towards its conclusion with a series of contrasts between the thin universalist conception of toleration and three rival accounts of how we might dispose ourselves within complex pluralism. These contrasts address the relationship between a more substantive, traditional liberal conception of toleration on the one hand, and more

²⁹ See Scanlon, 'The Difficulty of Tolerance', p.198

³⁰ Onora O'Neill, 'The Public Use of Reason', in *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge: Cambridge University Press, 1989), pp.28-50 at p.50

pluralistic and postmodern conceptions on the other. I begin with a consideration of thin universal toleration in contrast with 'classical' liberalism.

Given that the thesis has culminated in thin universalist accounts of human rights and toleration, and given that these are equally powerful components of liberalism, it is pertinent to ask: is a commitment to toleration likely to lead to anything that is *not* still 'liberalism' in terms of its substantive content? An answer to this can be found by examining how thin universalism and liberalism differ in their content, character and starting points. This is valuable, if only because the thin universalist project emphasises aspects of its own character which are inherently problematic when enshrined within a more substantively *liberal* universalism. In this section, I respond to the suggestion that thin universalism is unworthy of such close consideration and that toleration simply leads back to liberalism by examining the differences between thin universalism and liberalism.

If one suspects that a thin universalism expressed through the discourses of human rights and toleration and which seeks to respect complex pluralism is simply liberalism, this suspicion tends to emerge as one of two objections. The first objection is that *any* universalism, but particularly one cashed out as human rights and toleration, still shows strong Western bias and will return to past imperialist tendencies. The second objection is that a specifically *thin* universalism represents an 'anorexic' form of liberalism and is as such too thin or weak. The tenets of liberal 'right' are so regardless of context and therefore to offer a 'thin' version of it simply weakens our commitment to right.³¹

The first objection is overcome through thinness. A thin universalism, in its thinness, is able to deflect the suggestion that it contains excessive Western liberal

³¹ Rex Martin, 'Rawls on Human Rights: Liberal or Universal?' in Bruce Haddock, Peri Roberts and Peter Sutch (eds.), *Principles and Political Order: The Implications of Diversity* (London: Routledge, 2006), pp.192-212 at p.202

bias to render it inapplicable in a complex plural world. Just as Rex Martin notes that Rawls' doctrine of human rights in *The Law of Peoples* contains no universal commitment to democracy, more expansive list of rights, or any procedure for their implementation, so a thin universalism resists attending to these more substantive projects. However, this objection has been addressed throughout the thesis and further attention to it will not yield different or more illuminating conclusions.

Attendance to the second objection has not really been touched upon, and so becomes my focus here. It is addressed by examining the distinction between universalism and liberalism and, by extension, the distinction between *thin* universalism and *thin* liberalism. Initially, it could be argued that thin universalism and liberalism are *equivalent*, both in terms of their character and their 'thickness'. On this account, the procedures of construction that hold for a thin universalism would hold equally for liberalism. Thin universalism is not a less substantive, weaker or watered-down version of liberalism, because liberalism itself is intentionally minimalist. Here, procedural accounts of liberalism spring to mind, where a morally acceptable outcome is sought *only*, for example, in the means by which social conflicts are arbitrated.³² However, I have juxtaposed thin universalism with liberalism, suggesting that liberalism can be shown to have far more substantive content. The critics cannot be satisfactorily answered by asserting that thin universalism and liberalism are one and the same: substantively thin and universal in character. It does a disservice to liberalism to assert this strong thinness, and it does a disservice to the distinctiveness of thin universalism to simply brand it as 'liberalism'.

³² Here I refer most notably to the work of Stuart Hampshire. See his *Justice is Conflict* (London: Duckworth, 1999); and *Innocence and Experience* (London: Penguin, 1989), pp.54-62

A more promising counter argument is to assert that universalism is simply not the same as liberalism. While a universalism constructed from within a liberal framework will invariably bear liberal characteristics, and while liberalism contains strong universal dimensions, they are *not* equivalent. I begin to draw the distinction using a ‘canonical’ characterisation of liberal society, as the conflation of universalism and liberalism arises in part due to mischaracterisations of the latter. The work of John Rawls is paradigmatic here, for whom a liberal society bears the following characteristics:

1. Liberal societies will subscribe to a conception of fundamental rights and liberties (often codified in a bill of rights or a covenant on rights)
2. Those rights are assigned special priority and they will ultimately override such other considerations as the general good (as in communitarianism, socialism etc) and aggregate well-being (as in utilitarianism)
3. They try to assure for their citizens ‘adequate, all-purpose means’ which allow for effective use of those rights and liberties.³³

These form part of Rawls’ core characterisation of ‘liberal society’ found in *Political Liberalism*. They form the basis for his affirmation of a politically constructivist approach and the subsequent political liberalism that emerges. In the *Law of Peoples* Rawls adds the following conditions, the latter of which comports with the debate concerning the human right to democracy:

4. Liberal societies behave peacefully towards one another, and towards other peaceable societies.³⁴
5. Liberal states will be democratic in their fundamental formation.³⁵

³³ See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), introduction, especially p.6

³⁴ See John Rawls, *The Law of Peoples* (Cambridge MA: Harvard University Press, 1999), pp.44-54

Martin considers the plausibility of a global liberal society, grounded in a cosmopolitan Rawlsian original position that Thomas Pogge, Charles Beitz and Brian Barry and others have sought to advocate, but which Rawls himself has not. For Martin, a set of substantive liberal principles would fail the crucial Rawlsian test of reflective equilibrium, if implemented globally.³⁶ If reflective equilibrium is the bringing into harmony of our considered judgements and the outcome principles of reasoning in the original position,³⁷ then it will be possible to show how the initial considered judgements of many people who do not already belong to liberal societies will be unlikely *ever* to fall into harmony with a set of outcome principles derived from original position reasoning and which are substantively liberal in content. As Martin points out,

there are many, many persons in the world whose settled moral convictions would be in deep disharmony, perhaps irreconcilable disharmony, with what amounts to principles for a *liberal* global order.³⁸

Similarly, a set of substantive liberal principles intended for the global arena would fail many of the challenges that have been addressed throughout this project. It would likely fail many of the moral requirements of our first principles, and would almost certainly fail to garner substantial consent, even if a patchwork of procedures were employed effectively. Thin universal regulatory principles are thin and universal because of strong pragmatic *and* powerful moral considerations. Thin

³⁵ Rawls makes this case in *Political Liberalism*; also. See also Joshua Cohen, 'Is There a Human Right to Democracy?' in Christine Sypnowich (ed.) *The Egalitarian Conscience: Essays in Honour of G.A. Cohen* (Oxford: Oxford University Press, 2006), pp.226-248; as well as chapter six of this work. This simple codified account of 'Rawlsian' liberalism I owe to Rex Martin. See his 'Rawls on Human Rights: Liberal or Universal?', pp.192-193

³⁶ Martin, 'Rawls on Human Rights: Liberal or Universal?' pp.203-4

³⁷ See John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971) pp.48-51

³⁸ Martin, 'Rawls on Human Rights: Liberal or Universal?' p.204

principles are far more likely to pass tests of reflexivity than their thicker, more substantive counterparts.

Because liberalism is an explicitly thick, comprehensive, historically contingent, and contextual account of how to organise a particular kind of (albeit plural) society, it contains too thick an account of how to live to be acceptable globally. Liberalism is replete with strong background assumptions about institutional arrangements, the nature of participation, the character of the judicial system, the rule of law and the limits of acceptable conduct, for the governors and the governed. This conclusion is unsurprising. Concern for complex pluralism globally surely implies that *any* substantive account of morality or justice will be inappropriate. A substantively liberal global order will be deeply inappropriate, practically unattainable and potentially morally indefensible both in the eyes of others and according to the first principles of the project. This too is unsurprising.

A more perplexing challenge comes from the charge that thin universalism is, in fact, a *thin liberalism* rather than a global comprehensive, substantive or thick liberalism. There are two responses to this charge. The first is that there are significant differences between *thin* universalism and *thin* liberalism. The second is more decisive, and demonstrates how the very idea of a 'thin liberalism' is incoherent. The first is achieved through disentangling those ideas that apply to liberalism and those that apply to universalism, and those that apply to both. For Rawls this difference between liberalism and a universal moral and political order lies in the substantially different formulations of the original position in the domestic and international domains. As Martin notes, Rawls 'does not subscribe to the agenda of original position cosmopolitanism ... because he holds to a decidedly different characterisation of the normative foundations and the resultant principles that should

have “universal reach” in the international community.’³⁹ The grounds upon which we conceive of a thick conception of how to organise a society will be different from the grounds upon which a thin universalism is constructed.

For the constructivist thin universalist these differences are clear. Thin universal principles are constructed on the basis of the fact of pluralism and first principles concerning respect for persons and respect for pluralism. Complex pluralism differs between the domestic and international sphere,⁴⁰ and how we act upon a respect for that pluralism and for persons will also differ domestically and internationally. Most importantly, the role that thin universal principles are intended to perform is quite different from the role of more substantive principles intended to cover a more limited scope. They are constructed on the basis of facts pertaining to a global shared environment, whose internal boundaries are constantly shifting, overlapping, fracturing and reforming. They are formulated on the basis that there is little in the way of shared ground for constructing global regulatory norms, or for constructing consent to them. It proceeds, in true constructivist fashion, from what cannot be denied about global society: that it *must* function peacefully in order to avoid destruction.

In the domestic sphere, however, those regulatory principles are accompanied and offset by, and must compete with numerous *other* principles, institutions and cultural mores. A vast amount of more substantive presuppositions go into domestic regulatory principles. Religious commitments, philosophical and political practices and institutions established over thousands of years, shared bonds, old animosities, social psychologies, conceptions of the good or right, and vast and powerful historical experiences all go into shaping how a society is organised and the kind of

³⁹ Martin, ‘Rawls on Human Rights: Liberal or Universal?’ p.205

⁴⁰ See chapter two, above.

relationship it has with thin universal regulatory principles. Liberalism is one such order with which thin universalism must have a relationship.

This also highlights a further point. Thin universal principles are not pre-existing liberal principles with the substantive, normative content cut away. They are not liberal rights and commitments slimmed down, more abstract than ever before and with their particular content taken out. Just as John Gray remarked that human rights are not simply liberal rights writ large,⁴¹ thin universal regulatory principles, expressed as human rights and toleration, are not simply liberal values trimmed, stretched and extended to broaden their relevance. The construction of the validity of thin universal regulatory principles is conducted through the debate and interchange of liberal and Muslim, Muslim and socialist, socialist and Christian, Christian and American, American and utilitarian, and so on.

This, in turn, points to the second claim in defence of a thin universalism, namely that to posit a 'thin liberalism' is incoherent. Initially the idea of a thin liberalism seems not only plausible, but sensible and even desirable. It implies a liberalism that retains its liberal character but is less substantial in order to meet the demands of a pluralised world. On closer consideration, however, it starts to look more problematic. Liberalism is a political ideology, not simply a moral philosophy. Like other ideologies it is a collection of ideals, doctrines and principles on how a society should work which offers, at the same time, some guidance on how to achieve those goals. It contains, alongside powerful moral dimensions, political, economic, social and cultural doctrines which bear a distinct history and which have a core of common content centred on individual liberties.⁴² Assuming that the

⁴¹ John Gray, *Two Faces of Liberalism* (Cambridge: Polity, 2000), pp.109-110

⁴² To quote Maurice Cranston, 'a liberal is a man who believes in liberty'. See Maurice Cranston, 'Liberalism' in Paul Edwards (ed.) *The Encyclopedia of Philosophy*, (New York: The Free Press, 1967), pp.458-461 at p.459. See also Gerald Gaus and Shane D. Courtland, 'Liberalism', in Edward

organisation of other ideologies, as well as other moral, political, social, economic, cultural, religious and ethnic viewpoints are *not* constructed around a similar core of individual liberties, it is reasonable to presuppose that a *thin* version of liberalism, in order to be ‘universal’, would have to shed or significantly weaken its commitment to many of those liberties.

We might, then, wonder whether a thin liberalism would still in fact be ‘liberal’, as the ideological content would almost certainly have to be stripped from it in order to make it morally and practically universalisable. Would a thin socialism still bear any of the characteristics of a truly socialist ideology? Would the redistribution of wealth according to need have to be abandoned in order to render it universally applicable and acceptable? If so, is it still ‘socialism’? We might therefore wonder whether *any* of the frameworks and identities mentioned above could be ‘thinned’ in order to make them truly universalisable. A thin Christianity may be implausible, not least because, we would have to presume, thinning Christianity may require removing reference to God! Liberalism, like socialism and Christianity adds to an account of morality provided by a thin universalism. This does not, of course, mean that they are built out of a common thin universal ‘core’, but thin universalism leaves many blanks which can be filled for a comprehensive account of morality to emerge. Thin universalism is not itself a comprehensive account and we might ultimately wonder whether the objection that thin universalism is the same as liberalism holds any water at all.

Thin universalism’s conception of minimalist human rights and its emphasis on toleration are simply characteristics of moral and political discourse, interpretations of which can be found within liberalism, and within many other

N. Zalta (ed.) *The Stanford Encyclopaedia of Philosophy*, Winter 2003 Edition,
(<http://plato.stanford.edu/archives/win2003/entries/liberalism/> September 10th 2007)

political and moral systems. This is not the claim that thin universalism constitutes an empirically identifiable 'core' of beliefs common to most political cultures, but rather that constructed thin universal standards have a resonance which extends beyond their application in a thick liberal context. They emphasise something that speaks to many other political and moral doctrines whilst at the same asserting that many of them, including some conceptions of liberalism, must strive harder to meet the standards that they require. Thin universal principles cannot be context-dependent principles thinned down in order to 'free' them from that context-dependency. They cannot be derived from *any* single established set of comprehensive religious, moral or philosophical doctrines. Rather, they are, as the thin universalist project advocates, the outcome of constructive procedures which are not independent of, but amount to more than a simple thinning down of particular comprehensive viewpoints. They do not amount simply to a thinner version of liberalism, or imply that we all are or want to be liberals, deep down. Rather, liberalism shares with many other modes of political organisation both the capacity to ensure that basic respect for persons and pluralism is achieved, *and* the understanding that many societies, 'liberal' or otherwise, have a long way to go to meet these standards.

Reintroducing the language of toleration highlights further differences. At first glance it seems that a thin universalism that is committed to a set of human rights, and which is deeply tolerant, can say very little of significant difference to a liberalism, which is also so committed. Liberals, and particularly 'comprehensive' liberals, will have a great deal to say about societies that fail to be properly liberal. They will have many more resources at their disposal to make substantive and powerful moral judgements about those practices which violate liberal principles.

This is where liberal toleration emerges; in practice liberalism is a deeply tolerant doctrine. It acts on only rare occasions to guarantee its commitments globally, while domestically, its comprehensive values are maintained.⁴³ Internationally, though, liberalism is highly tolerant of illiberalism at work.

The thin universalist can say far less about much of this illiberalism. With its regulatory principles, expressed as human rights, thin universalism is concerned to speak only to violations of those principles. It does not assert that this is all that any one person or society can say with regard to moral matters, but it does ultimately advocate a form of tolerance influenced by the demands of complex pluralism. In *practice* thin universalism is deeply tolerant also; perhaps only slightly more so than liberalism, if perhaps more deliberately and noticeably so in *principle*. But this in itself is significant. Because thin universalism seeks to *say* less than liberalism, because it is more tolerant in principle, it is, and appears to be, far less judgemental in its regard for other societies and cultures. It is in this respect that a thin universalism succeeds fully in realising its first principles of respect for the complex plurality of social and cultural systems and the people who create, renew and inhabit them. Constructed thin universalism, more than *any* other, is aware of its own contingency, provisionality and limitations. It is acutely aware of the process by which it is constructed and validated and does not insist upon its own transcendental purchase.

At the same time, thin universalism avoids many of the troubling pitfalls of traditional liberalism, which are in no small part due to the incongruence between its own powerful historical contingencies and its universalist, transcendentalist and

⁴³ One could further maintain that liberalism is, in many such instances, not nearly as 'impartial' as some of its detractors suggest.

occasionally monistic and 'unitarian' views about the good society.⁴⁴ Coupled with the economic and global-political dominance of Western liberal states, this leads on the one hand to great resentment at the eagerness with which liberalism exports its comprehensive political values of democracy and rights, and to a suspicion of 'moral judgementalism' in situations where non-liberal peoples struggle to see the value in liberal institutions. In the same instance, the frequent failure of political institutions to live up to these values, in those contexts where they have been exported or imposed, *and* in their liberal homelands results in resentment towards otherwise promising intuitional arrangements. Liberalism can offer valuable ideological resources to the world, and human rights may indeed be liberalism's 'greatest bequest to the human race'.⁴⁵ But it all too often takes an all-or-nothing approach to its institutional arrangements, which often results in failure and backlash against those arrangements and their advocates. There are numerous examples of economic liberalism advancing without the accompanying expansion of political participation. Liberty can be respected without capitalism; human rights can exist without democracy. While we might *aspire* to such values universally, the extent to which we have the practical and moral leverage to insist upon them as something akin to universal *human rights*, and to refuse to tolerate their absence, is limited.

Thin universalism is less judgemental than liberalism. It embraces a similarly tolerant approach but it is less likely to be the recipient of the resentment which accompanies liberal toleration. This is a product of construction, and of thinness. It is perhaps unsurprising; liberalism is a comprehensive doctrine, and its thinner variants

⁴⁴ See William Connolly, *Pluralism* (Durham NC: Duke University Press, 2005), pp.3-4, 65

⁴⁵ Mark Evans, 'Pluralising Liberalism, Liberalising Pluralism' in *Res Publica*, Vol.10 (4), 2004, pp.449-460 at p.453

still embrace comprehensive views of social organisation.⁴⁶ Thin universalism simply does not represent a comprehensive view of morality, justice, the right, the good, or how a society should be organised; it represents only a small part of what we call ‘morality’. The constructed regulatory principles expressed as human rights are not the ‘be all and end all’ of our moral concerns, commitments, or thinking. Thin liberalism represents, however implausibly, a comprehensive doctrine thinned down to make it more applicable, forcing its adherents to be more tolerant for the sake of social order. Thin universalism is a separate doctrine constructed from a consideration of the facts of the world in light of those principles we recognise to be independent of those facts. As such it is not a slimmed down doctrine – it is not ‘moral anorexia’ – but rather it is thin of its own volition, for reasons that are pragmatic but quintessentially moral. The thin universalist is not cynically tolerant of all of which he or she disapproves, following through on respect for persons and pluralism by embracing tolerant principles with recognisable, reasoned and acceptable limits with intuitive appeal. Thin universalism is not tolerant because it must be; it is so because it chooses to be, more actively and with greater sensitivity than any doctrine prior to it.

Attempted thin liberalisms can only allow what Ronald Dworkin refers to as ‘interpretive variation’⁴⁷ within how liberal principles can be pursued. This is perhaps why Rawls himself backed away from a thinner liberalism, towards a thin universalism in his later writings on international justice. Ultimately, we are reminded of Rex Martin’s speculative conclusion: that the only universalism

⁴⁶ And about how those who choose to opt-out of the processes by which that occurs are treated. I am thinking here once again about Rawls’ inability to deal with purveyors of violence from *within* his political liberalism. His resort to a comprehensive view of liberalism in order to demonstrate why violence represents an unacceptable pursuit of ones goals, and of conflict, demonstrates nicely why it is a thin universalism, and not a thin liberalism that we must seek to construct here.

⁴⁷ See Ronald Dworkin, *Law’s Empire* (Cambridge MA: Harvard University Press, 1986), chapters 1-3; see also Martin, ‘Rawls on Human Rights: Liberal or Universal?’ p.206 fn.43

appropriate to Rawls's international position is 'a sort of "thin" universalism.'⁴⁸ The law of peoples itself constitutes a form of thin universalism and, as Martin asserts, it has been critiqued as not sufficiently liberal (or indeed Rawlsian) in character. But, just as the interpretation of Rawls's law of peoples resonates in one way in certain contexts, and differently in certain other contexts and will allow Dworkin's interpretive variation, a thin universalism too places great emphasis on the extent to which its principles will vary according to context. Thin universalism is most comfortable alongside the very late Rawls, because this is where he recognises and realises his thinnest universalism yet, and one that is not grounded solely in comprehensive liberalism. Its construction is separate from that of the construction within liberal societies themselves, which are simply one interpretation that could justifiably flow from his minimal 'preinterpretive' list of human rights.

Strong liberals like Barry and Pogge will continue to insist that without a more substantively *liberal* preinterpretive stage, many of those interpretations will be flawed and potentially dangerous.⁴⁹ Similarly, the thin universalist will assert that there are clear limits to the valid interpretive diversity of a set of thin universal regulatory principles. Claims to adhere to thin universal principles which clearly do not do so, in cases of ethnic cleansing or the like, cannot be regarded as valid interpretations of the principles. Thin universalism sets limits on interpretive disagreement, but allows a greater degree of illiberal interpretation. Thin universalism, as such, seeks to be more tolerant and less judgemental. This, some

⁴⁸ Martin, 'Rawls on Human Rights: Liberal or Universal?' p.205

⁴⁹ They would be what Barry and Pogge would call unjust. This assertion would require an examination justice in the context of thick and thin, and what constitutes 'justice' thickly and thinly conceived and the contrast and tensions between them. I do not have the capacity to enter this debate here but, speculatively, we might regard them as following the same lines as thick and thin accounts of morality. We might further surmise, therefore, that a thin account of justice does not exhaust what justice *is* or what it can *do* and we need not be excessively worried by liberal concerns of the supposed 'injustice' of illiberal forms of social organisation.

critics suspect, it fails to do by employing the language and values of toleration in the first place. These critiques are addressed in what follows.

Toleration, Recognition and Respect

Those sceptical of universalist projects might here raise the concern that toleration is harmful towards, or insufficient to safeguard the integrity of pluralism or the 'difference' identified therein. The suggestion emerges that we must transcend misplaced notions of 'toleration' in order to properly demonstrate our commitment to complex pluralism, and to individual human beings; acceptable pursuit of our first principles may demand it. For theorists of multiculturalism and 'difference', 'toleration' will involve far more than the account thus far has provided for. For Charles Taylor, social identities are formed in dialogue with 'significant others' and social 'recognition' is therefore key to the development of identity. The denial of recognition, and of *equal* recognition, can be deeply damaging for group identity.⁵⁰ For Taylor, 'toleration' lacks an adequate account of recognition to properly fulfil its role.

The 'politics of difference' and the recognition of a complex plurality of unique social groups with unique identities underpins this idea – that true respect for pluralism demands more than simply tolerating those whose practices differ from our own.⁵¹ A politics of recognition therefore claims that we can only give due acknowledgement to what is universal, the respect owed to all human beings, through recognising what is peculiar to each. It is only through *recognition* of pluralism, its constituent agents and its complexities that we are able to fulfil the

⁵⁰ Charles Taylor, 'The Politics of Recognition' Amy Gutmann (ed.), *Multiculturalism* (Princeton: Princeton University Press, 1994), pp.27-73 at pp.34-36. The term 'significant others' is taken from G.H. Mead.

⁵¹ See Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame: University of Notre Dame Press, 1994), p.ix. See also Taylor, 'The Politics of Recognition', pp.37-38

commitment to respect others.⁵² We must recognise the equal value of different cultures, let them survive, and acknowledge their worth. Due recognition is needed for the hitherto excluded and to negate images of inferiority inculcated by the dominant. The starting hypothesis from which we should approach the study of *any* culture should be grounded in equal respect and the recognition that all cultures have something important to say about human beings.⁵³

Recognition theorists suggest that emphasis on general principles within universalist approaches forces people into a mould which is neither ‘universal’ nor ‘neutral’, but rather particular and, moreover, white, Western, often male and liberal in its particularity. The result is a universalism which forces minority cultures – ‘the tolerated’, rather than ‘the tolerant’ – into forms alien to themselves.⁵⁴ Genuine differences are dismissed and denied in a ‘homogenising tyranny’.⁵⁵ This, recognition theorists argue, is also a failing of contemporary rights doctrines, many of which do offer distinctly ‘thick’ accounts of rights which allow little space for interpretation.⁵⁶ Without close attentiveness to recognition and difference, even a *thin* universalism risks falling into the imperialist trap. Commitment to *recognition* must be the outcome of the analysis of complex pluralism and must feature in place of toleration alongside other expressions of thin universalism.⁵⁷

⁵² Taylor, ‘The Politics of Recognition’, p.39

⁵³ It is important also to resist the stronger claim that the outcome of further study must be actual judgements of equal worth. It makes sense to presume the equal worth of cultures when studying them, but it cannot make sense to conclude that all are as valuable as each other. This kind of subjectivism is confused, condescending and ultimately ethnocentric – mistaking the other for ourselves, and equating the two. Taylor, ‘The Politics of Recognition’, pp.66-67, 69-71

⁵⁴ Taylor, ‘The Politics of Recognition’, p.43

⁵⁵ Taylor, ‘The Politics of Recognition’, p.50

⁵⁶ See Taylor, ‘The Politics of Recognition’, p.52. And, indeed, Walzer suggests that in cases where the ‘minimum’ is sought, that minimum itself is seldom ‘minimal’. See Walzer, *Thick and Thin*, p.12. See also chapter six, above.

⁵⁷ Though, it must also be recognised that many who would advocate Taylor’s position (though not necessarily Taylor himself) would perhaps reject any notion of human rights along with their rejection of toleration.

Does the challenge from recognition, which seems well disposed towards pluralism, undermine the thin universalist concern with toleration? Firstly, while recognition is perhaps a powerful tool in cross-cultural moral discourse, it fails an important test of universalisability, making it unsuited to the thin universalist project.⁵⁸ And, secondly, what recognition tries to capture is the inherent need to secure respect, but that this does not undermine a commitment to toleration, which secures respect equally well, without the problems that recognition presents.

Toleration must draw upon the claims of the thin universalist project to demonstrate its superiority over recognition. First principles of respect for persons and respect for pluralism are the source of thinness and universality. Is recognition both sufficiently thin and sufficiently universal to properly demonstrate our commitment to those first principles? Recognition calls upon agents to treat cultures with equal credence prior to further examination and study. On its own this seems unproblematic. But, while this sentiment is primarily addressed to a liberalism implicated in the West's colonial exploitation of the southern hemisphere, liberalism is not the only ideology guilty of wielding a superiority complex over others. Adherents of a great many doctrines around the world, who hold definite views of other cultures in relation to their own, will be unwilling to concede *prima facie* equality when approaching other cultural systems. Few cultures are relativist in their outlook, notes Alasdair MacIntyre, and we cannot necessarily count on their acceptance of the kind of cultural egalitarianism that recognition demands.

Recognition, then, prides itself on a much *thicker* set of values than the thin universal conception of toleration. Its claim that universalism tends to force people into an alien mould is mirrored in its thick approach to cultural difference. It further

⁵⁸ I note, at the same time, however, that it is equally unlikely that Taylor would wish to endorse this particular application of a politics of recognition.

threatens the identities of those agents who do *not* regard identity as central to ones interactions and it seems likely that without significant alteration to the fundamental views of many groups, recognition is not something that they could easily adopt.

While this critique does not undermine the whole project of recognition, it does raise questions about how 'pluralistic' it is in practice. As a personal ethos, recognition insists upon deep cultural sensitivity and is therefore quite positive. Though it is this that is most troubling socially, focusing upon a *singular* core ethos of recognition when confronting 'others'. We might be rightly concerned that to insist upon *more* than a minimal account of toleration is excessively demanding for many people, not least those to whom identity is less than central. Many ideologies and modes of discourse, including varieties of liberalism, fall into this category. Recognition is a powerful and compelling idea, but within the universal domain it is, at best, an *aspiration*. We may truly desire it to be universal, but recognise it as too problematic to be so.

This alone may not silence those critics concerned about the imperialist history of universalism. If the accusation remains that thin universalism and its conception of toleration still seek out an 'other' to ostracise, marginalise, exploit, enslave and ultimately destroy, what can be said in its defence? Occasionally it is prudent to suggest that some, whom we consider our 'others', really *are* our others. The 'otherness' of the paedophile and the Nazi is not only recognisable, but justified and powerful, and we should not be worried about saying so. 'Otherness' is further substantiated by a conception of thin universalism. Honour killings, for example in the case of the murder of Banaz Mahmud in 2006 by her father and uncle, represent

true otherness, in the midst of a social and political culture which rejects it as legitimate practice.⁵⁹

Other practices, which are also broadly disapproved of, such as halal and kosher butchery, do not generate the same sense of otherness. We may well disapprove on the grounds of animal welfare, but intervention and negation are ruled out by regulatory principles constructed out of respect for complex pluralism. The sense of otherness we might feel about murder but which does not extend to slaughter practices is characteristic of the *intensity* attributed to thin universal principles. They form what Walzer calls ‘morality close to the bone’.⁶⁰ But the complexity of tolerating those practices not ruled out by thin universal principles should not be underestimated. What underlies thin universal toleration is the notion of respect derived directly from these principles; this conception of toleration is only ‘thinly judgemental’ about specific cultural practices. It passes judgement, along with any consequences that are attached to it, to a very thin number of cases. These cases will include instances of honour killing, but will exclude slaughter practices. They will include paedophilia, but will exclude arranged marriage. Of course, locally, certain practices may be helped or hindered, prohibited or permitted. The legal status of gay ‘marriage’, for example, has recently been formally recognised in the UK, in the form of civil partnerships.⁶¹ A thin universalism will not mandate on the status of gay marriage, or on any number of other issues, which are left to local procedural mechanisms.

⁵⁹ See BBC News, “‘Honour Killing’ Relatives Guilty”, *BBC News Online*, (<http://news.bbc.co.uk/1/hi/england/london/6722699.stm> June 6th 2007)

⁶⁰ See Walzer, *Thick and Thin*, p.6

⁶¹ The ‘Civil Partnership Act’ came into force on 5th December 2005. The Act allows for adults of the same sex to enter into a legally binding civil partnership. Couples who form a civil partnership have a new legal status, that of ‘civil partner’.

Within first principles committed to respect persons and pluralism, the notion that one might have a duty to presume another's culture to be of value is inherent, and is part of the considerations that drive the urge to be 'thin' in the first place. Traces of 'recognition' are therefore found in the more minimal presuppositions of thin universal toleration. There is little need for the more extensive and strenuous commitment to a full politics of recognition in order to secure respect.

Respect is thus captured fully within a thin universal conception of toleration. The 'respect' inherent in the characterisation of our first principles is carried through directly to constructed regulatory principles. It is far from clear that respect can *only* be cashed out within a politics of recognition, and not within an account of toleration. Is it really the case that toleration is ill-equipped to deal with the challenges of complex pluralism?⁶²

The language of respect is used frequently in conjunction with toleration within political discourse. In a 2004 speech, Job Cohen, mayor of Amsterdam, used the language of respect and toleration interchangeably:

Equality and tolerance are not given things, but are things that every generation must struggle for to achieve. Creating and ensuring respect for the differences between people and ensuring respect for the human rights of every individual are essential.⁶³

It is perhaps a more *respectful* society that is sought, and toleration plays a key role in that. In order to tolerate that of which we disapprove, a principle of respect is also implicitly at work. Respect, is a part of the commitments of our first principles and

⁶² Because, perhaps toleration was conceived in far less diverse societies than the one in which we currently exist? See Gray, *Two Faces of Liberalism*, chapter one 'Liberal Toleration', p.2

⁶³ Speech of mayor Job Cohen 'Speech on the occasion of the European Gay Cop Symposium, Tuesday August 5 2004', *Amsterdam Civic Website*. (http://www.amsterdam.nl/gemeente/documenten/toespraken/cohen/inhoud/european_gay_cop November, 11th 2004)

provides part of the vocabulary which draws the constructivist towards thin universalism. The desire to respect pluralism is what makes a thin universalism thin. Respect does, therefore, feature strongly within the thin universalist account of toleration.

For Thomas Scanlon, toleration goes further, becoming akin not only to respect, but *recognition* of common membership, citizenship or humanity that runs deeper than the conflicts between different groups. In this case, *intolerance* involves a *denial* of the full membership of an 'in-group' to 'others' by making it conditional upon substantive agreement with ones own values.⁶⁴ Intolerance is therefore a procedure of alienation by individuals or groups directed at other individuals or groups. While this is a potentially 'thick' Kantian account of toleration, asking that everyone acknowledge a deeper membership of a community of ends or of the human race as a whole, it is important to recognise that toleration *can* be an expression of more than simply disapproval. And, while it is true that asking people to regard themselves first and foremost as cosmopolitans is more problematic than asking them to go beyond toleration into recognition, we can see that toleration is not necessarily limited in the way that its critics envisage.⁶⁵ Toleration paves the way for

⁶⁴ Scanlon, 'The Difficulty of Tolerance', pp.193-4. Membership of certain communities may be premised on shared beliefs, for example communities of religious faith. In these instances it may not be intolerant to deny the goods of membership if lack of shared belief is incompatible with membership.

⁶⁵ Richard Rorty, of course, denies the plausibility of such attempts. He contends that in a world marked by pluralism it is of no use to take this perspective and attempt to reconcile differences by asking people to relate to each other through shared 'human' characteristics, as followers of many moral doctrines would argue, (as Rorty himself does), that no such characteristics exist. See Richard Rorty, 'Human Rights, Rationality, and Sentimentality' in *Truth and Progress: Philosophical Papers Vol.3* (Cambridge: Cambridge University Press, 1998), pp.167-185 at p.178. Instead, most people think of themselves first and foremost not simply as human beings but as *certain sorts* of human being, defined quite often by what they are *not* (i.e. *not* black, gay, female, Muslim etc). What Rorty proposes instead is the use of sentimental education, the telling of 'long sad stories', gives people enough common ground to prevent feelings of 'difference', which so often lead to conflict, from becoming overwhelming. The character of complex pluralism severely limits appeals to empirical commonalities, as I have sought to show, though it does not preclude the idea of constructing a space in which commonalities can flourish, most notably by Michael Walzer in Chapter 1 of his *Thick and Thin*.

further universal *aspirations*. It is limited, but certainly not the ‘most that we can hope for’.

Nonetheless, a *thin universal* conception of toleration must remain more minimal than Scanlon’s account suggests. It does indeed acknowledge a complex plurality of agents and groups in the presuppositions made when acting, and it does not require us to cast off our familial ties and give ourselves wholeheartedly to the group or community.⁶⁶ Nor does it require us to cast off those affiliations and give ourselves over to a *global* community of human beings. It recognises that it will scarcely be possible for many even to recognise the validity of the cosmopolitan domain. So, we must fall back on toleration as the most we can reasonably ask of a complex plurality of others. While it might be difficult to ask that people think globally, or to recognise the equal validity of others groups, we must be able to insist that they are at least tolerant of one another if peaceful coexistence is to prevail over mutual destruction.

But toleration must demand *something* of agents in order for it to hold even this minimal value. Toleration is related to communication and to public reason.⁶⁷ Kant insisted that the ‘public use of reason’ should always be free, but this requires more than simply non-interference in the expressive activities of others. Such an undemanding notion of toleration, which consigns positive action in response to the expressions, actions or beliefs of others to secondary consideration, devalues toleration. It is presented superficially as something benign and uncostly; easily

⁶⁶ See here Onora O’Neill, *Towards justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996), pp.99-113

⁶⁷ For the genealogy of the term ‘public reason’ as used in this context see Kant, ‘What is Enlightenment?’ pp.55-56; Onora O’Neill, ‘The Public Use of Reason’; Rawls, *Politics Liberalism*, pp.212-254

given, and, we might suppose, equally easily denied. However, toleration plays a more challenging role in moral deliberation than this implies.⁶⁸

The significance and complexity of toleration for thin universalism becomes clear when the self-expression of others is recognised as a form of *communication*. For Onora O'Neill, the toleration of self-expression takes a 'weak' position with regard to, for example, the taste-oriented expressions of others, which, we may feel, we can take or leave at our leisure. Other expressions however are more 'public' and are not simply expressions of taste but forms of communication. Doing *nothing* in response to such communications may then convey hostility towards, disapproval of, or even rejection of another's point of view, signalling that what they are doing is not communicating, rendering the communication a failure. Toleration itself is a form of communication, which embodies minimal symbols of respect and we therefore do not tolerate others' communications if we are simply passive or non-interfering.⁶⁹

Toleration is only minimally demanding, but it is demanding nonetheless. It demands a sense of respect towards those from whom we differ. This is a part of what Scanlon calls the 'difficulty of tolerance'. Toleration and the conditions that give rise to it are not limited to the 'formal politics' of participation, voting, and party membership, they permeate our everyday lives to an enormous degree and extend into the realm of 'informal politics'. Consider Scanlon's example of a religiously plural state. The legal enforcement of a single official state religion may generate fears of formal intolerance of other religions, or of special privilege in public matters for the official faith. However, such concerns may legitimately extend *beyond* formal institutionalisation and into the informal, social sphere. The *social* predominance of a particular religion – where, for example, all but a small group are

⁶⁸ O'Neill, 'The Public Use of Reason', pp.30-31; Scanlon, 'The Difficulty of Tolerance', p.188

⁶⁹ O'Neill, 'The Public Use of Reason', p.31

⁷⁰ Scanlon, 'The Difficulty of Tolerance', pp.191-192. Atheism is not excluded from this potential.

devout followers of a particular religion – means that it will inevitably come to dominate social discourse, potentially making life for those who do not believe very difficult.⁷⁰

This, of course, reaffirms the important and valuable role of social pluralism, and pushes further the claim that we ought to respect and nurture it. Given that *no* societies but the very small and isolated are completely homogeneous, a plurality, even a ‘complex’ plurality, can be a valuable safeguard against tyranny.⁷¹

At the same time, as Taylor himself points out, its commitment to universalism has meant that liberalism has always been a fighting creed and this is equally true of thin universalism. There will always be a line drawn somewhere, however minimal the content beneath the line is.⁷² There will always be a drive to sort the genuine human rights claims from the universal aspirations and the various bogus claims to rights. As societies become more multicultural and more porous, the need to address citizens who belong to different cultures without compromising our basic principles become more and more important. In an attempt to avoid the accusation that thin universalism is morally and culturally imperialistic, it is tempting to introduce the concept of recognition to ensure respect for pluralism is upheld. But attention to complex pluralism and to our first principles demands only a robust conception of *toleration*, and *not* more demanding alternatives.

Conflict is always likely to arise on some level and to some degree in modern plural society, whether that society is a small rural community, a large metropolitan area, a politically and legally defined sovereign state or the entire planet. Toleration imposes limitations on how that conflict can be pursued. We do not need to tolerate

⁷¹ Indeed, such arguments are forwarded by those opposed to notions of cosmopolitan governance. See, for example the work of Hannah Arendt, particularly *Origins of Totalitarianism* (New York: Harcourt, 1966)

⁷² Taylor, ‘The Politics of Recognition’, p.62

terrorism, for example, as it is clearly an unacceptable pursuit of conflict. Accordingly, toleration performs part of the function of thin universalism. It is a framework in which moral and cultural conflict can be arbitrated, though neither can necessarily provide a framework in which all violent conflicts can be *resolved*. Resolution need not always be the ultimate objective of toleration, per se, though it might be hard to envisage any other means by which resolution could be achieved. It might be enough simply to suggest that disagreement and conflict need to be conducted within such a framework for them to be 'acceptable' in that they are subject to certain norms of conduct, expression and discourse in which certain means are rejected as unacceptable. Toleration *can* provide this framework.

Toleration and the 'Ethos of Pluralization'

I close this discussion by contrasting thin universal toleration with William E. Connolly's, 'ethos of pluralization'. For Connolly, 'pluralism' denotes more than the basic background conditions in which we act; it is more than a state or condition.⁷³ For Connolly, pluralism captures a way of being, of viewing the world, of working upon ones self, as part of the cultivation of a virtuous character. Pluralism, and a commitment to pluralize, takes the form of an 'ethos'.⁷⁴

Connolly places the concept of 'time' central to social questions. While Taylor provides a distinctly *fixed* conception of identity, which demands recognition, Connolly's notion of identity is far more *fluid*. His focus is not simply upon 'being', on what 'is', where the present state of affairs is a 'closed' system, but on 'becoming', where 'being' is mobile, contingent, changing and open. In the political and social arena, many groups find themselves falling just outside of accepted

⁷³ Nor is it, it is important to remember, for thin universalism.

⁷⁴ See William Connolly, *Pluralism* (Durham NC: Duke University Press, 2005). See also *The Ethos of Pluralization* (Minneapolis: University of Minnesota Press, 1996)

political norms, and within what Connolly calls 'a netherworld below the register of positive acceptance, identity, legitimacy, or justice'. In becoming, a move is made from this 'netherworld', to a state of recognition on one of these registers.⁷⁵

A contrast between thin universal toleration and the ethos of pluralization is interesting because Connolly uses the language of thick and thin to draw us into his discussion of becoming: 'The new demand [in Connolly's example, the demand for the right to doctor assisted suicide] is not *derived* from a thick set of principles containing it implicitly all along', he states. Rather, 'it will be pressed and negotiated into being by an assemblage of insurgents ... aided by the fatigue of erstwhile opponents'.⁷⁶ Connolly posits a different kind of project to that offered by thin universalism, with a very different account of toleration, critical both of classical and thin universalist conceptions due to their shared characteristics.

While tolerance is herein described as the virtue of the thin universalist, the ethos of pluralization, attuned to the issues of becoming, prides itself on similar yet contrasting traits. Key amongst these is the notion of 'agonistic respect', whereby pluralized social actors recognise within one another their radically different sources of ethical value and as such express modesty with regard to the ultimate universalisability of the sources of their own such values. For Connolly, the distinction between liberal tolerance and agonistic respect forms the basis of his critique, framed thus:

Agonistic respect is a kissing-cousin of liberal tolerance. But liberal tolerance is bestowed upon private minorities by a putative majority occupying the authoritative public centre. You may have noticed that people seldom enjoy being tolerated that much, since it carries the onus of being at the mercy of a

⁷⁵ Connolly, *Pluralism*, p.122

⁷⁶ Connolly, *Pluralism*, p.121

putative majority that often construes its own position to be beyond question.’⁷⁷

There are two familiar objections to proposing *toleration* here, both of which are potentially damaging to the account of toleration within the thin universalist project. First, for Connolly, ‘tolerance’ is the watchword of a particular and dominant public core. It fails to meet the needs and expectations of a pluralized world. Perhaps more damagingly though, toleration also risks failing to meet the standards set for it by thin universalism; it veers dangerously towards self-contradiction. Construction, keen to enter into dialogue, to redescribe itself and to offer pluralised access to its principles, fails if it adopts uncritically the language of toleration. But, for Connolly, this failure is symptomatic of something more troubling. Second, therefore, ‘toleration’ is an expression of deep misgiving about the doctrine of another; the very definition of toleration incorporates an undeniable notion of disapproval. This critique is worth exploring further, because it can help to address a key criticism not only of thin universalism, but of Anglo-American justificatory moral and political philosophy generally.

The disapproval within toleration is, for this broadly post-structuralist critique, symptomatic of the tendency within conceptions of ethics or politics that place their focus upon general, universalisable ‘rules’,⁷⁸ to fail to recognise the contingent authority of those rules. This leads to a tendency to define the authority of those rules as absolute for oneself and others, and to proclaim the doctrines of faith, political institutions, the state or nation that form the foundations of those rules to be under threat until all others share their authority. This is what Connolly calls the

⁷⁷ Connolly, *Pluralism*, p.123

⁷⁸ What Walzer called ‘covering-law universalism’. See Michael Walzer, ‘Nation and Universe’, p.11

‘temptation to evil within faith’⁷⁹ and leads to the more general concern over the resultant tendency to act to ‘punish, correct, exclude or terrorise’ those who do not or cannot fall into line.⁸⁰

When we merely tolerate those who do not conform, we have not taken sufficient action to discount the possibility that we might, at any time, return to punishment, correction, exclusion and terror. Even when this is not the case, toleration remains saturated in the expression of disapproval, which deeply patronises non-liberal practices. The ethos of pluralization offers a way of looking at these issues in a different light and of overcoming the problems Connolly perceives to be apparent within doctrines that proclaim ‘tolerance’.

The following example highlights the dispositions to which Connolly refers. A broadly ‘tolerant’ doctrine might be ‘heteronormative’, in that its adherents are heterosexual and embrace heterosexual practices as the norm. It instantiates institutions, rituals and practices, such as an institution of ‘marriage’ and a concept of ‘family’, which reflect that heteronormativity. Members of the group are not homosexual, and homosexuality is, by and large, not compatible with the teaching of the doctrine. In fact, homosexuality is flatly disapproved of, but the doctrine does not profess that homosexuality should be eradicated or that homosexuals should be the target of persecution. The leaders of the group reject the pursuit of an anti-homosexual policy while remaining silent on the obvious heteronormativity of the doctrine itself. The doctrine *tolerates* homosexuality in that it disapproves of the practice and, assuming that it has the power to act to negate it, chooses not to interfere with those who practice it.

⁷⁹ Connolly, *Pluralism*, p.18

⁸⁰ Connolly, *Pluralism*, p.19. For the ‘post-structuralist position’ – such as there is a unified position here – on the subject of punishment and related concepts see, most notably, Michel Foucault, *Discipline and Punish: The Birth of the Prison* (London: Penguin, 1991)

However, the ethos of pluralization will suggest that it fails in important ways to fulfil – returning to the language of thin universalism – a commitment to respect persons and to respect pluralism simply by ‘tolerating’ alone. While the commitment to toleration embodies a formal commitment not to interfere in the practices of a homosexual community who must share the same territory as the above doctrine, the deeply unresponsive and largely negative regard paid to it by both the political leadership of the doctrine and, plausibly, many of its practitioners has a potentially socially negating effect on that homosexual community.

Key constructivist thinkers have not been blind to this potential. Scanlon has expressed a similar sentiment from a different perspective.⁸¹ While toleration is presented by its critics as something that costs the tolerant very little, it is a powerfully receptive act. As noted above, both Scanlon and O’Neill demonstrate how toleration can be highly demanding for the tolerant. Scanlon recognises that where a particular religion, philosophy or such is predominant in a society, life for those who are not members, or not full members can be extremely difficult, even where public life is avowedly neutral with regard to specific religious or philosophical views.⁸² Construction, as such, urges a ‘spirit of tolerance’, of accommodation and respect coupled with a desire to find a system of rights that others within a given domain could also be asked to accept.⁸³

The ethos of pluralism makes the following point:

Many gay and lesbian activists, for instance, press in favour of a positive pluralization of sexual and gender identities on the same territory. The successful enactment of such plurality, moreover, involves a micropolitics of self-modification in the relational identities of straights, in which they

⁸¹ See Scanlon, ‘The Difficulty of Tolerance’, pp. 187-201

⁸² Scanlon, ‘The Difficulty of Tolerance’, pp.191-192

⁸³ Scanlon, ‘The Difficulty of Tolerance’, p.198

cultivate a bicameral orientation to their own practices of sensuality. You enact your sexual affiliation as if it were the natural way of being; but, in another gesture, you come to terms, viscerally and reflectively, with the extent to which it is neither the natural nor the universal form of sexuality.⁸⁴

Connolly goes on to suggest that in order to circumvent the temptation towards evil in faith, there is pressing need to accept that ones own identity is neither fixed nor eternal; its stability is always in a sense at risk. Any identity, any doctrine, is thus opened up to dispute and debate by other groups whose ultimate sources of value and identity differ. As such, he summarises that

the most noble response is to seek to transmute cultural antagonisms ... into debates marked by agonistic respect between the partisans, with each acknowledging that it's highest and most entrenched faith is legitimately contestable by others.⁸⁵

The most 'noble' response for the heteronormative doctrine is to engage with its own practices, to 'work upon itself', ultimately granting the contestability of its own heteronormative presuppositions. Such a procedure reflects far more than a 'simple' act of toleration, and perhaps even more than a bootstrapped –zipped or –laced argument could ever hope to yield. The concession of the ultimate contestability of ones own faith is the mark of the ethos of pluralization.

But this is not unproblematic. In chapter two I drew a strong contrast between pluralism as a higher order account of value ('value pluralism') and pluralism as an observable diversity of practices, customs and doctrines. I drew this distinction because it quickly becomes apparent that the former was itself a deep source of pluralization. It seemed unlikely that an account of value pluralism would be

⁸⁴ Connolly, *Pluralism*, pp.30-31

⁸⁵ Connolly, *Pluralism*, p.46

accessible to a large percentage of the people to whom a thin universalism was to be addressed. I rejected value pluralism,⁸⁶ in favour of a complex plurality of observable practices as the factual basis for a thin universalism. With the ethos of pluralization we have come full circle; conceding the ultimate contestability of ones own faith is equivalent to an acceptance of a form of value pluralism.

The thin universalist project rejects the need to accept the ultimate contestability of ones own faith as too 'thick' a demand to place upon many people. We may have good cause to suspect that many will refuse to accept our invitation to call into question the ultimate nature of their beliefs. Accepting that what one believes in most deeply – Walzer's 'morality close to the bone'⁸⁷ – to be powerfully contestable seems to significantly underestimate the seriousness with which people take their most deeply held beliefs.

Similarly, Connolly suggests that pluralization can disperse the assumption that societies organised around a shared doctrine, philosophy or faith occupy a central public core which tolerates the existence, and to an extent the activities of, minorities. He suggests that, following the ethos of pluralization, 'the national image of a centred majority surrounded by minorities eventually becomes transfigured into an image of interdependent minorities of different types connected through multiple lines of affiliation.'⁸⁸ But is such a transfiguration not an excessively thick demand to place on such a majority? The extent to which many would resist such efforts may well be huge and it would not be unrealistic to posit that it might take several generations for such transfigurations to occur peacefully if, in some cases, they are possible at all.

⁸⁶ Whilst at the same time suspecting its truth value.

⁸⁷ See Walzer, *Thick and Thin*, p.6

⁸⁸ Connolly, *Pluralism*, pp.61-62

Moreover, in his challenge to thin universalism's minimalist, pluralistically sensitive covering-law universalism, Connolly pushes for an understanding of 'morality' which 'is not understood in the first instance to be *derived* from apodictic recognition of its law-like form but rather taken *to be inspired* in the first instance by a love of the world or attachment to the complexity of being that infuses it'.⁸⁹ Of course, while it is not impossible to expect that such a view is viable, it again seems likely that the expectation is too great for many moral doctrines. Many conceptions of morality take on rule-like characteristics, especially those that have long histories.

Overall, then, pluralization demands a great deal, not least the radical restructuring and reordering of the ethical priorities and social norms of those to whom it is addressed. This at once seems practically problematic, and not wholly in accordance with the spirit of pluralism, toleration and thin universalism. Liberals have been called 'boutique multiculturalists'; of accepting 'difference' but understanding that difference as little more than skin deep, embracing diversity by eating Indian food and little more.⁹⁰ But if proponents of the ethos of pluralization think that, of the many people to whom it addresses itself, it will be a *majority* who can see the value in acknowledging the contestability of their ultimate beliefs, it is *they* who do not take seriously the genuine and irreconcilable differences that exist within complex pluralism.⁹¹

Connolly suggests that 'pessimists' might be an appropriate label for those who doubt the extent to which the contestability of ultimate beliefs could be

⁸⁹ Connolly, *Pluralism*, p.116 (author's emphasis)

⁹⁰ See Stanley Fish, 'Boutique Multiculturalism, or Why Liberals Are Incapable of Thinking About Hate Speech' in *Critical Inquiry*, Vol.23 (2), 1997, pp.378-395 at pp.378-380. It is far from clear, however, the extent to which multiculturalists could ever do much more than 'sample' other cultures in this way.

⁹¹ Connolly refers to it as 'deep pluralism' throughout his work, but specific instances can be found at Connolly, *Pluralism*, pp.30 and 59-67

adopted.⁹² This he says, is where ‘public intellectuals should lead the way in setting an example, rather than decrying the refusal of others’, perhaps in the same way that Rorty assigns philosophy and philosophers the task of making their *own* commitments more powerfully persuasive.⁹³ And Connolly may be correct; it may be a form of ‘pessimism’ that prompts concern over whether accepting essential contestability is a plausible objective for ethical projects such as a thin universalism.

We are reminded of William James and his insistence that we have a *right* to believe in what we would will to be the case, even without sufficient evidence.⁹⁴ In this respect perhaps we do risk being overly ‘pessimistic’ in resisting the suggestion that we cannot expect others to undertake to reform their own beliefs to the extent Connolly suggests. After all, no small amount of ‘faith’ goes into the underpinnings of the thin universalist project itself; we have faith in our judgements about the world, which lead us to identify our first principles. And, as Connolly points out, ‘if James can be taken to mean that concerted and long-term action based upon the assumption of a pluralistic universe can help to bring into the open features of the world that would otherwise remain in the shadows’ then perhaps we do not have cause to be so sceptical.⁹⁵

But the concerns over the excessively thick requirements of accepting essential contestability, as well as the seemingly extensive work that holders of faith are required to do upon their own structures of belief are not simply pragmatic. The suggestion that it is not simply practical, but also fundamentally moral concerns which underpin the tentative approach to what we can expect others to adopt, again

⁹² Connolly, *Pluralism*, p.47

⁹³ Connolly, *Pluralism*, p.47. See Richard Rorty, ‘Human Rights, Rationality and Sentimentality’ in *Truth and Progress: Philosophical Papers Vol.3* (Cambridge: Cambridge University Press, 1998), pp.167-185

⁹⁴ See William James, ‘The Will to Believe’ in *The Will to Believe and Other Essays in Popular Philosophy* (London: Longmans, 1917)

⁹⁵ Connolly, *Pluralism*, p.81

makes its presence felt. The concern that to insist upon agonistic respect and the recognition of essential contestability is too *thick* a demand to make of many people reflects the moral commitments implicit within the first principles of the thin universalist project. We are reminded once more that thinness is a *moral* imperative, derived from first principles, and not simply a practical directive generated by the importance of consensus on certain moral questions.⁹⁶

We might rightly wonder, more strongly, whether the kind of character change he pursues has an *anti*-pluralistic effect. If we *all* come to adopt an ethos of pluralization and we all come to accept essential contestability and agonistic respect, this would seem to entail, if not demand, a character change which would surely sap part of the essential character of pluralism. In fact, we might wonder whether it has more monistic and unitarian tendencies than any kind of pluralistically sensitive thin universalism, which demands only tolerance of differences. To assume that the only chance we have to bring the mass slaughter and moral catastrophe of the twentieth and early twenty first centuries to an end is by undergoing a massive change in our moral character, seem far *more* pessimistic than a healthy scepticism.

Though, perhaps it *is* down to pessimism that I endorse a thin universal conception of toleration over an ethos of pluralization. Perhaps it is the radically different backgrounds out of which the two ideas emerge. Perhaps there is more ground between them on which they can meet than I give credence to here. After all, thin universalism talks endlessly about pluralism, and the ethos of pluralization cannot help but refer to itself as tolerant, even if it does not preach 'tolerance'. But

⁹⁶ We will remember that this concern has reared its head throughout this latter half of the project as a constant reminder that while consent is an important practical question, it is a powerful moral underpinning that underpins the whole thin universalist project. It is the *moral* commitment to respect persons and to respect the pluralism inherent in their cultural, social, moral and political creations.

the ethos of pluralization is far more comprehensively minded than it lets on, and this is where tolerance is better situated in complexly pluralised world.

The Limits of a Thin Universalism

Toleration is a challenging disposition. It does not make scant demands upon those who look to practice it and insists that critical engagement with others and ourselves is a necessary part of ethical life. Where pluralism is neglected or ignored, where the agents who act within it are not accorded the respect required to properly follow through on our first principles, toleration fails. Because of this the thin universalist conception of toleration is both *more* demanding than liberal toleration but at the same time more easily universalisable.

The classical liberal conception of toleration fails to show this level of commitment to respect for persons and for pluralism and therefore unsurprisingly comes across as the kind of doctrine which simply ‘puts up’ with those with whom it disagrees, rather than seeking to engage or properly communicate with the actors in a pluralistic society. A doctrine which simply puts up with that with which it disagrees still bears all the hallmarks of the tired Enlightenment dogma that regards pluralism as a diversion on the path to pure reason. Classical liberal toleration veers dangerously close to a properly monistic and unitarian moral doctrine that is interested in little more than preventing social chaos.

It takes a long time to navigate the terrain of toleration. It takes great care and effort to negotiate between thin universal principles and thicker, more contextual principles. This poses challenges to the thin universalist project. With the heteronormative religious doctrine, and the striking of a balance between that doctrine and gay rights, inconsistencies can be played out by a thin universalism with

its conception of toleration. Issues of group or minority rights can be left for local communities, societies and states to work through. What to tolerate, what to endorse and what to prohibit cannot be determined by thin universalism alone. To prescribe how a society should do so is to violate a fundamental thin universalist commitment to respect for persons and pluralism, and it is therefore important to be tolerant in the first instance.

Toleration does not operate without limits however, and a conception of toleration is directly derived from a carefully constructed thin universalism which takes seriously the demands made upon it by an observable diversity of social, economic, cultural and ethnic groups. The limits of toleration within a global domain are drawn *by* a thin universalism and they are not open-ended.

What they can tell us, however, is that a thin universalist project is a limited project. Indeed, it is a project that is well aware of its own limitations. It does not look to be a holistic account of the universe, of morality, or of social and political interaction. In fact, practices of toleration illuminate clearly just how much there is to morality and politics that lies beyond a thin universalism. Just as clearly, though, practices of *intolerance* show why we might need a thin universalism in the first place.

- conclusion -

A Principled Pluralism?

This is a thesis about principles. Not any, nor all principles, but a specific set of principles, conceived with a particular purpose and scope, and with a particular audience and readership, in mind. It is not a comprehensive account of our moral commitments, or of what they ought to be, nor is it an exhaustive analysis of the nature of ethico-political interaction. This much should, by now, be clear. What this thesis *is*, is an account of how we might arrive at, and defend, a set of principled judgements which hold their validity across a complex plurality of social, cultural and political actors.

This is also a thesis about pluralism. Not as an account of value, but as a complex feature of our social lives. A feature which is terrifying and uplifting, challenging and rewarding, ineradicable yet immensely fragile, dangerous and endangered. What this thesis *is*, is an attempt to secure for pluralism sufficient public space to ensure its survival and proliferation. It is a *defence* of pluralism.

I began with an account of pluralism as an observable diversity of social, political, cultural and economic groups which, due to its many layers of interaction and renegotiation, I described as 'complex'. I began with pluralism as *fact*, as a statement about the world, the evidence for which is universally accessible. I conclude with a defence of pluralism, and its *normative* significance for individuals and groups within it. Pluralism, as one of my premises, emerges also as one of my conclusions. Thin universalism seeks to develop principles that are robust in such a

way as to be properly responsive to the conditions of the social worlds in which they operate. Such principles must be sensitive to complex pluralism; they are so precisely because they play a role in preserving it. They help to carve out the space in public and political life that allows a plurality of societal agents (and a plurality of societies) to continue to exist, thrive and interact. Thin human rights and toleration are not ends in themselves, they are tools – what Gray refers to as enforceable conventions¹ – which help to forge and maintain that space. Those tools, like the space itself, are forever reinventing and reinvigorating themselves – always redrawn by changing facts and fact-independent principles.

But pluralism is not an open-ended normative agenda, as the course of this thesis has sought to show. Its limits can be constructed through consideration of the status quo, and distilled into concepts with existing political import. Thin universalism provides a structure within which pluralism can flourish and which sets limits on a justifiable plurality of moral views. Thin universalism can secure a sphere of pluralistic contestation that excludes the extremes of moral degradation – it secures a *principled pluralism*.²

This is, in part, an engagement that uses the distinction between the ideal and the non-ideal. But it is important to clarify exactly what constitutes ‘the ideal’ – to what ‘ideal’ refers, and what it is to incorporate – that is spoken of when the ideal/non-ideal distinction is used. At what point do we reach an *ideal* level of abstraction from the realities of the world? It is tempting to assume that projects such as thin universalism place pluralism on the side of the non-ideal, and as such pursue a world *without* pluralism, even if it is ineradicable in practice. Of course, monists do

¹ See John Gray, *Two Faces of Liberalism* (Cambridge: Polity, 2000), p.107

² See Bruce Haddock, Peri Roberts and Peter Sutch. ‘Introduction’ in Bruce Haddock, Peri Roberts and Peter Sutch (eds.), *Principles and Political Order: The Challenge of Diversity* (London: Routledge, 2006), pp.1-9 at p.2

not deny this, claiming that error must be eradicated and that the single source of truth or value can be shown to be correct. Thin universalism recognises this to be the case, and does not contradict those doctrines that espouse such monisms. It seeks to bear upon the means by which they clash with one another, and with others.

Importantly, though, thin universalism need not *affirm* these monisms – it is not committed to saying that pluralism is a part of the non-ideal world, or that it cannot feature in a model of how the world ought to be. Thin universal principles are quite compatible with both sets of claims. Though, if pushed, the thin universalist would probably challenge the assertion that everyone agreeing about everything would constitute an ideal scenario. How much richness and variety would be lost if we all agreed on everything? What about those parts of our identity that are formed through contestation and debate, and political dialogue and interaction?

That said, what remains of the cosmopolitan vision of the Stoics that has long since framed this kind of universalism? Where does the thin universalist project stand with regard to the possibility of ‘justice on Earth’? The thin universalist can confirm that pluralism has problematised that vision in the strongest terms. What constitutes it, and how and why it is pursued will now forever come under scrutiny, as should have been the case from the outset. But this does not make the vision itself obsolete, nor does the pursuit of that vision entail disregard for pluralism.

The metaethical issues at stake here cannot be sidestepped if relativism is to be avoided. Many postmodernist and poststructuralist critics of the thin universalist project will want at the same time to share in a disavowal of the absolute truth of relativism or emotivism. But those critics do so whilst seeking to avoid answering many of the metaethical questions addressed in the first half of this thesis. In so doing, they risk ignoring these questions, or worse simply denying that they exist.

The fact remains that if we are to engage at all with people who do not share our views, we must accept that various metaethics are at work in different people's value systems. These metaethics deploy structures which allow their holders to reject relativism, in spite of the complex plurality which surrounds them. Thin universalism seeks to replicate those metaethics in order to respect that pluralism. This allows the realist, or the religious devotee access to thin universal principles, and at the same time allows the subjectivist, the emotivist and the sceptic access also. In order to reject relativism, the metaethical questions addressed in this project cannot simply be circumvented.

As such, the thin universalist project does not succeed or fail (if it can be said to succeed or fail, given that it is engaged in such a dynamic enterprise) according to the acceptance by others of the first principles at work in this thesis. A disposition towards respect for pluralism and respect for persons cannot be and is not assumed. Construction is not about securing the support for the project from a plurality of social actors from the start. Construction is about reaching out to people on their own terms, communicating in ways accessible to them. I take this approach because of my *own* principles and commitments which emerge from consideration of the facts, and of historical and social experience. The aim of construction is to find that terrain of debate and negotiation, where principles can remain the subject of that debate. The aim is to reach out to a plurality, in a plurality of ways, with a common result, which is expressed and negotiated in a plurality of ways, but which secures a common concern.

Constructivism will always be concerned far *less* with the substantive content of the regulatory principles themselves. Construction will be far *more* concerned with the means by which those principles are reached. This is inherent in the nature

of such a project, given its recognition that the world does not exist on a fixed final plane of realised reality, and nor do principles that are constructed in order to have an effect upon it.

This means that we need to affect a shift in how the form and purpose of universalism is regarded. We need to rethink, or re-imagine, what is meant by ‘universalism’, what universalism *is*. It is a valid domain of ethical inquiry, which presents to us genuine moral issues which ought to bear upon our actions and upon our judgements about the actions of others. It is therefore a descriptive feature of the regulatory principles to which it corresponds. It describes the extent of the application of a given political principle within a specified domain. But we also need to rethink, or re-imagine, what universalism is *for*. The perception that ‘universalism’ must constitute an answer to all our moral questions – as in the pure Kantian model of universalism – is misplaced. In fact, it is pervasive and destructive to pluralism, and therefore a violation of the first principles of this project. ‘Universal’ premises or principles do not provide access to ‘higher’ knowledge or morality. There is nothing within ‘universalism’, semantically or ethically, which suggests an ‘elevation’ of any kind. Universalism is intended to address a particular domain of ethical inquiry, and nothing more. In many respects, thin universalism is thin in one further crucial respect – it seeks to reform the role of universalism, rendering its task a far more modest one.

This also belies an answer to two further questions about the function and extent of the thin universalist project. Could we envisage a thin universal morality, where morality is comprised entirely of thin universal principles? Could we, in turn, envisage a thin universal society, governed solely according to thin universal principles?

In answer to the first question, it seems clear that there could never be a thin universal *morality*. There could never be a conception of morality made up entirely of thin universal principles. This is so firstly because thin universalism is the result of construction, and construction is conducted in part by people who already hold comprehensive views. Thin universal regulatory principles, while not empirically dependent on a common core of already existing principles, could not exist without a complex plurality of value-creating and value-holding groups and individuals. Without them, there would be no imagining of a thin universal morality. It cannot exist without people who hold other principles to bring it into being – to construct it. Furthermore, thin universalism is a conception of a particular set of principles, *designed for a particular purpose*. A ‘morality’, on the other hand, or indeed ‘morality’ in general, may comprise *many* such sets of principles and judgements, of which thin universalism is (or may be) one set. Thin universalism can never be morality, holistically understood, because it looks to one particular ethical domain alone, that of the universal.

Nor can there be a thin universalist *society*. Universalism generally, but thin universalism specifically, contains far too few moral and political materials to render it functional as the only tool of deliberation within a society. The very idea of thinness is tied up with the underdetermination of the full moral character of any decent society. No society, much less a state, could be held together by thin universal principles alone. Moreover, thin universalism is the result of construction, and construction is conducted in part by people with their own comprehensive views which make up the more comprehensive character of political and social relations. Thin universalism is not a scheme for establishing new polities. It is a scheme for establishing the limits of political relations and arbitrating disagreement between

already-existing societies. Thin principles could not form the basis of a way of life, simply the mechanisms by which competing ways of life engage in discourse and attempt to reach non-violent resolutions to conflict.

But this does not mean that thin universalism simply represents ‘moral anorexia’; it is not ‘morality-lite’. Thin universalism is constituted by regulatory principles which are compatible with a complex plurality of comprehensive doctrines. In many respects they do not make a great deal of sense unless they are connected to and engaged in interactions with a comprehensive set of views. This may sound like nothing more than a rephrasing of Rawls’ ‘overlapping consensus’,³ but thin universalism diverges from Rawls in several key respects. For Rawls, citizens relate to the political liberal core in the same way: detached from their particular comprehensive views. But a complex plurality can relate to thin universal principles in a plurality of different ways. Because thin universalism reaches out to that plurality, instead of dictating the language and vocabulary of a public core, it serves pluralism more fully, whilst seeking to secure it – and persons and groups – against violence.

‘Thinness’, then, does not imply ‘thinned’. It is not simply a matter of stripping content from thick, contextual beliefs or values. As chapter seven suggested, it is difficult to imagine many doctrines, such as liberalism, Christianity, or socialism, ‘thinned down’ for a wider audience. Such doctrines would most likely lack any semblance of their thicker selves, including essential commitments to liberty, belief in God, or outcome equality. But ‘universalism’ is not the same as ‘liberalism’, ‘Christianity’ or ‘socialism’. It is a feature of those doctrines, not a comparable doctrine in itself. It lacks most of their characteristics, including

³ See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), introduction

comprehensive views about social or ethical life. Universalism contains within it any number of judgements and prescriptions, but prescriptions and judgements which are constrained by limitations of the nature of universalism itself. *Thin* universalism, therefore contains even fewer prescriptions, ones which pertain to a specific context (the universal) and which do not amount simply to a thinned down form of liberalism or Judaeo-Christianity. Thinned down forms of liberalism and Judaeo-Christianity could not rightly be so called. Thin universal regulatory principles exist alongside, and aim to be compatible with, other doctrines, speaking in the language of those doctrines where possible, or in accessible terms where it is not. Thin universalism is *universalism* thinned down, not liberalism or Christianity thinned down.

As such, instead of outlining a comprehensive doctrine at the outset and proceeding to strip away from it the thick, context-dependent, particular, substantive content, leaving a 'thin' doctrine at the end, the thesis has sought to take an abstract account of the relationship between facts and principles, and elaborate, elucidate and justify that account, constructing a 'thin' conception of universalism. The narrative created by considering the thin universalist project in this increasingly specific way has, I hope, shown how analytic philosophising of this kind can draw a deeply abstract metaethical account of the relationship between empirical and normative features of the world towards an account which makes use of contemporary political debate. The intention has been to show how abstract consideration of general moral principles need not lack a sense of connection with the real world and real people. The use of human rights and toleration are themselves deeply significant with this in mind and further study could fully draw out the role of thin universalism in these debates

Similarly, taken further, thin universalism could be used to confront other moral doctrines. Rawls did just this with his theory of justice, comparing it to classical Kantianism and utilitarianism. But, at heart, these doctrines are deeply abstract and neither is particularly closely adhered to by real people in their everyday lives (though tenets of both creep into ‘ordinary’ or ‘common’ morality⁴). Again, further study could produce deeper critical expository work on thin universalism, confronting it with challenges and obstacles pertinent to a more fully worked-out thin universalism, that emerges as an outcome of this thesis.

In other circumstances, further work could explore what thin universal principles might bring to actual case studies. It may well be plausible to identify those ‘real-world’ situations where a thin universalism might have something to say. There are surely many situations – *global* situations, perhaps – across the world, and within our own societies, where we feel morality is necessarily invoked. In bringing a thin universalism into our approach to the issues of the day we may find that it yields new conclusions and spins debates, such as those between pacifism and interventionism, statism and humanitarianism, democracy and justice, and sovereignty and human rights, in new and fruitful directions. In many such circumstances, we may find ourselves hanging onto a universalism – a thin one – in the face of the facts of complex pluralism. We may find we take universalism very seriously indeed.

Thin universalism even has the potential to take on the character of a more pluralistically enlightened and minimal ‘ethos’, and further work could turn to the development of our own thin universalist sentiments in ourselves, and what that

⁴ See Bernard Gert, *Common Morality* (New York: Oxford University Press, 2004)

might mean. Because thin universalism evokes moral responses ‘close to the bone’,⁵ thin universalist sentiments may require a certain amount of restraint, as well as cultivation. It is the fighting spirit of moral doctrines such as liberalism, socialism, Christianity and the like that that pushes them towards universalism in the first place. Temperance, therefore, may also be part of this cultivation, lest we see a return to patterns of coercion, punishment and domination.

The urgency of many moral questions is certainly powerful, even pervasive. There is often precious little time to ‘stop and wait and see’ when it comes to the issues with which constructed thin universal regulatory principles are concerned. We may be truly unable to suspend our moral judgements or our political procedures. Thin universal regulatory principles can be built within and used to reform current social, economic and political mechanisms. That we must in some way wait and see provides for us no answers whatsoever. This is a project that can begin in the here and now, that can build on existing dialogues and accords, that can celebrate existing differences and strive to ensure that they are not subsumed under false consensus, and that can allow pluralism to flourish by placing reasoned moral limits on the nature of the conflict that ensues from it.

But again, the thin universalist must not be hasty. Do my conclusions ultimately imply that the use of coercion and violence to enforce thin universal regulatory principles would always be justified? Would a war in the name of thin universal regulatory principles, or in the name of human rights, always constitute a ‘just war’? Does a state which violates thin universal regulatory principles lose its moral and consequently its legal status? Must self-determination and sovereignty on the part of those whose rights are being violated be assumed to be insufficient?

⁵ Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame: University of Notre Dame Press, 1994)

No. Thin universalism is not a line, which we wait for others to cross, in order to pounce on them. It is not a warrant for justified violence. It is not a vehicle for exporting values by force. Used in this way, thin universalism falls back into old traps, into hard fought habits of the last century. Used in this way thin universalism is nothing more than a moral empire, spreading a totalising, homogenising brand of moral conformism. Used in this way, the thin universalist project is an abject failure – both objectively speaking, and from its own point of view, by its own standards and remit.

But with its explicitly moral underpinnings thin universalism need not fall into these traps; nor is it bound to repeat the mistakes of universal doctrines in the past. Its acute sensitivity to pluralism and its heightened self-awareness, particularly of its own reflexivity, contingency and historical situation provide it with greater tools than any previous universalism to overcome the challenges to it. Thin universalism need not lapse into uniformity or rigid legalism.

But this does not exclude the possibility that thin universalism *can* countenance action where action is needed. While it must resist responding with force to every transgression, it does not rule force out as a means of preventing escalating violence or moral catastrophe. What thin universalism asserts is that intervention, sanctions, coercion, invasion, violence, and war are last resorts which must come from the international community – parties to the construction – as a whole. Conventions of proportionality in response and conduct are designed to constrain, alongside the existence of formal international institutional mechanisms, such as the United Nations, the processes of which cannot be foregone. What thin universalism does is forbid unilateral coercive action on the part of single segments

of the international plurality. Thin universalism is intended to powerfully scrutinise the conditions for action in any given case.

The road to the realisation of the thin universalist project is a long one. Without radical reform, present international institutions and power arrangements provide enormous roadblocks which must be overcome. But with the increasingly complex interdependence of the modern system, the universal remains a parameter within which we must work on some level. We are colliding with one another on a more and more frequent basis. Some might lament this but I join with Isaiah Berlin in quoting John Stuart Mill:

It is hardly possible to overrate the value, in the present low state of human improvement, of placing human beings in contact with persons dissimilar to themselves, and with modes of thought and action unlike those with which they are familiar ... Such communication has always been, and is peculiarly in the present age, one of the primary sources of progress.⁶

Berlin suggests we substitute 'progress' with 'knowledge', and we might perhaps add too 'richness', 'hope' and 'celebration'. While we may be cautious with how we go about using the language of thin universalism, for, unless it is equipped with the language of toleration and tempered by recognition of thin universal human rights, we may mistake it for mere permissiveness. On the other hand, without an acute awareness of complex pluralism, it starts to look more like paternalistic judgementalism. But where respect for persons and respect for pluralism inform the principles we adopt via construction, and where they determine what we are prepared to tolerate we may well find that steering a path between the two is difficult. We may

⁶ John Stuart Mill, *Principles of Political Economy*, book 3, ch.17, section.5 in *The Collected Works of John Stuart Mill* (Toronto: University of Toronto Press, 1963-1991), vol.3, p.594; Isaiah Berlin, *The Crooked Timber of Humanity* (Princeton: Princeton University Press, 1990), p.90

also find that no two paths are the same. With pluralism I end, just as I began; for
Connolly is right, pluralism truly is the philosophy of a messy universe.

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