Introduction

During the last thirty years of the twentieth century, writing on justice flourished and multiplied throughout and beyond the developed world. This intellectual movement was spearheaded by John Rawls's rightly famous *A Theory of Justice*,[1] and augmented by hundreds of other writers who have debated the issues with close and acute tenacity. Their vast body of work has been admirably engaged in at least two ways. It has been deeply connected both to academic work in law and in the social sciences and to the more practical activity of many political movements. Debates about human rights and the justice of wars, about the ending of apartheid and of communism, about Third World development and welfare states, have been continuously linked to more abstract writing on the requirements of justice. The more abstract writing has been deeply argued, diverse, scrupulous and useful. There is much to admire.

And yet, I believe, there is also much more to be understood and investigated. Beyond current debates on justice there are unresolved, sometimes unasked, questions both about the philosophical and conceptual boundaries of writing on justice, and about the political and other boundaries of just institutions. The essays in this book do not present a new theory of justice: they raise questions about the boundaries assumed in work on justice and suggest alternative ways of approaching these questions.[2]

Most protagonists in recent debates about justice have accepted John Rawls's agenda of devising a theory of justice that reaches (varying forms of) broadly 'Kantian' normative conclusions while remaining

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[1] John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971).

[2] With one major omission: these essays say almost nothing about the boundary between justice and other ethical concerns. I have had my say on this range of topics and the opportunity to say something more systematic about requirements of justice in *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996).

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within 'the canons of a reasonable empiricism'.[3] With few exceptions, they have accepted empiricist views of reason, action, freedom and motivation, not to mention knowledge. Of course, any theory of justice that wishes to be taken seriously must respect empirical findings; but that is not the same as accepting 'the canons of a reasonable empiricism'. 'Kantian' theorists of justice accept that ethical and political reasoning must take account of consequences of action without concluding that they must be consequentialists; they could also respect empirical findings without concluding that they must take empiricist views of reason, freedom and action.

The essays in this book explore some of the paths not generally taken in debates about justice. I have taken seriously John Rawls's thought that a theory of justice can and should aim for broadly 'Kantian' conclusions, but have suggested that it might do so better by building on less exclusively empiricist conceptions of reason, freedom, action and judgement. At many points I have found it useful also to draw on the very different views of reason, freedom, action and judgement on which Kant relied to reach the first 'Kantian' account of justice (his views on knowledge, on the other hand, lie resolutely 'within the canons of a reasonable empiricism'). However, this is emphatically not a work on Kant, or specifically on his theory of justice. Excellent work on Kant's political philosophy has been appearing during the last twenty years, and I have found much of it helpful in coming to understand his position. However, here aspects of Kant's work are used to identify and explore alternative accounts of the philosophical and political boundaries of justice.

My reason for taking Kant seriously is not only that it is reasonable to suppose that there is a good connection between his conceptions of reason, freedom, action and judgement and 'Kantian' conclusions about justice. Nor is it only that Kant, unlike many contemporary writers, insists that a fully adequate account of justice must be cosmopolitan, and so has taken a less absolute view of the justice of state boundaries than have many more recent 'Kantian' writers. It is also, surprising as it may seem, that many of Kant's views accord rather well with certain daily pre-philosophical views, particularly of action, principles and judgement.

The empiricist conceptions of action that lie in the background of contemporary work on justice often conceive of human agents as moved by

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[3] John Rawls, 'The Basic Structure as Subject', *American Philosophical Quarterly*, 14 (1977), 159–65; 165.

preferences, beliefs and a solely instrumental conception of rationality. Those who introduce additional conceptions of reasonableness or practical reason – for example, Rawls in many of his later writings, those who are interested in deliberative conceptions of democracy – generally anchor these conceptions of reason in the shared views or the debates of fellow-citizens, so adding a normative to an instrumental conception of practical reason. In making this move they may reject aspects of empiricist theories of action, but at the cost of putting any universal claims about justice in question. Paradoxically, while processes of regionalization and globalization have surged, the deep structure of political reasoning has been increasingly conceived of in civic rather than in universal terms.

Perhaps this does not matter. Universalism in ethics and politics has acquired a bad name among a wide range of philosophers, for reasons that are discussed in many of these essays. My own view, however, is that if we are to have an account of justice that is relevant for a world in which state boundaries are increasingly porous to movements of goods, capital, ideas and people, and in which state sovereignty is increasingly circumscribed, we shall need to work on setting out a reasonable form of universalism for ethics and politics. This will not be easy because conceptions of justice which were devised with the thought that states are the primary context of justice may need a lot of stretching and remodelling if they are to do global duty. Questions about the *scope* of ethical and political reasoning and about the *boundaries* of just institutions cannot be treated as mere afterthoughts in an account of justice that is convincing and useful in the contemporary world.

Although the critics of universalism in ethics have been quite varied, their criticisms have not. Communitarians and virtue ethicists, postmodernists and certain feminists, Wittgensteinians and Nietzscheans, as well as subtle particularists, have attacked universalist ethics on remarkably similar grounds, beginning in the main around 1980. Broadly speaking, these critics have argued that ethical thinking that begins with principles of universal scope will be uselessly abstract as well as insensitive to differences between cases. Some have also pointed out that any focus on principles must be a focus on rules, and hence also on obligations, rights and (supposedly) on blame: Bernard Williams's charges against what he calls 'the morality system' articulate these suspicions particularly well.[4] In viewing principles, rules and blame as the centre of the moral life, the 'morality system' excludes ethical concerns other than

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[4] See Bernard Williams, *Ethics and the Limits of Philosophy* (London: Fontana, 1985), ch. 10.

those focussed on obligations and rights. In Williams's view this constel-
lation of claims is well entrenched, philosophically incoherent and eth-
ically corrupting. The incoherence arises both because putative
obligations conflict and because their claims on us are requirements yet
indeterminate. The corruption arises because principles take no account
of difference and diversity, or of the special relationships between
persons which are fundamental to the moral life. Moral thinking,
Williams concludes, must begin closer to home: 'I must deliberate *from*
what I am.'[5]

These and similar criticisms levelled against ethical universalism have
received considerable attention in more recent work on justice. Once
again Rawls's work is paradigmatic.[6] Although he has not repudiated
universalist aspirations, and has not accepted the communitarian view
that embedded social norms form adequate starting points for ethical
and political reasoning, Rawls has argued in his later work that the
agreements of fellow-citizens have a fundamental status in an adequate
conception of the reasonable, and thereby in political justification.
Many others also take it that the discourse or debate of citizens is fun-
damental to justice. The thought may seem convincing if we take for
granted that an account of justice may presuppose that we are fellow-
citizens of some state, or (as Rawls puts it) of a 'bounded society', insid-
ers who can share a common debate about justice. But the approach is
strangely silent about the predicaments of outsiders, and about the
justice of a world that is segmented into states, a world in which for each
of us most others are emphatically not fellow-citizens. It seems to me
that, on the contrary, an adequate account of justice has to take seriously
the often harsh realities of exclusion, whether from citizenship of all
states or from citizenship in the more powerful and more prosperous
states. Why should the boundaries of states be viewed as presuppositions
of justice rather than as institutions whose justice is to be assessed?

Some of the essays in this book have appeared elsewhere, more or less
in their present forms; others have been very extensively revised; yet
others are published for the first time. I have tried to select and to revise
in ways that reduce overlaps and repetitions, without short-changing the
coherence of arguments. Since all the essays grow out of an integrated

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[5] Ibid., 200.
[6] See in particular John Rawls, 'Justice as Fairness: Political not Metaphysical', *Philosophy and
Public Affairs*, 14 (1985), 223–51 and *Political Liberalism* (New York: Columbia University Press,
1993).

view of the role of ethical and political reasoning, I cannot hope to have been wholly successful in avoiding repetitions.

The sequence of topics is quite straightforward. The essays in the first part of the book, 'Philosophical Bounds of Justice', are about a number of the philosophical boundaries of justice. The focus moves from practical reason, to freedom and action, to principles and judgement before turning to certain aspects of justice.

The initial essay, 'Four Models of Practical Reasoning', surveys the structure and authority of various conceptions of practical reasoning often used in writing ethics and politics and considers what each presupposes, what claims each has to be thought either a partial or a complete conception of reason, and how it can shape and ground normative conclusions, including a conception of justice.

Practical reasoning and normativity will neither of them have a role unless there are agents. The second essay, 'Agency and Autonomy', considers some of the problems created for thought about right and justice by reliance on preference-based models of action and some of the advantages of relying on alternative, principle-based conceptions of action.

In 'Principles, Practical Judgement and Institutions' I take up the fear that there may be a lack of connection between principles of justice and their actualization in particular institutions, policies and acts. In it I try to look at the structures of deliberation used in practical reasoning that begins with principles, that works *towards* action and policy making. In particular, I discuss the difference between the conception of practical judgement which principle-based judgement uses and the surprisingly influential conceptions of ethical judgement as quasi-perceptual and retrospective, aimed at assessing or appraising action.

'Kant's Justice and Kantian Justice' tries to set the themes of the preceding three essays in context, by contrasting some features of Kant's work with aspects of contemporary Kantian work. In it I try to disentangle differences between abstraction and idealization, and argue that their conflation lies behind many of the criticisms made both of Kant and of contemporary Kantian work.

The last two essays in Part i focus on some of the implications for an account of justice of the revisionary views of action and practical reasoning discussed in preceding essays. Any account of justice will need to have some way of distinguishing coercive from non-coercive action, yet it is surprisingly hard to devise one within the accounts of action favoured by those who seek to stay 'within the canons of a reasonable

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empiricism', in which threats and bribes alike appear too straightfor-
wardly as mere incentives that change preference orderings. 'Which are
the Offers *You* Can't Refuse?' suggests another way of looking at coer-
cion; readers will, I hope, be relieved to find that I discuss the Mafia and
terrorism rather than the philosophical literature on coercion. 'Women's
Rights: Whose Obligations?' rehearses reasons why, having taken
agency seriously, we shall find grounds for treating principles of obliga-
tion as more basic than rights in thinking about justice. The case is made
by considering debates about women's rights, but the arguments can be
extended to other aspects of justice.

In the second part of the book, 'Political Bounds of Justice', I turn to
the political and institutional boundaries of justice. Institutions gener-
ally have boundaries: they have a place and a time, a beginning and an
end, and often an edge and a middle. Institutional thinking therefore
always raises questions about scope: who is included and who excluded,
and what are the physical and temporal boundaries of justice? In the
modern period it has been common to think of justice as instituted and
confined within state boundaries; improvements and set-backs to justice
are commonly identified with the historical events in the histories of
states. On a happy view of the matter, states taken severally secure justice
for all. However, these assumptions have been increasingly queried as
processes of globalization have begun to change economic and political
life. State boundaries, I argue in this book, can no longer be seen as legit-
imate bounds of justice: they are themselves institutions whose justice
can, and often should, be queried.

'Transnational Economic Justice' sets out ways in which the statist
assumptions of certain theories of justice fail to engage with the increas-
ingly global realities of economic life. 'Justice, Gender and International
Boundaries' considers ways in which the vulnerabilities created by boun-
daries and their inevitable exclusions can compromise justice: an ade-
quate account of justice has to address ways in which state boundaries
and gender divisions can marginalize and exclude, so creating vulner-
abilities and thereby ready contexts for injustice. 'Identities, Boundaries
and States' looks at some arguments that have long been used to justify
state boundaries, and suggests that arguments which try to connect
(senses of) identity to bounded territories are less robust than is some-
times thought: states and their boundaries can be justified only in so far
as they create no injustice for those whom they exclude; where they
create injustices, there is some case for compensation. 'Distant
Strangers, Moral Standing and Porous Boundaries' addresses the justice

of political boundaries from the perspective of individual agents rather than of states: it proposes a way of determining to which others, and in particular to which distant others, we have reason to accord full moral standing.

The most basic thought that lies behind all these discussions is that fruitful work in ethics or politics must be *practical*. It must address the needs of agents who have yet to act, who are working out what to do, not the needs of spectators who are looking for ways of assessing or appraising what has already been done. This practical task is not furthered by seeing agents as the prisoners of their preferences, or even of the norms and commitments which they (more or less) accept. It does require an empirically realistic view of the capacities and capabilities agents have, of ways in which they are vulnerable to others, and of ways in which existing institutions may be either resilient or fragile. This is the context within which the construction of more robust and reliable institutions which can secure justice even for the relatively weak must be undertaken.

PART I

Philosophical bounds of justice

CHAPTER I

Four models of practical reasoning[1]

Any convincing account of justice builds upon some conception of reason: yet the more self-consciously we think about reason, the less confident we become that we know what reason requires, or what authority those requirements have. In the daily fray of life, science and politics few of us hesitate to appeal to reason, or to comment adversely on others' lack of reasons for what they say or do. We appeal to reason as an authoritative arbiter of disputes. But when we are asked to vindicate this confidence, it ebbs. This is hardly surprising. If reason is the basis of all vindication, how can we vindicate it? Will not each attempt end in defeat – if we invoke anything unreasoned – or in circularity – if we offer only reasons?

Despite this venerable dilemma, I believe that there is much to be said about the vindication of reason. Here I am mainly concerned with the sorts of reasoning that we attempt in contexts of action, and shall have little to say about theoretical reasoning. I hope that this will not limit the inquiry as much might be surmised. For I shall assume neither that theoretical reason provides the foundations for practical reason nor that theoretical reasoning itself needs no vindication. I suspect that, on the contrary, any adequate vindication of theoretical reasoning requires a vindication of practical reasoning; but this too is more than I can make plausible here.[2] For present purposes I shall simply bracket issues that are specific to theoretical reason, and shall consider what can be done to vindicate practical reason.

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[1] An earlier version of this essay appeared under the title 'Vier Modelle der praktischen Vernunft', in Hans Friedrich Fulda and Rolf-Peter Horstmann, eds., *Vernunftbegriffe in der Moderne* (Stuttgart: Klett-Cotta, 1994), 586–606.

[2] Some reasons why a vindication of theoretical reason may build on rather than ground practical reason are sketched in Onora O'Neill, 'Reason and Autonomy in *Grundlegung III*', in *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge: Cambridge University Press, 1989), 51–65 and 'Vindicating Reason', in Paul Guyer, ed., *The Cambridge Companion to Kant* (Cambridge: Cambridge University Press, 1992), 280–308.

I shall organize my thoughts around a consideration of four concep-
tions of practical reason, each of which has a long history and many var-
iants, as well as many contemporary advocates and detractors. As I do
so, I shall draw on a certain intuitive understanding of what we might
hope that reason can provide either for practice or for theory. I begin by
characterizing this understanding. This hope is not one that those who
are sceptical whether anything can count as (practical) reason are likely
to object to: their scepticism is, after all, a claim that nothing meets stan-
dards of reason. Sceptics about reason are not without views about what
reason would provide; they simply hold that it cannot be provided.[3]

Reasoners and sceptics probably agree on two points. They hold, in
the first place, that anything that could count as reasoned would make
no arbitrary moves: when we reason we neither introduce assumptions
arbitrarily nor move from one point to another arbitrarily. This formu-
lation eschews the thought that reason must provide some non-arbitrary
foundation on which all reasoned thought and action builds – perhaps
it does so, but all that is presented in this initial thought is the demand
that the moves made in reasoned stretches and aspects of thought and
action avoid arbitrariness. In the second place both reasoners and scep-
tics expect anything reasoned to have a certain authority in guiding
thinking and acting, which is quite generally discernible, and so does not
presuppose any views – or prejudices – which are not, or might not
be, generally shared. Ultimately these two considerations – non-
arbitrariness and accessible authority – are not really separable: any
sequence of thought or action based on principles that are not generally
accessible and authoritative would seem arbitrary from some points of
view, and any arbitrary move in thinking or acting will be vindicable only
to those who share some arbitrary assumption or other, and hence would
lack generally accessible authority. However, for expository purposes it
can be useful to distinguish arbitrariness from lack of accessible author-
ity.

It is hard to articulate these expectations more fully at this stage, but
I hope that they can be made clearer and more plausible by considering
four conceptions of practical reason, each of which would be presumed
by its advocates to meet at least these meagre standards. I shall first con-
sider those *teleological accounts of practical reason* which see reason as guiding
action by connecting it to the ends of action, and then move on to more

[3] Contemporary sceptics are in the main post-modernists of one sort or another, whose dis-
appointment with what others take for reasoning is evidently based not on lack of views
on what reason *should* provide, but rather on conviction that it is not available.