



De Ethica

A Journal of Philosophical,
Theological and Applied Ethics

Vol. 3, No. 2 (2016)

- 1-2 **From the Editors (English)**
- 3-4 **From the Editors (German)**
- 5-21 **Aleta Quinn**
*Run the Experiment, Publish the Study,
Close the Sale: Business, Values, Science
and Biomedical Research*
- 23-35 **Danny Frederick**
*The Good Bishop and the Explanation of
Political Authority*
- 37-51 **Matthew Bagot**
*Catholicism and Cosmopolitanism: the
Confluence of Three Catholic Scholars and
the Cosmopolitan Democrats on State
Sovereignty and the Future of Global
Governance*
- 53-63 **Anders Melin & David Kronlid**
*Should We Ascribe Capabilities to Sentient
Animals? A Critical Analysis of the
Extension of Nussbaum's Capabilities
Approach*

DE ETHICA

A JOURNAL OF PHILOSOPHICAL, THEOLOGICAL AND APPLIED ETHICS

De Ethica seeks to publish scholarly works in philosophical, theological and applied ethics. It is a fully peer-reviewed, open-access publication hosted by Linköping University Electronic Press. We are committed to making papers of high academic quality accessible to a wide audience.

De Ethica is published in cooperation with *Societas Ethica, the European Society for Research in Ethics*. *Societas Ethica* was founded in Basel, Switzerland in 1964; today it has more than 200 members from more than 20 countries, representing a variety of theological and philosophical traditions. The annual conferences of *Societas Ethica* draw speakers from across the globe and provide a lively forum for intellectual exchange. Like *Societas Ethica*, *De Ethica* aims to create dialogue across national, political, and religious boundaries.

We welcome contributions from all philosophical and theological traditions. While we do welcome historically and empirically oriented work, our focus is on normative ethical questions. We also have a special interest in papers that contribute to ongoing public debates.

It is our aim to facilitate intellectual exchange across disciplinary and geographical boundaries and across the gaps between different philosophical and theological traditions. Thus we seek to publish papers that advance a clear and concise argument, avoid jargon, and are accessible to a non-specialized academic audience.

De Ethica is an Open Access publication with no publication fee. This means that the contents of the journal are published free of charge for authors, and can be accessed free of charge by readers. *De Ethica* uses Creative Commons BY-NC licencing, meaning that anyone may make full use of an article for non-commercial purposes as long as a full reference (including DOI) is given to the original publication. Additionally authors are free to archive the copy-edited version of the article at his or her web page, or at their university's web page.

By publishing exclusively online, *De Ethica* is not only more accessible than most traditional journals, but its production is also considerably more environmentally friendly. *De Ethica* is a not-for-profit operation; hence we welcome donations that might help us to improve the journal's quality, but we do not rely on them.

Editor in Chief *Elena Namli* (Uppsala University, Sweden)
Executive Editor *Marcus Agnafors* (University of Borås, Sweden)
Associate Editor *Maren Behrens* (Linköping University, Sweden)
Assistant Editor *Heidi Jokinen* (Åbo Akademi University, Finland)

Editorial Board *Tina Beattie* (University of Roehampton, United Kingdom)
 Göran Collste (Linköping University, Sweden)
 Marcus Düwell (Universiteit Utrecht, The Netherlands)
 Raimond Gaita (University of Melbourne, Australia; and King's College London, United Kingdom)
 Hille Haker (Loyola University Chicago, United States)
 Lena Halldenius (Lund University, Sweden)
 Robert Heeger (Utrecht University, The Netherlands)
 Neil Messer (Winchester University, United Kingdom)
 Michael Northcott (University of Edinburgh, United Kingdom)
 Philip Pettit (Princeton University, United States)
 Pamela Slotte (Helsinki University, Finland)
 Hans Ulrich (Friedrich-Alexander-Universität Erlangen-Nürnberg, Germany)
 Peter Vallentyne (University of Missouri, United States).

De Ethica was founded in 2013. It published its first issue in 2014, under the guidance of its first Editor-in-Chief, distinguished professor Brenda Almond.

Cover photo courtesy of [Freemages.com/bert8k](https://www.freemages.com/bert8k).

From the Editors

Running an academic journal is quite a challenge. Not only in terms of reading manuscripts that might be well outside your comfort zone or recruiting suitable reviewers, but also when it comes to operating the journal in accordance with principles that respect both authors, editors, the academic community and morality.

Respecting moral principles is a challenge in ordinary life, and it is no less a challenge in the life of an academic journal. When establishing *De Ethica*, we made several morally important choices. The first was to be a not-for-profit, web only, open access journal. Free from pressures to generate a profit, *De Ethica* therefore enjoys a greater freedom to publish what it wants. While having the backing of a large, profit-driven publisher certainly has its benefits, operating without demands for profit also means that there is no need for subscription fees or article processing fees. By making our articles freely available on the web, scholars with no institutional backing, or those affiliated with universities that cannot afford the substantial subscription fees, are not excluded from the academic discussions.

A second morally motivated choice was for the editors to avoid becoming gatekeepers. Many, if not all journals have editors who screen the submissions before sending them out for external reviews. In order not to overburden reviewers, this is an important part of the review process. Unfortunately, this sometimes amounts to arbitrary or ill-founded rejections, as an editor is seldom competent in all areas covered by the journal. As a result, a submission can be rejected because of the editor not properly understanding the topic, or because of his or her often unconscious biases regarded subject, ethical position, or style. Recognising that the area of expertise of an editor is rather narrow, *De Ethica* is committed to a charitable screening process, only desk-rejecting submissions that are clearly lacking in quality or – as is almost always the case when a desk-rejection is made – outside the scope of the journal.

A third choice was to adhere to a strict double-blind review process, with an ambition to move towards an explicit triple-blind review process. While double-blind review is relied upon by most journals, it allows the editors' often implicit biases to kick in: gender biases, racial biases, personal biases, and so on. Triple-blind, where both reviewers and editors handle anonymous manuscripts until a decision is made, helps to reduce such biases and allows a proper focus on the manuscript's content.

A fourth choice of ours was to encourage constructive reviews. Many authors are doctoral students sending their manuscripts to an academic journal for the first time, or authors not having English as their first language. Neither they, nor the academic community, benefit from reviewers giving short and unmotivated reviews or from abusive comments. While a reviewer must be forthright and not shun from pointing out embarrassing weaknesses, it should never be done in a manner that is insulting to the

author or disheartens the author from pursuing his or her career in academia, or without supplying solid reasons why the paper is not worthy of publication.

De Ethica is continuously trying to improve; not only in terms of the quality of the articles published, but also regarding the moral status of the journal. Academic publishing is a moral balance act, and if not properly done it has a potential for causing substantial harm to both individual authors and to the academic community. By having an ongoing discussion on such matters, and by welcoming input from our readers, we hope to set a good example for the future of academic publishing.

From the Editors

Eine wissenschaftliche Zeitschrift zu leiten, ist eine große Herausforderung – nicht nur dann, wenn es darum geht Manuskripte zu lesen, die außerhalb unserer persönlichen Expertise liegen, und passende Begutachtende zu finden, sondern auch im Bezug auf Prinzipientreue gegenüber Autorinnen und Autoren, den Redakteurinnen und Redakteuren, der akademischen Gemeinschaft und der Moral.

Respekt vor ethischen Prinzipien ist eine Herausforderung im Alltagsleben, und nicht weniger im Leben einer wissenschaftlichen Zeitschrift. Als wir *De Ethica* gründeten, trafen wir einige moralische Entscheidungen. Die Zeitschrift sollte internetbasiert und *open access* sein, und nicht gewerbsmäßig betrieben werden. Dadurch, dass *De Ethica* nicht dem Profit dient, haben wir eine größere Freiheit, zu publizieren, was uns wichtig erscheint. Natürlich hat die Unterstützung von großen, gewinnorientierten Verlagen auch Vorteile, aber dadurch, dass wir nicht gewerbsmäßig operieren, vermeiden wir Abonnement- und Bearbeitungsgebühren. Indem wir unsere Artikel online allen zugänglich machen, tragen wir dazu bei, dass unabhängige Wissenschaftlerinnen und Wissenschaftler und solche, deren Universitäten die oft sehr hohen Abonnementgebühren nicht zahlen können oder wollen, nicht vom akademischen Diskurs ausgeschlossen werden.

Eine weitere moralisch motivierte Entscheidung war es, unsere Herausgeberschaft nicht zu einer Art Wachdienst werden zu lassen. Viele, wenn nicht gar alle Zeitschriften haben Redakteurinnen und Redakteure, die Einsendungen überprüfen, bevor diese an externe Begutachtende weitergereicht werden. Dies ist ein notwendiger Prozess, um den Arbeitsaufwand für externe Begutachtende beherrschbar zu halten. Allerdings führt dies auch gelegentlich zu willkürlichen oder schlecht begründeten Ablehnungen. da Redakteurinnen und Redakteure selten in allen von einer Zeitschrift abgedeckten Feldern spezialisiert sind. Daher kann es passieren, dass Einsendungen zurückgewiesen werden, weil eine Redakteurin oder ein Redakteur ein Feld nicht versteht, oder aufgrund von unbewussten Vorurteilen gegenüber Thema, ethischer Position oder Stil. Da wir einsehen, dass die Expertise eines Redakteurs oder einer Redakteurin begrenzt ist, haben wir uns einem großzügigen Begutachtungsprozess verschrieben. Umgehend abgewiesen werden nur Beiträge, die entweder von eindeutig viel zu schwacher Qualität sind, oder – was weitaus häufiger der Fall ist – nicht innerhalb des von *De Ethica* behandelten Themenkomplexes liegen.

Unsere dritte moralische Wahl war es, an einem strikten doppelt anonymisierten Begutachtungsprozess festzuhalten, mit der Ambition, später ein dreifach anonymisiertes Verfahren einzuführen. Doppelt anonymisierte Begutachtung wird von den meisten Zeitschriften praktiziert, aber es lässt Raum für unbewusste Vorurteile, etwa in Bezug auf Geschlecht, ethnische Zugehörigkeit oder persönliche Überzeugungen. Ein dreifach

anonymisiertes Verfahren, in dem weder den Redakteurinnen und Redakteuren noch den Begutachtenden die Identität der Autorin oder des Autors bekannt ist, bis ein Beschluss gefasst wird, reduziert den Einfluss solcher Vorurteile und rückt den Inhalt des Manuskripts in den Fokus.

Die vierte Entscheidung war es, zu konstruktiven Gutachten zu ermuntern. Viele derjenigen, die ein Manuskript einreichen, sind Doktorandinnen und Doktoranden, die zum ersten Mal veröffentlichen, oder haben Englisch als zweite oder dritte Sprache erlernt. Weder sie, noch die akademische Gemeinschaft als Ganzes profitieren davon, wenn solche Manuskripte kurze und unmotivierte Gutachten oder gar beleidigende Kommentare bekommen. Eine Gutachterin oder ein Gutachter soll natürlich nicht davor zurückschrecken, peinliche Fehler mit aller Klarheit zu benennen; das sollte jedoch geschehen, ohne den Autor oder die Autorin zu beleidigen, von einer akademischen Karriere anzuschrecken, oder gar ohne gute Gründe zu nennen, warum ein Artikel nicht publiziert werden sollte.

De Ethica strebt nach stetiger Verbesserung, nicht nur, was die Qualität unserer Artikel angeht, sondern auch in Bezug auf die moralische Position der Zeitschrift. Wissenschaftliches Publizieren ist ein ethischer Balanceakt und kann individuellen Forscherinnen und Forschern und der akademischen Gemeinschaft Schaden zufügen, wo es unredlich betrieben wird. Indem wir uns einer fortlaufenden Diskussion und Rückmeldungen von Leserinnen und Lesern öffnen, hoffen wir, ein positives Beispiel für die Zukunft des wissenschaftlichen Publizierens zu setzen.

Run the Experiment, Publish the Study, Close the Sale: Business, Values, Science and Biomedical Research

Aleta Quinn

Business models for biomedical research prescribe decentralization due to market selection pressures. I argue that decentralized biomedical research does not match four normative philosophical models of the role of values in science. Non-epistemic values affect the internal stages of for-profit biomedical science. Publication planning, effected by Contract Research Organizations, inhibits mechanisms for transformative criticism. The structure of contracted research precludes attribution of responsibility for foreseeable harm resulting from methodological choices. The effectiveness of business strategies leads to over-representation of profit values versus the values of the general public. These disconnects in respect to the proper role of values in science results from structural issues ultimately linked to the distinct goals of business versus applied science, and so it seems likely that disconnects will also be found in other dimensions of attempts to combine business and science. The volume and integration in the publishing community of decentralized biomedical research imply that the entire community of biomedical research science cannot match the normative criteria of community-focused models of values in science. Several proposals for changing research funding structure might successfully relieve market pressures that drive decentralization.

Introduction

Goldacre and Reiss and Kitcher describe a variety of problems arising through the commercialization of biomedical research.¹ Innovation is neglected in favor of intellectual property rent-seeking behavior and development of 'me-too' drugs. The effect size of new drugs is overstated while important side effects are unnoticed. Some 'diseases' are invented and marketed via direct-to-consumer advertising.

¹ Ben Goldacre, *Bad Pharma: How Drug Companies Mislead Doctors and Harm Patients* (New York: Faber & Faber, 2014); Julian Reiss and Philip Kitcher, 'Biomedical Research, Neglected Diseases, and Well-Ordered Science', *Theoria* 24:3 (2009), pp. 263-282.

Given the high toll in human suffering caused by these problems, moral outrage is unsurprising. As Reiss points out, however, philosophers of science are uniquely positioned to address not just the ethical but also the epistemic short-comings of the current system of biomedical research.² Ethical critiques tend to focus either on the overall injustice of the distribution of resources or on ethical lapses of particular individuals engaged in research. This paper argues that a more structural approach is needed. Both epistemic and ethical problems in US biomedical research arise not from individual greed but from the nature of the institutions engaged in biomedical research. Goldacre has pointed out that 'it's possible for good people, in perversely designed systems, to casually perpetrate acts of great harm on strangers, sometimes without ever realizing it.'³ The phrase 'perversely designed' suggests that the systems in question arose through deliberate intent. It is critical both to the diagnosis and resolution of problems in biomedical research to understand certain structural problems as having evolved without intentional design.

The structure of U.S. biomedical research qua business follows from its purpose. The ultimate goal is profit. For simplicity, this paper focuses on the case of a pharmaceutical company pursuing profit via drug sales. A further source of revenue – patenting and licensing research methodologies – arises alongside drug development. I begin, in section 2, by examining the structure of Contract Research Organizations (CROs), focusing on publication planning in particular. For economic reasons, pharmaceutical companies increasingly turn to CROs as the most efficient biomedical research business model.

In section 3 I consider the goal of applied science and how the problems with contemporary biomedical research are both epistemic and ethical. Failure to meet the goal of applied science stems from an inappropriate intrusion of nonepistemic values in commercialized research. I show that research on the CRO fails to match the role of values in science prescribed by a traditional, externalist model of applied science. I elucidate the problematic role of nonepistemic values by showing that biomedical research on the business model violates each of the roles for non-epistemic values prescribed by Longino, Douglas, and Elliott.⁴ The structure of biomedical research (BMR) businesses, which ultimately stems from the goal of BMR business, currently cannot meet the normative standards described by these philosophical models of the role of non-epistemic values in science. I conclude by identifying two proposed interventions that would alleviate the problematic role of nonepistemic values in US biomedical research.

² Julian Reiss, 'In Favour of a Millian Proposal to Reform Biomedical Research', *Synthese* 177:3 (2010), pp. pp. 427-447.

³ Goldacre, *Bad Pharma*, p. xi.

⁴ Helen E. Longino, *Science as Social Knowledge: Values and Objectivity in Scientific Inquiry* (Princeton: Princeton University Press, 1990); Heather Douglas, *Science, Policy, and the Value-Free Ideal* (Pittsburgh, PA: University of Pittsburgh Press, 2009); Kevin Christopher Elliott, *Is a Little Pollution Good for You? Incorporating Societal Values in Environmental Research* (Oxford: Oxford University Press, 2010).

Biomedical Research as Business: Contract Research Organizations

Since the 1980s, large pharmaceutical companies have increasingly out-sourced aspects of BMR business.⁵ Mirowski and Van Horn showed that out-sourcing is a response to globalization, regulatory pressures, and broad market trends.⁶ For example, beginning in 1981 the FDA permitted Institutional Review Boards (IRBs) to operate independently, on a for-profit basis. However, universities and companies that already used their own dependent IRBs as of 1981 could not employ the new, independent IRBs. The independent IRBs tended to approve studies faster due to market selection pressure. Consequently, it became advantageous for pharmaceutical companies, whose own research would be tied to dependent IRBs, to out-source trials to companies that could employ the independent IRBs.

The 1990s saw the rapid growth of Contract Research Organizations (CROs): companies that the pharmaceutical giants contract to conduct drug research, clinical trials, and disseminate research results via publication planning. Sismondo reported that about 70 % of pharmaceutical industry research funding goes to Contract Research Organizations.⁷ Pharmaceutical giants can decrease or eliminate their own in-house research, thereby avoiding the costs of keeping up with new technology. On the CRO model, research can be spread out over many geographic sites. CROs can maintain facilities and provide local expertise in countries that have weaker regulatory structures. Particular methodological requirements (e.g. that patients receive the best available treatment rather than placebo), conflict of interest reporting, and trial registration requirements can be avoided. The economic benefit to the pharmaceutical sponsor is that these trials are faster, and data and results can be chosen from the most positive trials only. Trials that are not generating positive results can simply be terminated. Research funding is thus more efficiently spent.

A CRO can handle all phases of drug development, from initial molecule testing to each clinical trial phase and beyond. The CRO develops the research design and all subsequent research decisions. Some details of how the CRO proceeds are critical. Each research step proceeds precisely according to the initial design. The CRO delivers the trial data following the contract 'line-by-line'; 'anything beyond the contract, you do not get'.⁸ Often there are no incentives for employees to notice unexpected results, ask questions outside the narrow bounds of their tasks, or report potential problems. To a large extent there are no opportunities for employees to notice potential problems because each individual task is performed in isolation from other study tasks, without knowledge of how the task fits into the overall study.

⁵ Philip Mirowski and Robert Van Horn, 'The Contract Research Organization and the Commercialization of Scientific Research', *Social Studies of Science* 35:4 (2005), pp. 503-548; Joel Lexchin, 'Clinical Trials in Canada: Whose Interests Are Paramount?', *International Journal of Health Services* 38:3 (2008), pp. 525-542; Gary Pisano, 'Can Science Be a Business?', *Harvard Business Review* 84:10 (2006), p. 114.

⁶ Mirowski and Van Horn, 'The Contract Research Organization and the Commercialization of Scientific Research'.

⁷ Sergio Sismondo, 'Ghost Management: How Much of the Medical Literature Is Shaped Behind the Scenes by the Pharmaceutical Industry?', *PLoS Medicine* 4:9 (2007), e286.

⁸ Pierre Azoulay, 'Capturing Knowledge within and across Firm Boundaries: Evidence from Clinical Development', *The American Economic Review* 94:5 (2004), pp. 1591-1612.

No single scientist need know the results at all geographic sites or for all clinical trials. Each task of the project can be performed completely independently. There is no opportunity for a scientist to notice outliers or trends that might indicate study contamination or bias. Indeed, it is possible in such a diffuse system for bias to accumulate at all levels. Methodological decisions that, taken individually, seem to involve only minor potential bias can add together to generate skewed results overall. This overall bias results from the structure of the enterprise itself: there is no single scientist responsible for the significant end-result.

Not only the clinical trials themselves but the dissemination of research results can be contracted out. Many CROs offer publication planning, which can also be contracted to independent Medical Communications companies. Publication planning involves both preparing individual studies and coordinating journal submission strategies.

Each individual study may be written by multiple people. Under the current system, it is in fact very difficult to determine who writes a study. Increasingly, however, the named study author will have had very little to do with either the research or the writing. Sismondo estimated that 75 % of industry-funded publications are ghost-written,⁹ while Elliott suggested the figure might be as high as 90 %.¹⁰ From a business perspective, hiring a well-known, respected named author lends weight to the study. The persons who performed tasks within the clinical trial are not likely to be involved in writing the study. There is no reason to involve study designers or lab technicians in the writing, which is best done by professional medical writers with an eye toward the goal of study publication. The purpose of publication in turn relates either to winning FDA approval, or leading doctors to prescribe the favored drug. The person or persons who write the study have no interest in gaining scientific or academic credit; they are simply paid to write the manuscripts. The overall result of all this diffusion is that no single individual meets the requirements of study authorship set by the International Committee of Medical Journal Editors.¹¹ These requirements include (1) contributing to the study design or data acquisition, analysis, or interpretation; (2) writing or critically reviewing the manuscript; (3) approving the final draft; and (4) agreeing to bear responsibility for the accuracy and integrity of the work reported. In the case of ghost-writing by publication planners, there is no single person hiding behind the curtain – the ‘ghost’ is truly a non-person.

Publication planners coordinate manuscript submissions in order to achieve effective timing and an effective spread of journals, authors, and topics. Again the goal is either (or both) FDA approval and promoting the drug to medical professionals. The latter goal suggests that the purpose of study publication is, in fact, marketing. Publication planners are at pains to deny this charge. In arguing that publication planning is a form of marketing,¹² Sismondo and Nicholson cite the publication planning section of a CRO website, that advises that ‘[d]ata generated from clinical trials are the

⁹ Sismondo, ‘Ghost Management’.

¹⁰ Elliott, *Is a Little Pollution Good for You?*

¹¹ International Committee of Medical Journal Editors, ‘Defining the Role of Authors and Contributors’, online at <http://www.icmje.org/recommendations/browse/roles-and-responsibilities/defining-the-role-of-authors-and-contributors.html> (accessed 2016-06-10).

¹² Sergio Sismondo and Scott Howard Nicholson, ‘Publication Planning 101’, *Journal of Pharmacy & Pharmaceutical Sciences* 12:3 (2009), pp. 273-279.

most powerful marketing tools available to a pharmaceutical company.’ Publication planning offers ‘message development and allocation’.¹³ Browsing the same site by means of the Internet Archive Project (web.archive.org), one finds that by 2009 ‘the most powerful marketing tools’ has been replaced by ‘the most powerful publication tools’. ‘Message development and allocation’ has been replaced by ‘Scientific finding development and allocation’.¹⁴

In 2002, during the course of *Motus v. Pfizer*, Pfizer was compelled to produce a document that illustrates the extent of publication planning. The document reports the status of eighty-five studies on Zoloft (sertraline) funded by Pfizer, using several CROs (vendors). At the time, these studies represented a significant portion of the entire published literature on sertraline. Submissions to different journals were clearly coordinated – for example, one study’s submission status was listed as ‘on hold’ until another study had been submitted (the document can be viewed at David Healy’s website).¹⁵ The most effective business strategy for publishing studies involves careful selection of study author and professional writers, and the coordination of multiple publications in terms of timing and journal selection in order to convey the advertising message: the FDA should approve, and doctors should prescribe, the study drug.

Overall, the BMR business model involves diffusion at all levels. All functions of drug development are strategically separated, with each employee performing a narrow, specialized task. This structure results not from individual greed, but from effective and inevitable response to market conditions. Businesses that do not effectively strategize BMR fail; indeed, Pisano claims that most biotech firms earn no profit.¹⁶

The fact that Envision Pharma replaced marketing terms with non-marketing terms suggests both a faith and a worry. The faith is that it is irrelevant whether one describes an activity as ‘marketing’ or ‘publication’, and an item as ‘message’ or ‘scientific finding’. The worry is that the company saw the need to change the wording to combat the perception that marketing values are corrupting research. As will be seen below, the perception is well-founded. In the next section I identify problems with the business model as failures to meet the goal of applied science. I then use philosophical models of the role of values in science to elucidate the ways in which the intrusion of marketing values is indeed problematic for research on the CRO model.

¹³ Envision Pharma, ‘Publications Planning’, <http://envisionpharma.com/publicationsplanning/>, 27 September 2008, online at <https://web.archive.org/web/20080927093133/http://www.envisionpharma.com/publicationsPlanning> (accessed 2016-06-22).

¹⁴ Envision Pharma, ‘Publications Planning’, <http://envisionpharma.com/publicationsplanning/>, 31 March 2009, online at <https://web.archive.org/web/20090331060139/http://www.envisionpharma.com/publicationsPlanning> (accessed 2016-06-22).

¹⁵ David Healy, ‘Let Them Eat Prozac’, online at <http://www.healyprozac.com> (accessed 2016-06-10).

¹⁶ Pisano, ‘Can Science Be a Business?’

Diagnosing Epistemic and Ethical Problems

Applied Science

Much ink has spilled debating the validity of the applied/pure distinction, and whether non-epistemic values play a different role in the applied versus pure sciences.¹⁷ There may be no sharp distinction between pure and applied, but some sciences have a built-in directionality. An applied science is a field of research that aims at discovering, elucidating, and in some sense mastering causal levers that can effect directional change of some specified property or set of properties in the world. The phrase 'causal levers' indicates intervention points: ways in which we can exert causal power and get things done. The property of interest need not be precisely, rigorously defined. There must be some means of roughly recognizing and measuring the property, even if particular cases and even overall measurement methods are disputed.

For example, conservation biology is an applied science that aims at causal levers that can be used to preserve or promote biodiversity. Biodiversity can mean many things.¹⁸ The concept might include sheer number of species (though the concept 'species' is itself much disputed), proportionality of species representation, genetic diversity, diversity at the level of higher taxa, phenetic or morphological diversity, degree of phylogenetic divergence, and more. Different methods of measuring biodiversity recognize or privilege some subset of these components. At the end of the day, despite disagreement on the nature of the property, conservation biologists elucidate factors that affect biodiversity. Conservation biology thereby generates tools that policy planners can use to promote biodiversity in particular cases of application.

The property of interest for medicine and medical research is health and its counterparts, disease, injury, and disorder. Applied science aims to enable directional change. One does not study conservation biology in order to reduce biodiversity or medicine in order to promote disease. In addition to the typical slate of epistemic values that characterize the goal of science in general, applied science is also guided by whatever values determine the direction of sought-after change. Both the choice of target property and direction of sought-after change are guided by non-epistemic values.

Moreover, in the case of medicine, the target property is inherently value-laden. The World Health Organization describes health as a positive state of well-being in itself, beyond the absence of disease.¹⁹ Health is essentially value-laden because it is a good that is necessary for individuals to pursue other goals of value.²⁰ As Bergsma and Thomasma argue forcefully, health is not identical with its indicator measures, such as blood

¹⁷ See for example Martin Carrier and Patrick Finzer, 'Theory and Therapy: On the Conceptual Structure of Models in Medical Research', in *Science in the Context of Application*, edited by Martin Carrier and Alfred Nordmann (Springer, 2011), pp. 85-99; Sven Ove Hansson, 'Values in Pure and Applied Science', *Foundations of Science* 12:3 (2007), pp. 257-268; Ann Johnson, 'Everything New Is Old Again: What Place Should Applied Science Have in the History of Science?', in *Science in the Context of Application*, edited by Martin Carrier and Alfred Nordmann (Springer, 2011), pp. 455-466.

¹⁸ James MacLaurin and Kim Sterelny, *What Is Biodiversity?* (Chicago, IL: University of Chicago Press, 2008).

¹⁹ World Health Organization, 'WHO Constitution; 1948', in *Official Records of the World Health Organization*, 2 (1948), pp. 100-109.

²⁰ Norman Daniels, *Just Health Care* (New York, NY: Cambridge University Press, 1985).

pressure, bile secretion, or urine production; health is the capacity to attain experiences of value.²¹

To the extent that BMR discoveries do not enable promotion of health, BMR will fail to meet the goal of applied science. Grounds on which such a charge could be levied are empirical claims that BMR businesses are not innovative.²² Such failure is both epistemic and ethical, since the goal of applied science is knowledge, and both the target property and directionality encode moral values.

An immediate worry is 'invented diseases' and inappropriately medicalized conditions are not related to health at all. Research efforts that target these phenomena do not address health-related conditions and so fail to meet the goal of medicine qua applied science.

Another concern is the disconnection between clinical drug trials and the theoretical framework of medicine. Frequently these trials identify strategies to alleviate clusters of symptoms in the absence of an understanding of the causal structure whereby these strategies work. For example, gabapentin alleviates seizures in epileptic patients, but the mechanism of action is not understood. Gabapentin has also been correlated with relief of pain that is caused by a damaged sensory system, and with the discomfort of photorefractive keratectomy (the older form of laser eye surgery). Parts of the mechanism of action in the case of pain have been described though a complete account is lacking.²³ Gabapentin is also prescribed off-label to treat anxiety disorders, bipolar disorder, attention deficit disorder, and restless legs syndrome.²⁴ The disparate array of uses results from a shotgun approach to drug testing. Through documents obtained via a lawsuit, Vedula *et al* analyzed 21 clinical trials related to four types of off-label use of gabapentin.²⁵ These studies target correlations between use of the study drug and changes in some measured symptom, in the absence of any causal understanding of the interaction between drug and targeted phenomenon. There are always cases like this in any body of science, but when large parts or even the majority of research produces correlations devoid of causal understanding, the status of the research comes into question. Identifying strategies for manipulating variables is not the same as elucidating causal levers within a scientific theoretical framework.

Moreover, the existence of the haphazard network of identified statistical correlations may actually hinder the progress of causal discovery. The phenomena measured as desired effects may not represent causally unified phenomena at all, at least with respect to the kind of causes that biomedical science identifies. Some identified correlations will reflect statistical artefacts; others are artificially combined effects of disparate causes. Thus the problem of failure to fit into theoretic frameworks is a failing

²¹ Jurrit Bergsma and David C. Thomasma, *Autonomy and Clinical Medicine: Renewing the Health Professional Relation with the Patient*, vol. 2 (Springer Science & Business Media, 2000).

²² Reiss and Kitcher, 'Biomedical Research, Neglected Diseases, and Well-Ordered Science'.

²³ Ankesh Kukkar *et al.*, 'Implications and Mechanism of Action of Gabapentin in Neuropathic Pain', *Archives of Pharmacal Research* 36:3 (2013), pp. 237-251.

²⁴ Alicia Mack, 'Examination of the Evidence for Off-Label Use of Gabapentin', *Journal of Managed Care Pharmacy* 9:6 (2003), pp. 559-568.

²⁵ S. Swaroop Vedula, Tianjing Li, and Kay Dickersin, 'Differences in Reporting of Analyses in Internal Company Documents Versus Published Trial Reports: Comparisons in Industry-Sponsored Trials in Off-Label Uses of Gabapentin', *PLoS Med* 10:1 (2013), e1001378.

both for the research in question and for the larger scientific community that responds to the research.

If the charge that business BMR does not meet the goal of applied science is true, a natural question is what accounts for this failure? It may be that the overarching failure results from a problematic intrusion of nonepistemic values in the practice of science on the CRO model. Even if business BMR more successfully meets the overarching goal of applied science than the above points suggest and others have argued, lower level epistemic problems can be analyzed via models of the role of values within scientific practice.

Externalist Model

The lines of my critique can be broadly drawn by employing the externalist model of values in science, which differentiates internal scientific practice – investigation of causal levers – from target-setting and application stages of applied science. The externalist model allows that non-epistemic values affect decisions only outside the internal processes of good science. Non-epistemic values can affect the choice of research problems (usually via funding), and the application to which the research is put. Choice of research problem (before the internal science) will be enabled by considerations about enabling directional change in the target property. Values may impact application (after the internal science) by guiding the use of the causal levers that are explicated in the internal science.

On the externalist model, the influence of non-epistemic values on the internal processes (data collection, interpretation, evaluation, hypothesis acceptance, and so on) is strictly limited to ruling out certain methodological choices. For example human experimentation is narrowly restricted for ethical reasons. Apart from this, to the extent that non-epistemic values influence internal science, the science is flawed.

On the BMR business model, publication of study results is explicitly guided by business values. It might be argued that dissemination of results represents application of the internal science. However, the writer or writers of the study do not simply present raw data. Decisions about data format and methods of analysis (which data are to be analyzed by which statistical methods), and which results to discuss and highlight in the abstract and conclusion, reflect business values. Attention can be drawn to a selection of the significant results while ignoring side effects or null-results in certain groups of subjects.

The output of internal processes of applied science is knowledge about causal levers in the world. Data alone does not elucidate causal regularities or enable prediction and control. Interpretation of data is critical to fitting the research into the existing theoretical framework of science. In turn this fit is critical to the understanding of causal levers that applied science targets. The externalist model prescribes the exclusion of nonepistemic values from the process of scientific inference and discovery. Interpretation of data is part of the critical, fruitful process of scientific inference. BMR on the business model thus violates the externalist normative proscription of non-epistemic values in internal science. To the extent that the externalist model highlights problematic intrusions of values, the model flags as problematic the role of business values in CRO research.

Longino's Model

The externalist model has been much criticized as unrealistic, impossible, and unnecessary. Various authors have proposed ways in which values can influence internal

science without thereby sully it. Helen Longino argued convincingly that values can affect the internal processes of science without researchers being conscious of this intrusion.²⁶ Indeed, Longino's approach suggests that non-epistemic values will inevitably affect internal science. Values affect even the fundamental matter of whether some particular observation counts as evidence or not, because values inform background assumptions that underlie observation. It is unclear how widespread and how unavoidable the intrusion of values is on Longino's picture. It is clear, however, that non-epistemic values can and will enter some areas of research without scientists' awareness of the intrusion. The critical issue is whether this intrusion compromises scientific objectivity, resulting in failure to meet the goals of science.

Longino argues that objectivity is a function of the social nature of science. Science is objective to the degree that transformative criticism is possible. Longino identifies four requirements for the possibility of transformative criticism: (1) recognized avenues of criticism (for example peer review in public forums); (2) shared standards, both epistemic and social (e.g. empirical adequacy, consistency with accepted theories in other domains, relevance to or satisfaction of social needs); (3) community responsiveness to criticism; (4) equality of intellectual authority.²⁷

Within itself, a CRO does not meet these requirements. Contributors have rank and status as employees in a hierarchical structure that precludes equal intellectual authority. The CRO responds to economic pressures and contract stipulations, but to scientific criticism only to the extent that such criticism relates to those concerns (for example when scientific problems damage the chances of securing contracts). Much of the inner workings of CRO studies are immune to criticism as a result of their decentralization. Each employee has access to a very narrowly limited portion of the drug development process, and no particular employee knows enough to critique the overall process and output.

BMR on the business model lacks Longino's prescribed objectivity when considered within the social structure of medical science at large. Companies publish in journals that are broadly recognized as forums for criticism. However, BMR business does not share standards with academic and publically funded medical researchers. These researchers, who represent the potential critics of the BMR business' work, share standards among themselves. BMR business standards differ, and expectedly so, as the standards reflect the companies' economic interests. CRO practice diverges from academic requirement for disclosure of all data, registration of trials, study authorship, and attribution of credit and responsibility for activities within studies. More broadly, BMR business has no direct concern for expansion of knowledge frameworks or consistency with widely accepted scientific theories, epistemic values that underlie scientific standards Longino. Both the existence of and the content of the communal standards enable the community to effectively pursue the goal of applied science. Subverting these standards compromises the ability of the community to produce and respond to criticism that enables objectivity.

By strategically planning study publication, and by virtue of sheer volume of studies, pharmaceutical companies can dominate public fora. Because ghost-written studies by their very nature do not reveal true authorship or funding, it is extremely

²⁶ Longino, *Science as Social Knowledge*.

²⁷ *Ibid.*

difficult to quantify precisely how much of the literature is produced by CROs. The Pfizer sertraline document (discussed in section 2) indicates that Pfizer alone was responsible for a significant portion of all scientific literature published on sertraline throughout the 1990s. Healy and Cattell claim that, as of early 2001, Current Medical Directions (hired by Pfizer) was responsible for 55 publications on the therapeutic effects of sertraline.²⁸ 41 studies had been published (apparently) independently of Current Medical Directions. The overall impact of Pfizer's studies is even greater than this figure suggests, because Current Medical Directions carefully selected well-known authors and journals. Sismondo claims that the Pfizer-funded studies have been cited at about three times the rate of (apparently) non-Pfizer studies.²⁹ Public scientific forums can be dominated to such an extent that academic researchers cannot exercise equal intellectual authority, because each critical voice is effectively drowned out.

The current structure of BMR business results in concealment of research funding. This is not a deliberate, nefarious plot to avoid scientific accountability, but an unsurprising result of efficient business decentralization. The study author is paid to affix his/her name to the publication and has no need to know the ultimate source of study funding. The appearance of study independence better serves the business' advertising purposes, but again, this should not be seen as a calculated ploy to evade scientific standards. BMR business just does not consider scientific standards of disclosure in the first place.

It is implicit in Longino's requirement for equal intellectual authority that participants in scientific discourse are not anonymous. One cannot ensure that a participant's authority is equal without some knowledge of the participant's identity. The problem with ghost-authorship is more fundamental than the anonymity of an individual participant, however. Because of the decentralized structure of BMR business, no single person qualifies for study authorship by the standards of the International Committee of Medical Journal Editors. The published study is the scientific vehicle for discussion and possible criticism, but it is unclear who exactly represents the BMR business in the public forum. It is problematic to assign any intellectual authority to a 'ghost' that represents the disparate efforts of lab workers, study coordinators, and professional writers. Standards for transparency in research and research reporting, such as those advocated by the Center for Open Science,³⁰ would not solve this conceptual problem.

Douglas' Model

The problems raised by publication planning in particular are brought out by Heather Douglas' model of the role of values in science.³¹ Douglas argues that problems arise when non-epistemic values are given what Douglas calls a direct role in internal science: when non-epistemic values are taken to be evidential. However, non-epistemic values may play an indirect role without compromising scientific objectivity. Douglas further argues that non-epistemic values normatively ought to enter into decisions within the internal processes of science. Scientists must bear responsibility for the possibility of

²⁸ David Healy and Dinah Cattell, 'Interface between Authorship, Industry and Science in the Domain of Therapeutics', *The British Journal of Psychiatry* 183:1 (2003), pp. 22-27.

²⁹ Sismondo, 'Ghost Management'.

³⁰ B. A. Nosek *et al.*, 'Promoting an Open Research Culture', *Science* 348:6242 (2015), pp. 1422-1425.

³¹ Douglas, *Science, Policy, and the Value-Free Ideal*.

foreseeable harm resulting from methodological decisions. Though public involvement can be helpful at various stages of science, some methodological choices (for example, whether particular slides of rat livers show malignant or benign tumors) can only be made by the scientist with his/her scientific expertise. All such decisions carry some risk of epistemic error. When such error would result in public harm, scientists must employ non-epistemic values to choose what degree of certainty is required in making the decision (for example, to score a slide 'benign'). This can take the form of balancing the risk of Type I vs. Type II errors. From a public health standpoint, the risk of erroneously deeming a carcinogenic chemical safe typically carries more dire consequences than the risk of erroneously deeming a harmless chemical carcinogenic. Privileging public health above industrial profits involves non-epistemic values. The responsible scientist can and should explicitly privilege public health in decisions about Type I vs. Type II error tradeoffs. If scientists were to disavow this ethical responsibility the result must compromise scientific autonomy. Outside agents could bear the responsibility only through a level of oversight that would effectively hamstring the scientific community.

Douglas' arguments ultimately stem from claims about the nature of science and its progress. The externalist ideal of excluding values from science has the goal of preventing values from being mistaken for evidence. The worry is that wishful thinking will lead to faulty inferences. As Brown has argued, the complete exclusion of values from science is too crude a solution for this worry.³² Rather, an adequate account of the success of science requires situating research programs in their social and ethical contexts.³³ A scientific community is both an epistemic and ethical community, and scientists qua persons are morally responsible agents. The idea of taking off one's 'moral responsibility hat' is untenable. Ethical responsibility for the risk of epistemic error is at once an individual and communal responsibility that attaches to scientists as morally responsible agents. Moreover, scientists bear role responsibilities not to hinder the success of science, as the compromise of scientific autonomy would do.

Douglas' model highlights a critical problem for CRO research that results from its decentralized structure. Because of the extreme specialization and narrow bounding of each employee's role, responsibility becomes impossibly diffuse. No particular individual within the drug development process bears responsibility for potential harms caused by the eventual marketing of the drug. This claim might seem to conflict with the earlier argument that company-favoring bias accumulates at each node of the diffuse study process. The key is that each employee can subtly favor company interests when making methodological choices, without actually knowing the potential non-epistemic risks of epistemic error. There are no incentives for noticing unexpected and potentially harmful side-effects. Such side-effects are not the concern of the technician recording chemical data or the analyst applying statistical models. Each employee works to further company interests, but without knowledge of the potential consequences of the total project.

³² Matthew J. Brown, 'Values in Science Beyond Underdetermination and Inductive Risk', *Philosophy of Science* 80:5 (2013), pp. 829-839.

³³ Heather Douglas, 'The Moral Terrain of Science', *Erkenntnis* 79:5 (2014), pp. 961-979; Janet A. Kourany, 'Meeting the Challenges to Socially Responsible Science: Reply to Brown, Lacey, and Potter', *Philosophical Studies* 163:1 (2013), pp. 93-103.

Elliott's Model

Having shown that consideration of non-epistemic values is necessary for scientific responsibility, the question is which values and how. Kevin Elliott provides guidance on how to responsibly include non-epistemic values within scientific practice.³⁴ Elliott's central claim is that at critical decision-points, there must be appropriate representation of all relevant stakeholders. He diagnoses the role of non-epistemic values in four areas: (1) choosing research projects and study designs; (2) creating scientific definitions and terminology, (3) evaluating and interpreting evidence (studies), and (4) applying research, including decisions about how to disseminate research results. Elliott's critique is that 'contemporary research tends to be dominated by the values of just a few groups (especially industry and the military) that happen to have deep pockets'.³⁵ On Elliott's view, non-epistemic values should not be entirely excluded from the internal processes of science. Rather, the goal should be bringing policy-relevant scientific research into alignment with the values of the public at large, rather than a small set of wealthy stakeholders.

Because of the publication advantages of the BMR business model, pharmaceutical companies are over-represented in biomedical science in the way that Elliott warns against. BMR on the business model chooses research projects likely to generate profits. These choices result in the phenomenon of 'neglected diseases',³⁶ such that the interests of many members of the public are not represented. If 'public interest' is taken to include the global population, certainly the problem of neglected diseases represents a severe departure from representation of public interests in BMR. Even if public interest is restricted to the concerns of the US population (since biomedical research in the US is the focus of this paper), US citizens all share an interest in justice not only for the global community but for even extreme minority populations afflicted with rare neglected diseases in the US.

Running multiple trials at multiple geographic sites, with no requirement that each trial run to completion, enables companies to choose trials and develop studies that further business aims to the detriment of public interest in the evaluation of evidence (Elliott's point 3). Publication planning introduces business values into decisions about how to disseminate research results (Elliott's point 4), in ways that may run counter to public interest.

Considering Elliott's second locus of concern, scientific definitions and terminology, also illustrates ways in which BMR on the CRO model does not reflect public values. CROs choose terminology that furthers marketing aims, including the re-branding of marketing itself as 'scientific finding allocation and dissemination'.³⁷ Disease categories reflect business values. The oft-cited example, 'Pre-menstrual Dysphoric Disorder', represents an 'invented disease' created by the pharmaceutical companies in order to generate demand for a product (drug treatment). The definition of Major Depressive Disorder as a list of symptoms, regardless of context, enables companies to market drugs to individuals that Horwitz and Wakefield argue are merely rationally sad

³⁴ Elliott, *Is a Little Pollution Good for You?*

³⁵ *Ibid.*, p. 5.

³⁶ Reiss and Kitcher, 'Biomedical Research, Neglected Diseases, and Well-Ordered Science'.

³⁷ Pharma, 'Publications Planning', 31 March 2009.

(owing to romantic or career loss, or other life circumstance) rather than sick.³⁸ From the business perspective, it does not matter whether individuals are diseased or not; the business need not consider this question. In its own lights, the pharmaceutical company invents a marketing vector, not a disease.

It is important to note that the public often benefits from the products developed to treat medicalized conditions. Erectile dysfunction is a medicalized condition; the fact is that many individuals want and are now able to obtain drugs that benefit them. Medicalizing the condition can help individuals view the issue without blaming themselves. On the other hand, medicalizing phenomena can make people think that they have problems when in fact they do not, particularly when symptoms are vague. Drugs often have harmful side effects. Moreover, medicalization can change societal norms in harmful ways. Equating maleness, energy level, and testosterone level, as in 'low-T' advertising, may be broadly harmful. Given that there are potential benefits and harms associated with biomedical research, the critical point is that value-laden questions need to be addressed: public values must be represented in addition to business values.

Intervention

Goldacre's recent critique of commercialized biomedical research shed much-needed light on the problems addressed throughout this paper.³⁹ Resulting calls for transparency in industry-funded research will not suffice to resolve the problems. Part of the reason is practical: many companies simply aren't conforming to legal requirements, and there are not sufficient mechanisms for enforcement.⁴⁰ Moreover, it is unclear that making problems visible will resolve them. For example, identifying occurrences of ghost authorship does not resolve the problem that no individual can bear responsibility for the published study. Critically, Goldacre highlights the ethical cost of inaction. Marketing new drugs that are less effective, and potentially less safe, than existing treatments results in greater suffering than would result from scientifically responsible comparison of new treatments to existing treatments. In addition to this direct harm, philosophical work has shown that problematic intrusion of values in science compromises the effectiveness of science and the very reason that we have science in the first place.⁴¹

These problems cannot be isolated to the for-profit sector. The high volume of research that is conducted along the decentralized model and its integration within the biomedical research community imply that the entire community of biomedical research

³⁸ Allan V. Horwitz and Jerome C. Wakefield, *The Loss of Sadness: How Psychiatry Transformed Normal Sorrow into Depressive Disorder* (Oxford: Oxford University Press, 2007).

³⁹ Goldacre, *Bad Pharma*.

⁴⁰ Jennifer E. Miller, David Korn, and Joseph S. Ross, 'Clinical Trial Registration, Reporting, Publication and FDAAA Compliance: A Cross-Sectional Analysis and Ranking of New Drugs Approved by the FDA in 2012', *BMJ Open* 5:11 (2015), e009758; Amelia Scott, Julia J. Rucklidge, and Roger T. Mulder, 'Is Mandatory Prospective Trial Registration Working to Prevent Publication of Unregistered Trials and Selective Outcome Reporting? An Observational Study of Five Psychiatry Journals That Mandate Prospective Clinical Trial Registration', *PloS one* 10:8 (2015), e0133718; Monique L. Anderson *et al.*, 'Compliance with Results Reporting at Clinicaltrials.Gov', *New England Journal of Medicine* 372:11 (2015), pp. 1031-1039.

⁴¹ Douglas, 'The Moral Terrain of Science'.

science is compromised. The analysis cannot be confined to contract research organizations independently of the scientific community in which they publish. This point is borne out most clearly by the compromise of communal mechanisms for ensuring scientific objectivity identified by Longino's model.⁴²

In this paper I have used philosophical models of the structure of science and values to show the structural causes of the epistemic and ethical problems with BMR on the CRO model. Claims that science and business can be seamlessly integrated are overly simplistic, but so too are claims that the problems with for-profit BMR result from greed. Casting problems in terms of greed erroneously attributes agency and intentionality to corporate structures that are not proper subjects of these individualized concepts.

The disconnection between BMR business and objective science, on whichever model, ultimately stems from the disconnection between the goals of a business versus an applied science. Qua business, BMR need not aim at causal levers that can be used to promote health or fight disease. I have claimed that the disease concept itself is not needed for BMR business, and it seems clear that no concept of health is required either. Biological endpoints must be specified and measured, but these will be determined by business rather than scientific concerns.

Problems with the achievement of scientific goals stem from the goal and conditions required to meet the goal of BMR business – if BMR businesses do not seek profit, they fail. Companies have evolved to operate along the model described in this paper. The identified problems might be relieved or resolved by altering the conditions necessary to achieve business goals. Given that many of the problems arise through the decentralization of scientific functions, proposed interventions might succeed by relieving the market pressures that drive decentralization.

Reiss' proposal to create a publically-operated central research organization that draws fees from industrial clients faces the problem that research results reliably track funding source due to hidden biases.⁴³ Moving the source of funding back one level likely would not affect hidden biases. However, centralization of the research trial phase can reconcile some of the structural issues discussed in this paper, and remove incentives for decentralization at other phases.

Brown's more radical suggestion to socialize biomedical research funding relieves market pressures by the direct expedient of removing biomedical research from the marketplace.⁴⁴ Brown suggests that socialized clinical medicine should serve as a successful model for socializing BMR. In this spirit, one possibility is a 'two-tiered' approach to BMR. In the current system, BMR companies can effectively dominate medical journals. In order to ensure public forums for transformative criticism, a distinct set of research journals might publish only publically funded studies. This can be done by registering the recipients of public funding and preventing them from accepting additional private funding.

Ensuring the success of this sort of public program will require massive funding, if only to attract some scientists away from the private sector. The extreme success of the

⁴² Longino, *Science as Social Knowledge*, p. 19.

⁴³ Reiss, 'In Favour of a Millian Proposal to Reform Biomedical Research'.

⁴⁴ James Robert Brown, 'The Community of Science®', in *The Challenge of the Social and the Pressure of Practice: Science and Values Revisited*, edited by Martin Carrier, Don Howard, and Janet A. Kourany (Pittsburgh: University of Pittsburgh Press, 2008), pp. 189-216.

top dozen pharmaceutical giants suggests that targeted corporate tax increases are economically feasible and can be of great help in the near term. In the long term, the cost of public funding now must be considered alongside the total economic cost and benefits of biomedical knowledge and health outcomes at a broad scale.

Although the analysis of this paper suggests that either of the two proposals would ameliorate problems with commercialized BMR, the plain fact is that both proposals face extreme practical challenges. Each proposal requires large-scale regulatory changes that are unlikely to come about in the present political and social climate. Another approach is possible. The critical factor underlying the epistemic and ethical problems is the decentralized structure of CRO research. Yet this factor appears to be present in other areas of contemporary science, seemingly without compromising objectivity. For example in the field of high-energy particle physics, recent papers include hundreds and sometimes thousands of authors, representing an extreme diffusion of responsibility. Further philosophical work can shed light on why such cases do not appear to violate Douglas' prescription for ensuring responsibility in scientific inquiry. Analysis of decision-making and responsibility in the context of extreme diffusion of research roles may suggest alternative solutions to the problems rooted in the decentralized structure of CRO research.

Regardless of criticism and disagreement about particular proposed interventions, here is a place where philosophers of science can contribute to crucial social issues. Philosophic engagement is crucial, in keeping with the tradition of socially engaged philosophy going back to the Vienna Circle (and indeed further).

Aleta Quinn, Smithsonian Institution
aletaquinn@gmail.com

Bibliography

- Anderson, Monique L., Karen Chiswell, Eric D. Peterson, Asba Tasneem, James Topping, and Robert M. Califf. 'Compliance with Results Reporting at Clinicaltrials.Gov', *New England Journal of Medicine*, 372:11 (2015), pp. 1031-1039.
- Azoulay, Pierre. 'Capturing Knowledge within and across Firm Boundaries: Evidence from Clinical Development', *The American Economic Review*, 94:5 (2004), pp. 1591-1612.
- Bergsma, Jurrit, and David C. Thomasma. *Autonomy and Clinical Medicine: Renewing the Health Professional Relation with the Patient. Vol. 2*. Springer Science & Business Media, 2000.
- Brown, James Robert. 'The Community of Science®', in *The Challenge of the Social and the Pressure of Practice: Science and Values Revisited*, edited by Martin Carrier, Don Howard and Janet A. Kourany, Pittsburgh: University of Pittsburgh Press, 2008, pp. 189-216.
- Brown, Matthew J. 'Values in Science Beyond Underdetermination and Inductive Risk', *Philosophy of Science*, 80:5 (2013), pp. 829-839.
- Carrier, Martin, and Patrick Finzer. 'Theory and Therapy: On the Conceptual Structure of Models in Medical Research', in *Science in the Context of Application*, edited by Martin Carrier and Alfred Nordmann (Springer, 2011), pp. 85-99.
- Daniels, Norman. *Just Health Care*. New York, NY: Cambridge University Press, 1985.

- Douglas, Heather. *Science, Policy, and the Value-Free Ideal*. Pittsburgh, PA: University of Pittsburgh Press, 2009.
- Douglas, Heather. 'The Moral Terrain of Science', *Erkenntnis*, 79:5 (2014), pp. 961-979.
- Elliott, Kevin Christopher. *Is a Little Pollution Good for You? Incorporating Societal Values in Environmental Research*. Oxford: Oxford University Press, 2010.
- Envision Pharma. 'Publications Planning', <http://envisionpharma.com/publicationsplanning/>, 27 September 2008, online at <https://web.archive.org/web/20080927093133/http://www.envisionpharma.com/publicationsPlanning> (accessed 2016-06-22).
- Envision Pharma. 'Publications Planning', <http://envisionpharma.com/publicationsplanning/>, 31 March 2009, online at <https://web.archive.org/web/20090331060139/http://www.envisionpharma.com/publicationsPlanning> (accessed 2016-06-22).
- Goldacre, Ben. *Bad Pharma: How Drug Companies Mislead Doctors and Harm Patients*. New York: Faber & Faber, 2014.
- Hansson, Sven Ove. 'Values in Pure and Applied Science', *Foundations of Science*, 12:3 (2007), pp. 257-268.
- Healy, David. 'Let Them Eat Prozac', online at <http://www.healyprozac.com>. (accessed 2016-06-10).
- Healy, David, and Dinah Cattell. 'Interface between Authorship, Industry and Science in the Domain of Therapeutics', *The British Journal of Psychiatry*, 183:1 (2003), pp. 22-27.
- Horwitz, Allan V., and Jerome C. Wakefield. *The Loss of Sadness: How Psychiatry Transformed Normal Sorrow into Depressive Disorder*. Oxford: Oxford University Press, 2007.
- International Committee of Medical Journal Editors. 'Defining the Role of Authors and Contributors', online at <http://www.icmje.org/recommendations/browse/roles-and-responsibilities/defining-the-role-of-authors-and-contributors.html>. (accessed 2016-06-10).
- Johnson, Ann. 'Everything New Is Old Again: What Place Should Applied Science Have in the History of Science?', in *Science in the Context of Application*, edited by Martin Carrier and Alfred Nordmann (Springer, 2011), pp. 455-466.
- Kourany, Janet A. 'Meeting the Challenges to Socially Responsible Science: Reply to Brown, Lacey, and Potter', *Philosophical Studies*, 163:1 (2013), pp. 93-103.
- Kukkar, Ankesh, Anjana Bali, Nirmal Singh, and Amteshwar Singh Jaggi. 'Implications and Mechanism of Action of Gabapentin in Neuropathic Pain', *Archives of Pharmacal Research*, 36:3 (2013), pp. 237-251.
- Lexchin, Joel. 'Clinical Trials in Canada: Whose Interests Are Paramount?', *International Journal of Health Services*, 38:3 (2008), pp. 525-542.
- Longino, Helen E. *Science as Social Knowledge: Values and Objectivity in Scientific Inquiry*. Princeton, NJ: Princeton University Press, 1990.
- Mack, Alicia. 'Examination of the Evidence for Off-Label Use of Gabapentin', *Journal of Managed Care Pharmacy*, 9:6 (2003), pp. 559-568.
- MacLaurin, James, and Kim Sterelny. *What Is Biodiversity?* Chicago, IL: University of Chicago Press, 2008.
- Miller, Jennifer E., David Korn, and Joseph S. Ross. 'Clinical Trial Registration, Reporting, Publication and FDAAA Compliance: A Cross-Sectional Analysis and Ranking of New Drugs Approved by the FDA in 2012', *BMJ Open*, 5:11 (November 1, 2015), e009758.

- Mirowski, Philip, and Robert Van Horn. 'The Contract Research Organization and the Commercialization of Scientific Research', *Social Studies of Science*, 35:4 (2005), pp. 503-548.
- Nosek, B. A., G. Alter, G. C. Banks, D. Borsboom, S. D. Bowman, S. J. Breckler, S. Buck, *et al.* 'Promoting an Open Research Culture', *Science*, 348:6242 (2015), pp. 1422-1425.
- Pisano, Gary. 'Can Science Be a Business?', *Harvard Business Review* 84:10 (2006), p. 114.
- Reiss, Julian. 'In Favour of a Millian Proposal to Reform Biomedical Research', *Synthese*, 177:3 (2010), pp. 427-447.
- Reiss, Julian, and Philip Kitcher. 'Biomedical Research, Neglected Diseases, and Well-Ordered Science', *Theoria*, 24:3 (2009), pp. 263-282.
- Scott, Amelia, Julia J. Rucklidge, and Roger T. Mulder. 'Is Mandatory Prospective Trial Registration Working to Prevent Publication of Unregistered Trials and Selective Outcome Reporting? An Observational Study of Five Psychiatry Journals That Mandate Prospective Clinical Trial Registration', *PloS one*, 10:8 (2015), e0133718.
- Sismondo, Sergio. 'Ghost Management: How Much of the Medical Literature Is Shaped Behind the Scenes by the Pharmaceutical Industry?', *PLoS Medicine*, 4:9 (2007), e286.
- Sismondo, Sergio, and Scott Howard Nicholson. 'Publication Planning 101', *Journal of Pharmacy & Pharmaceutical Sciences*, 12:3 (2009), pp. 273-279.
- Vedula, S. Swaroop, Tianjing Li, and Kay Dickersin. 'Differences in Reporting of Analyses in Internal Company Documents Versus Published Trial Reports: Comparisons in Industry-Sponsored Trials in Off-Label Uses of Gabapentin', *PLoS Medicine* 10:1 (2013), e1001378.
- World Health Organization. 'WHO Constitution; 1948', in *Official Records of the World Health Organization*, 2 (1948), pp. 100-109.

The Good Bishop and the Explanation of Political Authority

Danny Frederick

A central problem of political philosophy is that of explaining how a state could have the moral authority to enforce laws, promulgate laws which citizens are thereby obliged to obey, give new duties to citizens and levy taxes. Many rival solutions to this problem of political authority have been offered by contemporary and recent philosophers but none has obtained wide acceptance. The current debate takes no cognisance of George Berkeley's 'Passive Obedience', in which he defends the exceptionless duty of not using force to resist the state and offers a rule-consequentialist account of morality which indicates an explanation of political authority as grounded in the social connectedness of human beings. I expound, criticise and develop Berkeley's explanation to provide a promising solution to the problem of political authority. The solution impugns the political authority of all existing states as well as the duty of passive obedience.

Introduction

A central question of political philosophy concerns the moral legitimacy of the state. Any body with sufficient *power* can issue directives accompanied by credible threats of adverse consequences in case of non-compliance that make it prudent for people to comply with the directives. But how could a body be morally *entitled* to:

- (1) enforce laws across the whole of a society,
- (2) issue new laws which people thereby have a duty to obey,
- (3) assign new moral duties to the citizens,
- (4) levy taxes?

That is, how is it possible for a body to have political authority?¹ In the course of his defence of passive obedience to the state, George Berkeley, 'the good bishop', suggests a theological rule-consequentialist explanation of the moral authority of the state which, if

¹ The term 'political authority' is sometimes used to refer only to (2) and (3), for instance by David Estlund, *Democratic Authority* (Princeton: Princeton University Press, 2008), p. 2; but here I use the term more loosely to cover (1) - (4).

developed and corrected, provides a promising solution to the problem of political authority.² Unfortunately, Berkeley's approach to the problem has been ignored by contemporary and recent philosophers. For example, four recent encyclopaedia articles which review the state of the current debate about the problem of political authority say nothing of either Berkeley or a rule-consequentialist solution.³ This paper begins to fill the gap.

Berkeley's task in 'Passive Obedience' is, by appeal solely to principles of reason common to all mankind, to inculcate and explain the Christian duty of passive obedience to the supreme civil power that makes and enforces laws (henceforth, 'the state').⁴ Passive obedience means fulfilling the laws either by a punctual performance of what they enjoin or, where that is inconsistent with reason or conscience, by a patient submission to whatever penalties the state imposes for non-performance (paras. I-III).⁵ In 1688, the Protestant William III had ousted the Catholic James II as King of England, Scotland and Ireland, and the attempted restoration of James, which took hold in Ireland and divided the Irish along religious-ethnic lines, was defeated at the Battle of the Boyne in 1690. The turmoil had presented Irish Protestants with an apparent conflict between the Anglican adherence to the doctrine of passive obedience and their support for William. Some argued that James had effectively abdicated, or that William was a just conqueror, or that the doctrine of passive obedience needed qualification, or that it could be set aside in extreme circumstances, or even that William's ousting of James had been due to an act of God. Berkeley was an infant during the turmoil and the debates that followed it, but in 1712, when he wrote his tract as a Fellow at Trinity College, Dublin, political polarisation had reignited the controversy. Berkeley's intention was to support William and promote civil peace, but some took him to be a supporter of James.⁶

I begin by expounding Berkeley's rule-consequentialism and extricating it from his theology. I take no account here of the other strands in Berkeley's moral theory.⁷ I then explain that Berkeley's defence of passive obedience suggests a rule-consequentialist explanation of political authority. I develop and correct that explanation to make a new

² For historical references to Berkeley as 'the good bishop' see Scott Breuninger, *Recovering Bishop Berkeley: Virtue and Society in the Anglo-Irish Context* (New York: Palgrave Macmillan, 2010), Ch. 1.

³ Tom Christiano, 'Authority', *The Stanford Encyclopedia of Philosophy: Spring 2013 Edition*, edited by Edward N. Zalta, available online at <http://plato.stanford.edu/archives/spr2013/entries/authority/> (accessed 2014-11-4); Richard Dagger and David Lefkowitz, 'Political Obligation', *The Stanford Encyclopedia of Philosophy: Fall 2014 Edition*, edited by Edward N. Zalta, available online at <http://plato.stanford.edu/archives/fall2014/entries/political-obligation/> (accessed 2014-10-27); Leslie Green, 'Legal Obligation and Authority', *The Stanford Encyclopedia of Philosophy: Winter 2012 Edition*, edited by Edward N. Zalta, available online at <http://plato.stanford.edu/archives/win2012/entries/legal-obligation/> (accessed 2014-11-5); Fabienne Peter, 'Political Legitimacy', *The Stanford Encyclopedia of Philosophy: Winter 2014 Edition*, edited by Edward N. Zalta, available online at <http://plato.stanford.edu/archives/win2014/entries/legitimacy/> (accessed 2014-11-4).

⁴ George Berkeley, 'Passive Obedience', in *The Works of George Berkeley*, Volume VI, edited by A. A. Luce and T. E. Jessop (London: Thomas Nelson and Sons, 1953 [1712]), pp. 15-46.

⁵ Throughout, all parenthetical references to numbered paragraphs are to Berkeley, 'Passive Obedience'.

⁶ Breuninger, *Recovering Bishop Berkeley*, pp. 20-34.

⁷ For which see Matti Häyry, 'Passive Obedience and Berkeley's Moral Philosophy', *Berkeley Studies* 23 (2012), pp. 3-14, especially p. 11.

contribution to the contemporary philosophical debate about the problem of political authority. In the light of that development, I criticise Berkeley's defence of passive obedience. In the conclusion I highlight further work needed to develop the explanation.

Rule Consequentialism

Berkeley says that because God created and preserves us we have a duty to conform our actions to His will. God, being infinitely good, intends the good of His creatures and thus that the actions of each individual human should promote the well-being of all humans (paras. V-VII). However, it is impossible that a person should, in each circumstance, attempt to identify the action which would produce the greatest good for humanity, because the full consequences of a possible action cannot be known by a person in advance, or at all, and surely not in the time available to make a decision. In contrast, a compendious set of exceptionless rules is open to practical mastery. Thus, what is enjoined by the will of God is adherence to those moral rules which, if universally acted upon, have a necessary tendency to promote the well-being of humanity in general, so far as it is attainable by human actions, even though in some particular instances action in accord with the rules may, through untoward accidents and the perverse irregularity of human wills, occasion great sufferings and misfortunes (paras. VIII-XI, XV). Although our limited capacities require that the moral rules are exceptionless in the sense that no deviation from them is permissible, the *statement* of a particular rule may specify some exceptions. For instance, the moral rule, 'one ought not to murder', might also be expressed as 'one ought not to kill another person except in battle or in self-defence or in capital punishment' (para. XXXII). In framing the true moral rules we must be guided entirely by the general human good, but in our ordinary moral actions we must be guided by the moral rules (para. XXXI).

We can separate rule-consequentialism from Berkeley's theism as follows. The value of the general good of humanity is so great that we (morally) ought to do our best to bring it about. The best prospects for its achievement will be realised if we all act in conformity with a particular set of rules $R_1...R_n$. Therefore, we (morally) ought to act in conformity with the rules $R_1...R_n$. Therefore, each of the rules $R_1...R_n$ is a true moral rule. That is analogous to the transmission of value from ends to means; and since the purpose of the means is to achieve the end, we might express the account teleologically, though metaphorically, by saying that the purpose of morality is the general good of humanity. A theist such as Berkeley can then add (para. XI) that God's purpose is the general good of humanity and, since he who wills the end wills the necessary means (if he knows them and is instrumentally rational), the set of true moral rules are expressions of God's will.

True moral rules include a number of universal ought-statements, such as, 'one ought not to lie', 'one ought not to steal' and 'one ought not to commit adultery' (para. XV). As we have seen, what distinguishes the true universal ought-statements from those which are false, such as 'one ought not to sing', is that the former form a set such that, if everyone always acted in accord with them, the well-being of all humans would be promoted as far as is possible in this world. The well-being of all would not be perfectly achieved under such circumstances, in part because of 'untoward accidents' (para. VIII). Berkeley does not say what sorts of accidents he has in mind, though he does speak of the 'unhappy concurrence of events' (para. XIII). That suggests that the type of thing in question is misfortunes consequent upon imperfect skill or knowledge. Here is a couple

of examples. At dinner I see a guest looking for the salt, so I reach for the salt to pass it to her, but in doing so I knock over a glass of wine and stain the expensive outfit of the woman sitting next to me. A friend who loves landscape paintings is currently melancholy, so I send her a beautiful landscape painting to raise her spirits; but, unbeknown to me, the scene depicted bears an uncanny resemblance to a place she frequented in her childhood which brings back awful memories. So, universal compliance with the set of true universal ought-statements cannot guarantee the well-being of all; it provides only the best prospects for it.

There is not much chance of universal compliance with the true universal ought-statements: people often act contrary to moral rules for the sake of some material advantage or even to indulge wicked desires; and good people suffer as a consequence. The existence of 'the perverse irregularity of human wills' (para. VIII) means that there are often circumstances in which action in accord with the true moral rules produces worse consequences for human well-being than would transgression of them. Berkeley does not give an example, but here is a familiar one.⁸ In a small South American town, twenty Indians are tied up against a wall. There have been protests against the government and the Indians have been selected at random to be shot, to discourage further protests. A foreign botanist comes upon the scene and the captain in charge offers him a guest's privilege of killing one of the Indians himself. If the botanist accepts the offer, the other Indians will be set free; otherwise all twenty will be shot. The botanist, on Berkeley's view, ought to comply with the moral rule 'one ought not to murder', even if nineteen more people will be murdered as a consequence. His reason is that, given that the purpose of morality is to promote general human well-being, we have a choice between act-consequentialism and rule-consequentialism, and the former is impossible given our limited capacities.

It might seem that in any case in which an action that would best promote the general good is prohibited by a moral rule, *R*, an amendment to *R* which makes an exception of that type of case would better promote the general good than *R* does; in which case it is the amended rule rather than *R* that belongs to the set of true moral rules. Following that thought to its logical conclusion, it may seem that rule-consequentialism collapses into act-consequentialism, because any apparent conflict between the two only shows that the rules need to be amended; and a refusal to make the necessary amendments would seem to be a fetishistic attachment to a particular set of rules.⁹

However, that line of thought is mistaken. The rule, 'one ought not to murder except when doing so will have better prospects for the general good than any alternative action', is open to the objection to act-consequentialism, that it is impossible that a person should, in each circumstance, attempt to identify which action would have better prospects for the general good. Rules so qualified would be useless. It might be suggested that, instead of the general clause, 'except when doing so will have better prospects for the general good than any alternative action', every statement of a rule should contain a

⁸ Bernard Williams, 'A Critique of Utilitarianism', in J. J. C. Smart and Bernard Williams, *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973), p. 98.

⁹ The claim is made by J. J. C. Smart, 'Extreme and Restricted Utilitarianism', *Philosophical Quarterly* 6:25 (1956), pp. 344-354, section III, and refined by David Lyons, *Forms and Limits of Utilitarianism* (Oxford: Oxford University Press, 1965), pp. 177-186. It is repeated by many philosophers, such as A. John Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979), pp. 51-52.

clause listing each type of exception in which action contrary to the rule will better promote the general good. But that is open to a similar objection: we cannot identify in advance all of the particular types of exceptions. It is also open to the objection that, even if we could formulate such rules, they would be so complex, containing so many very detailed descriptions of exceptional cases, that they could not be employed in practical decision-making. It is not rule fetishism to adhere to a set of moral rules on the grounds that the impossibility of act-consequentialism makes a learnable set of rules necessary and that the set of rules in question is learnable and provides better prospects for general human welfare than any other learnable set of rules.

Berkeley recognises that the moral rules that he enunciates presuppose a set of social institutions (para. XXV). Those institutions are in turn constituted in part by other moral rules. Thus, the rule, 'one ought not to steal', presupposes the institution of property, which implies that people have moral authorities, rights, duties and liabilities.¹⁰ For example, a property-owner has the moral right to exclude others from his property, the moral duty not to destroy the property of others, the moral authority to alter existing moral rights and duties concerning property, of himself and of others, by entering a contract to buy or sell or hire, and the moral liability to have his existing moral rights or duties altered by others who may, for instance, give him permission to enter their property and thus annul his erstwhile moral duty not to enter it. Similarly, the rule, 'one ought not to commit adultery', presupposes the institution of marriage, which implies that people have the moral authority to enter marriage contracts and to alter their prior moral rights and duties as a consequence. The ought-statements to which Berkeley pays explicit attention are therefore somewhat surface phenomena, in that they depend upon the background moral rules assigning moral authorities, rights, duties and liabilities which underlie the institutional framework of the society.

The Possibility of Political Authority

Berkeley argues that the general good of humanity depends upon social co-operation which in turn depends upon submission to a state and its laws (para. XXV) and that the set of true moral rules includes the rule of passive obedience (para. XV). That rule, like the other ought-statements in the set, presupposes an institutional background, in this case the institution of the state (para. XXV). As the rule, 'one ought not to steal', is underpinned by the moral right of the property-owner to deny others the use of her property and the correlative duty of those others not to take her property without her consent, so the rule, 'one ought not to resist the state', would be explained if the state has the moral authority to make and enforce laws for the people within its jurisdiction so that those people are liable to be morally bound by those laws and subject to their enforcement. Thus, sovereignty belongs originally to the state (paras. I-IV, XVI), rather than being given to the state by the people through a social contract (paras. XXII-XXIV). I discuss the rule of passive obedience below. Here I want to offer a more detailed

¹⁰ For detailed explanations of these moral and legal notions and their interrelations see Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions*, edited by Walter Wheeler Cook (New Haven: Yale University Press, 1919) and Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, MA: Harvard University Press, 1990).

development of Berkeley's rule-consequentialist insight that the political authority of the state is a moral fact independent of people's thoughts or wills.

It was noted above that the set of true moral rules is such that:

- (i) if everyone always acts in accord with the rules, the best prospects for the general good of humanity will be achieved;
- (ii) there is not much chance that everyone will always act in accord with the rules.

Many more people will act in accord with moral rules much more of the time if it is permissible to enforce at least some of those rules. For example, the rule which assigns to each person the moral right not to be murdered, which entails the rule that everyone has a moral duty not to murder, will more generally be adhered to if persons have the moral right to enforce their right not to be murdered, that is, if they have the moral right of self-defence. It will even more generally be adhered to if third parties also have the moral right to enforce a person's right not to be murdered, by preventing an aggressor from murdering another. Since rules assigning such rights of enforcement would substantially increase the frequency of adherence to true moral rules, they would improve the prospects of the general good of humanity. They therefore also belong to the set of true moral rules. General adherence to true moral rules, and the prospects for the general good of humanity, would increase much farther if there were a single body (the state) which had:

- (a) the duty to enforce those true moral rules that are permissibly enforceable;
- (b) the authority to promulgate laws declaring true permissibly enforceable moral rules;
- (c) the authority to make efficient institutional arrangements for the enforcement of true permissibly enforceable moral rules (police, courts, penal and restitutive measures, and arrangements for defence against external aggression);
- (d) the authority to levy fair taxes on the citizens to pay for those arrangements.

Rules assigning that duty and those authorities to the state therefore belong to the set of true moral rules.

In Western societies, and perhaps in all others, it is not the case that all moral rules are permissibly enforceable. For example, a promisor gives a promisee a moral right to fulfilment of the promise; but, unless there is an exchange of promises (a contract), the promisee is not entitled to enforce her right if the promisor defaults. Contracts, in contrast, engender moral rights that are permissibly enforceable by the courts. If the set of true moral rules includes some which it is impermissible to enforce, it will be because some true moral rules are such that, if they were permissibly enforceable, the prospects for the general good of humanity would be diminished. The explanation would reside in the high cost or other disadvantages of permitting the enforcement of true moral rules of particular types; but we can leave that issue on one side.

Historically, the state emerges against a background of evolved moral rules and it typically takes upon itself the enforcement of a substantial portion of those rules;¹¹ but since the evolved rules may require supplementation or correction, the state must have,

¹¹ Friedrich Hayek, *Law, Legislation and Liberty* (London: Routledge, 1982), Volume 1.

in addition to the moral duty enunciated in (a), also the moral authority identified in (b). The moral authorities identified in (c) and (d) give the state considerable permissible leeway because there may be any number of different but equally efficient ways of arranging for enforcement and any number of different but equally fair ways of raising a given sum through taxation. In promulgating the laws governing the arrangements it establishes, the state therefore exercises the moral authority to create new duties in the citizens which the citizens would not have had but for the state's action. For example, in creating a police force the state passes laws which give police officers rights to enter property or to stop, search or direct citizens, which in turn create new duties in the citizens to allow the police to do such things. There are innumerable alternative sets of rights that could be given to the police, and some of those alternatives may be equally as good as each other and better than the rest, in which case *which* new duties the citizens receive depends upon which set the state permissibly chooses. With regard to taxation, the state also passes laws which citizens *thereby* have a duty to obey. There are any number of equally fair tax laws which raise the same overall amount of tax but which employ principles which distribute the burden slightly differently between the citizens. So, the duty to pay a particular amount of tax derives from the duty to obey the particular tax laws which the state has permissibly decided to promulgate. However, in all such cases, the state's permissible leeway is limited to selection from among those potential laws which are equally good from the standpoint of the general good of humanity. That follows from the fact that the rules which assign the state's moral authorities belong to the set of true moral rules only because of their connection to the general good of humanity; so they will not assign the state moral authorities to promulgate laws which would undermine the prospects for the general human good.¹²

The reason there should be a *single* body with the duty and authorities specified in (a) - (d) is that a multiplicity of competing bodies would engender internecine strife. The practical difficulties of managing affairs over a large scale mean that a state should be confined to a manageable territory and thus that humanity should be divided into separate states. The laws of the states may differ, given the (limited) permissible leeway that a state has in promulgating laws.

The state is an institution, not a person. It is a network of relations structured by norms, including rules which assign moral authorities, rights, duties and liabilities to particular citizens under specific circumstances; it includes people only *qua* occupants of particular roles, and those roles are themselves patterns of relations structured by norms.¹³ For instance, the moral authorities, rights, duties and liabilities attaching to the office of the Prime Minister may be assigned to the leader of the political party that obtains most votes in an election. The moral authorities, rights, duties and liabilities of the state are realised in moral authorities, rights, duties and liabilities of specific individuals which attach to those individuals only insofar as they fulfil a particular social role.

¹² Where the state has a choice between alternative equally optimal enforceable moral rules, the true moral rule is a disjunction of each of the alternatives. In such cases, the state's duty or authority concerns not the moral rule itself but any one of its disjuncts. That complication is suppressed in the text to avoid circumlocution.

¹³ See Dorothy Emmett, *Rules, Roles and Relations* (London: Macmillan, 1966), pp. 1-16, 138-148.

The duty identified in (a), above, is the duty to enforce only *true* moral rules. Plainly, a state which had a duty to enforce false moral rules would be detrimental to the general good of humanity, so a rule assigning such a duty to the state does not belong to the set of true moral rules, which means that no state has such a duty. For the same reason, no state has the moral authority to promulgate or enforce false moral rules, which means that any state that promulgates or enforces false moral rules is acting outside of its moral authority and is thus acting wrongly.

Knowledge and Actual States

We need a solution to the knowledge problem: how can we know which of the myriad possible sets of moral rules is the correct one? Berkeley says that, on an impartial survey of the general frame and circumstances of human nature, it will appear plainly to anyone who has the use of reason, that universal compliance with the rules, 'one ought not to lie', 'one ought not to steal', and 'one ought not to commit adultery', has a necessary connection with the well-being of humanity (paras. XV, XXVIII-XXIX). He says that those moral rules 'necessarily result from the Nature of Things', are '*stamped on the Mind*' and 'may be demonstrated by the infallible deductions of Reason' (para. XII). There are at least two reasons why it seemed reasonable to Berkeley to claim that the set of true moral rules is knowable infallibly by pure reason. The first is that, in his day, Christianity dominated his culture and the culture of the other educated nations within his purview, so Christian moral precepts were taken for granted by almost all of the educated people with whom he came into contact, which would have made them seem axiomatic. The other reason is that Berkeley expresses moral rules using terms that are already loaded with moral force. For example, the statements 'one ought not to steal' (para. XV) and 'one ought not to murder' (para. XXXII) each contains a term, respectively, 'steal' and 'murder', that connotes moral wrong, so people generally will agree that such statements are generally true. However, agreement on such statements with morally-loaded terms can camouflage substantial disagreements about which actions count as stealing or which actions count as murder. For instance, Berkeley denies that capital punishment is murder (para. XXXII), but many educated people in contemporary Western societies would say that it is. Similarly, there are nowadays heated disputes about whether taxation, copyright infringement or even legal tax-avoidance is stealing; and whether abortion, euthanasia or assisted suicide is murder. In our post-Christian, culturally diverse societies, the claim that the set of true moral rules is knowable by a priori reflection seems preposterous.

The knowledge problem concerns the consequences and risks for human welfare of types of human action in different institutional environments, so we must look to the social sciences for the solution.¹⁴ Any such appeal to the social sciences presupposes an account of what sorts of things make for human welfare. It should be possible to obtain a broad consensus on a set of features of human life, described without using moral terms, such that general human welfare varies with how fully that set of features is realised.¹⁵

¹⁴ Emmett, *Rules, Roles and Relations*, pp. 125-137.

¹⁵ For example, the capabilities approach developed by Amartya Sen, Martha Nussbaum and others is a recent contribution to that project. For a general discussion see Ingrid Robeyns, 'The Capability

We should then be able to construct a formula which orders sets of moral rules according to how fully the set of features would be likely to be realised if each set of rules were universally followed. It should be noted that the rule-consequentialist knowledge-problem is of a different order to the act-consequentialist knowledge-problem. It is simply *impossible* for each, or for any, individual to calculate consequences for every option for action that he takes or fails to take, in part because the consequences of an action often depend upon how other people act in response and are thus knowable only if people act largely in accordance with rules. It is *difficult* to acquire social-scientific knowledge about the consequences of implementing different systems of rules and to develop generally acceptable metrics of welfare, but there is already a great deal of relevant research and further progress can be made; and it is possible that people should conform their actions to a set of rules that such research discovers to be best.

Since the results of scientific research are always open to revision in light of new discoveries, we can never know for sure whether the rules being enforced by a particular state are true ones; and thus we can never know for sure whether the state acts with political authority. However, a state which assiduously revises its legislation in line with the latest social-scientific findings is either:

- (A) enforcing true moral rules (if the latest social-scientific results happen to be correct); *or*
- (B) enforcing false ones *excusably*, because it cannot reasonably be expected to know that the rules it is enforcing are false.

In case (A) it has political authority; in case (B) it does not have political authority and acts wrongly, but excusably. No one can know for sure which of (A) or (B) is the case; but whichever it is, the state is not acting culpably. Correspondingly, the citizens of such a state who obey its laws are either acting rightly or they are acting wrongly but excusably, so their obedience is not culpable.

In contrast, actual states, while they often pay lip-service to 'the common good', generally promulgate and enforce laws, and establish institutional arrangements and systems of taxation, either oblivious of, or in opposition to, the findings of social-scientific research, as a result of deals made between officers of the state seeking to enhance their electoral or career prospects and representatives of organised groups that seek to increase their own wealth or well-being at the expense of the general public.¹⁶ It is just possible that some of these states have by pure fluke hit upon the set of true enforceable moral rules, in which case they have political authority as a matter of chance and without trying to obtain it. But it is more plausible that no actual state has political authority; and none can exonerate itself by showing the consonance of its legislation with the findings of the social sciences. Thus, while the rule-consequentialist account can explain how it is possible for a state to have political authority, it simultaneously impugns the political

Approach', *The Stanford Encyclopedia of Philosophy: Summer 2011 Edition*, edited by Edward N. Zalta, available online at <http://plato.stanford.edu/archives/sum2011/entries/capability-approach/> (accessed 2015-1-20).

¹⁶ Mancur Olson, *The Logic of Collective Action* (Cambridge, MA: Harvard University Press, 1965), *The Rise and Decline of Nations* (New Haven: Yale University Press, 1982), *Power and Prosperity* (New York: Basic Books, 2000).

authority of all actual states and suggests that the wrong behaviour of existing states is culpable.

Passive Obedience

If, as seems to be the case, existing states act without political authority, and culpably, in promulgating and enforcing false moral rules, what are the citizens to do? Berkeley says that they have a duty of passive obedience that requires them to obey the false moral rules except in cases where that would conflict with a true moral rule, in which cases the citizens have a duty to comply with the true moral rule and accept the state's penalty for failure to comply with the false moral rule (paras. I-III). The duty to obey false moral rules imposed by the state or to accept the penalty for not obeying them, is not a duty to the state, which has no right to impose false moral rules, but a duty assigned by the rule of passive obedience which belongs to the set of true moral rules; in Berkeley's theological terms, it is a duty to God (paras. XXXVII, XXXIX, XLIV). The duty is exceptionless and ought morally to be fulfilled even in cases where its consequences are detrimental to the general good (para. LIV).

Berkeley's arguments for assigning the rule of passive obedience to the set of true moral rules are not cogent. His first argument is that even a despotic state is preferable to anarchy (paras. XV-XVIII, XLV, LI). However, that assumes that the use of force to resist the state entails anarchy, which is not so, since such resistance could be sporadic or targeted rather than general.

Berkeley's second argument is that, without the exceptionless rule of passive obedience, there would be disputes about when the use of force is permissible, which would in turn lead to anarchy (para. XX). That confuses epistemological and ontological issues. Let us, for the sake of argument, grant Berkeley that the exceptionless rule of passive obedience is true as a matter of objective fact. There are still disputes between people about whether it is true, and thus about when the use of force against the state is permissible. Indeed, Berkeley himself says that, if it is not clear which person or group has a legitimate claim to represent the state, it will not be clear to whom the people have a duty to submit (para. LIII); in which case there may be disputes over whether the use of force against the (legitimate) state is permissible. That was the case when Berkeley wrote, but it did not lead to anarchy; similarly, in contemporary Western societies there are disputes over the permissibility of resisting the state, but they have not led to anarchy.

Berkeley's third argument is that, while it is possible that an attempt to remove a government by force may succeed, the danger of civil war, or of failure followed by repression, make it inadvisable (para. XLVII). That is a legitimate worry for general resistance, but less so for targeted acts of resistance. The attacks on agents of the state (police, soldiers and so on) and ordinary citizens by terrorists in contemporary Western societies, for example, have not led to civil war, though they have led to significant erosions of civil liberties.

Berkeley's fourth argument is that, in any case of resistance, large or small, we can never know whether the use of force will promote the general good, so we need an exceptionless rule of passive obedience (para. XIX). That just repeats the argument for the superiority of rule-consequentialism over act-consequentialism. As such, it leaves open the question of whether Berkeley's rule of passive obedience or some other more nuanced rule is the correct one.

Ironically, Berkeley himself proposes a qualification to the statement of the rule of passive obedience. He says that the duty of passive obedience does not require submission without opposition to usurpers or madmen in control of the state, because such exceptions are specified in the proper formulation of the rule (paras. LII-LIV). He regards it as obvious that the statement of the rule should specify those exceptions (para. LII). It is thus easy to see how Berkeley's sympathies were misinterpreted: was it William or James who was a usurper? Unfortunately, Berkeley cannot consistently admit that qualification of the rule. If, as he claims, resistance to the state is impermissible because it entails anarchy, it will entail anarchy, and thus be impermissible, when the state happens to be controlled by a usurper or madman.

We are left without an answer to the question of when it is permissible to use force to resist a state that acts culpably without political authority. But it seems that, if we do retain a rule of passive obedience, its statement will include exceptions that distinguish it from the rule that Berkeley defended.

Conclusion

Bishop Berkeley's 'Passive Obedience' indicates a theological rule-consequentialist explanation of political authority. I have developed that explanation by spelling it out in more detail and by removing its invocation of moral rules knowable infallibly by pure reason, grounded ultimately in God's will. The result seems to be a promising solution to the problem of how political authority is possible, which explains why the state has the duty to enforce true permissibly enforceable moral rules, and the (limited) authorities to promulgate and enforce new laws, to create new duties for the citizens, to pass laws which citizens thereby have a duty to obey, to levy fair taxes and to institute efficient administrative arrangements. The solution posits true moral rules which are grounded in the value of the general good of humanity and which are to be discovered by social-scientific research. However, it impugns the political authority of all actual states and the duty to either obey their laws or accept the penalties they impose for disobedience.

Needless to say, the solution is pitched at a general level and it needs to be developed in more detail. First, the non-moral features of human life that constitute the general good of humanity need more detailed specification; but work on that issue is already underway. Second, while the solution assigns sovereignty directly to the state, rather than directly to the people (as in democratic theories), that leaves open the question as to whether, despite all the defects of democracy, democratic elections may be the best available means for limiting abuses of state power by its agents. Third, it will not always be clear what the latest social-scientific results indicate, since science is characterised by competing research programmes. That problem is not as acute as might at first be thought. For one thing, social scientists may disagree on many things without disagreeing about which set of moral rules, if universally acted upon, would be likely to yield the best results for the general human good. For another thing, although we can expect different social scientists to espouse different theories about that matter, they may be able to agree about which of the available theories appears to have greatest explanatory scope and simplicity and to stand up best to empirical tests *given the current state of the debate*. Advocates of a challenger hypothesis often realise that their hypothesis is a challenger: they accept that they have more work to do, though they have avenues of investigation to pursue that they hope will eventually show their hypothesis to be better

than the currently leading theory. Still, some new procedure would doubtless need to be introduced to reach a decision for political purposes in cases where there is no clear leader among the competing social-scientific theories about the consequences of rival sets of moral rules.

In those three respects, the explanation of political authority presented can be developed in rival ways. Such rival developments will form a family of rule-consequentialist solutions to the problem of political authority to be evaluated in the light of ongoing social-scientific research. The possibility of such rule-consequentialist solutions has been overlooked by contemporary political philosophers.¹⁷

Danny Frederick
dannyfrederick77@gmail.com

Bibliography

- Berkeley, George. 'Passive Obedience' [1712], in *The Works of George Berkeley*, Volume VI, edited by A. A. Luce and T. E. Jessop. London: Thomas Nelson and Sons, 1953, pp. 15-46.
- Breuninger, Scott. *Recovering Bishop Berkeley: Virtue and Society in the Anglo-Irish Context*. New York: Palgrave Macmillan, 2010.
- Christiano, Tom. 'Authority', *The Stanford Encyclopedia of Philosophy: Spring 2013 Edition*, edited by Edward N. Zalta. Online at: <http://plato.stanford.edu/archives/spr2013/entries/authority/> (accessed 2014-11-4).
- Dagger, Richard and Lefkowitz, David. 'Political Obligation', *The Stanford Encyclopedia of Philosophy: Fall 2014 Edition*, edited by Edward N. Zalta. Online at: <http://plato.stanford.edu/archives/fall2014/entries/political-obligation/> (accessed 2014-10-27).
- Emmett, Dorothy. *Rules, Roles and Relations*. London: Macmillan, 1966.
- Estlund, David. *Democratic Authority*. Princeton: Princeton University Press, 2008.
- Green, Leslie. 'Legal Obligation and Authority', *The Stanford Encyclopedia of Philosophy: Winter 2012 Edition*, edited by Edward N. Zalta. Online at: <http://plato.stanford.edu/archives/win2012/entries/legal-obligation/> (accessed 2014-11-5).
- Hayek, Friedrich. *Law, Legislation and Liberty*. London: Routledge, 1982.
- Hohfeld, Wesley Newcomb. *Fundamental Legal Conceptions*, edited by Walter Wheeler Cook. New Haven: Yale University Press, 1919.
- Häyry, Matti. 'Passive Obedience and Berkeley's Moral Philosophy', *Berkeley Studies* 23 (2012), pp. 3-14.
- Lyons, David. *Forms and Limits of Utilitarianism*. Oxford: Oxford University Press, 1965.
- Olson, Mancur. *The Logic of Collective Action*. Cambridge, MA: Harvard University Press, 1965.
- Olson, Mancur. *The Rise and Decline of Nations*. New Haven: Yale University Press, 1982.

¹⁷ I thank two anonymous reviewers for *De Ethica* for comments and suggestions that helped me to improve my exposition.

- Olson, Mancur. *Power and Prosperity*. New York: Basic Books, 2000.
- Peter, Fabienne. 'Political Legitimacy', *The Stanford Encyclopedia of Philosophy: Winter 2014 Edition*, edited by Edward N. Zalta. Online at: <http://plato.stanford.edu/archives/win2014/entries/legitimacy/> (accessed 2014-11-4).
- Robeyns, Ingrid. 'The Capability Approach', *The Stanford Encyclopedia of Philosophy: Summer 2011 Edition*, edited by Edward N. Zalta. Online at: <http://plato.stanford.edu/archives/sum2011/entries/capability-approach/> (accessed 2015-1-20).
- Simmons, A. John. *Moral Principles and Political Obligations*. Princeton: Princeton University Press, 1979.
- Smart, J. J. C. 'Extreme and Restricted Utilitarianism', *Philosophical Quarterly* 6:25 (1956), pp. 344-354.
- Thomson, Judith Jarvis. *The Realm of Rights*. Cambridge, MA: Harvard University Press, 1990.
- Williams, Bernard. 'A Critique of Utilitarianism', in J. J. C. Smart and Bernard Williams, *Utilitarianism: For and Against*. Cambridge: Cambridge University Press, 1973, pp. 75-150.

Catholicism and Cosmopolitanism: the Confluence of Three Catholic Scholars and the Cosmopolitan Democrats on State Sovereignty and the Future of Global Governance

Matthew Bagot

One of the central questions in international relations today is how we should conceive of state sovereignty. The notion of sovereignty – ‘supreme authority within a territory’, as Daniel Philpott defines it – emerged after the Treaty of Westphalia in 1648 as a result of which the late medieval crisis of pluralism was settled. But recent changes in the international order, such as technological advances that have spurred globalization and the emerging norm of the Responsibility to Protect, have cast the notion of sovereignty into an unclear light. The purpose of this paper is to contribute to the current debate regarding sovereignty by exploring two schools of thought on the matter: first, three Catholic scholars from the past century – Luigi Sturzo, Jacques Maritain, and John Courtney Murray, S.J. – taken as representative of Catholic tradition; second, a number of contemporary political theorists of cosmopolitan democracy. The paper argues that there is a confluence between the Catholic thinkers and the cosmopolitan democrats regarding their understanding of state sovereignty and that, taken together, the two schools have much to contribute not only to our current understanding of sovereignty, but also to the future of global governance.

Introduction

How should we conceive of state sovereignty? Understood as ‘supreme authority within a territory’,¹ the idea of sovereignty is commonly conceived as the heart of the modern anarchical ‘system’ of states that followed the Peace of Westphalia in 1648.² But it has

¹ Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton, N.J.: Princeton University Press, 2001), p. 16.

² Daniel H. Nexon and Benno Teschke have challenged the ‘Westphalian hypothesis’ on historical grounds. According to Nexon, defenders of the hypothesis cite Westphalia in order to accentuate

been called into question in recent times for two main reasons. First, with the end of the Cold War, we have witnessed not only the need, but also the opportunity to protect minority populations in such places as Rwanda and Bosnia from grave human-rights violations. Thus the United Nations has endorsed the idea that states have the responsibility to protect their citizens from such harms, but that should they fail to meet this responsibility, the international community is obliged to intervene in their place, if necessary by armed force.³ At the same time, we witness an increasingly integrated global society characterized by the breakdown of the traditional distinction between domestic and foreign affairs. Emblematic in this regard is the European Union, where the management of a single market is best characterized as both domestic and foreign business. As British diplomat, Robert Cooper rather humorously puts it: 'The European Union is a highly developed system for mutual interference in each other's domestic affairs, right down to beer and sausages.'⁴

Cooper is quite serious, however, when addressing the global state of affairs that currently confronts us. He begins his book, *The Breaking of Nations: Order and Chaos in the Twenty-first Century*, with a warning:

The worst times in European history were in the fourteenth century, during and after the Hundred Years War, in the seventeenth century at the time of the Thirty Years War, and in the first half of the twentieth century. The twenty-first century may be worse than any of these.⁵

Cooper's point here is that the first two periods were times when order broke down, when church, state and other ties of obligation were losing their power to manage man's aggression, and that the century we now face manifests similar trends.

the role of the Protestant Reformation in the development of the modern state system. But he sees two major problems with this line of reasoning: 'First, it confuses the emergence of a number of *elements* of the configuration we associate with sovereign-territorial states system with the actual instantiation of such a system. Second, it fails to make a convincing counterfactual case that, in the absence of the reformation, military-technical, economic, and ideational change would not have resulted in international structures with broadly similar attributes' (Daniel H. Nexon, *The Struggle for Power in Early Modern Europe: Religious Conflict, Dynastic Empires, and International Change* (Princeton, N.J.: Princeton University Press, 2009), p. 275). In Teschke's view, Westphalia marked merely 'the recognition and regulation of the international – or, to be more precise, inter-dynastic – relations of absolutist, dynastic polities' (Benno Teschke, *The Myth of 1648: Class, Geopolitics and the Making of Modern International Relations* (London: Verso, 2003), p. 3). In this light, Daniele Archibugi claims it was only after the Congress of Vienna (1814-1815), at the earliest, that the nation-state as sole actor of international politics emerged (Daniele Archibugi, *The Global Commonwealth of Citizens: Toward Cosmopolitan Democracy* (Princeton, N.J.: Princeton University Press, 2008), p. 97).

³ This idea was endorsed through the United Nations General Assembly in 2005. See UN General Assembly 2005, *World Summit Outcome*, 15 September 2005, paragraphs 138-139. For a comprehensive account of the doctrine, see International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001).

⁴ Robert Cooper, *The Breaking of Nations: Order and Chaos in the Twenty-first Century* (New York: Atlantic Monthly Press, 2003), p. 27.

⁵ *Ibid.*, p. vii.

In Cooper's view, the situation is compounded by the fact that the third period – the European crisis in the twentieth century – shows that the opposite can also be true: chaos can likewise emerge when overly powerful states are able to mobilize their societies, particularly when other factors such as industrialization, heightened nationalism and ideology are also in play. Cooper suggests: 'In this multiple catastrophe, the single most important thing that went wrong was that technology overran political maturity.'⁶ In the latter half of the century, he adds, 'it seemed as if the nuclear revolution might complete the triumph of technology over mankind; but somehow political wisdom returned and there was a pause in civilization's pursuit of self-destruction.'⁷ Nevertheless, Cooper fears that the century we now face 'risks being overrun by both anarchy and technology'.⁸ As he puts it: 'The two great destroyers of history may reinforce each other. And there is enough materiel left over from previous centuries in the shape of national, ideological and religious fanaticisms to provide motives for the destruction.'⁹

Cooper contends that we live now in a divided world, but one divided quite differently from the days of the Cold War or East-West confrontation. In his view, there exists today a threefold division. First, there is the 'pre-modern world'. Here Cooper is referring to the pre-state, post-imperial chaos of places like Somalia, Afghanistan and Liberia. Second, there is the 'modern world' where the state insists on its own sovereignty, retains its monopoly on law and force, and proceeds to act in its own national interest. Finally, there is the 'post-modern world' where – in Cooper's words – the state 'is prepared to redefine its sovereignty as legal rights and to accept mutual interference in internal affairs; the prime example of a post-modern community is the European Union.'¹⁰

Cooper argues that the post-modern world has witnessed the triumph of the individual and that foreign policy has subsequently become the continuation of domestic concerns beyond national boundaries. As he puts it: 'Individual consumption replaces collective glory as the dominant theme of national life.'¹¹ At the same time, the human rights of citizens – in particular, their right to life in the event of genocide – have superseded any absolute ascription of state sovereignty in the form of the emerging norm of the Responsibility to Protect. 'Thus', Cooper concludes,

in the postmodern world, *raison d'état* and the amorality of Machiavelli have been replaced by a moral consciousness that applies to international relations as well as to domestic affairs: hence also the renewed interest in the question of whether or not wars should be considered just.¹²

Despite Cooper's concerns (or perhaps because of them), there are great possibilities in the emergence of this 'moral consciousness'. In particular, it presents an opening for so-called idealists to challenge the hegemony of political realism in the international realm.

⁶ *Ibid.*, p. viii.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*, p. 174.

¹¹ *Ibid.*

¹² *Ibid.*, p. 31.

For realists, morality tends to be a matter of private choice and preference. Thus, as David Fisher points out: 'Inter-state relations are treated as an ethically free zone in which considerations of realpolitik and the pursuit of power dominate.'¹³ But if international relations can be reconceived as moral then we will need to reflect on what kind of world we ought to build. In this paper, I will argue that the ideas of three Catholic theologians—Luigi Sturzo, Jacques Maritain and John Courtney Murray—who all wrote extensively on global governance in the past century, have much to offer with respect to our understanding of state sovereignty and global governance.¹⁴ I will then tally their ideas with the views of a number of contemporary political theorists committed to a vision of cosmopolitan democracy. This shared vision, I will conclude, can serve as a rich starting point for continued reflection on global governance in the years to come.

Recent Catholic Reflection on State Sovereignty

First, then, let us turn to the work of Luigi Sturzo, Jacques Maritain, and John Courtney Murray regarding state sovereignty. I will begin by describing the thought of Sturzo in this regard and then turn to the relevant work of Maritain and Murray.

Luigi Sturzo, Italian priest, social reformer and founder in 1919 of what became the Christian Democratic Party, wrote extensively about global governance during the last century. Sturzo's great contribution regarding global governance is his account of the formation and development of the *idea* of an International Community.¹⁵ He locates the roots of this idea in the Christian revelation of human equality before God and the subsequent religious duty to love one's neighbor in a way that transcends the traditional boundaries of family, clan, nation or empire that characterized the ancient world. As Sturzo puts it: 'No bond of kinship, race or nation was to be respected if it drew a man away from God and infringed the rights of conscience.'¹⁶ Of course, this 'Good News' was universal; it was 'addressed to all peoples and all classes, Jew or Gentile, Greek or Barbarian, rich or poor, master or slave.'¹⁷ Moreover, there emerged the constitution of the Church, which was deemed 'extraneous to political or domestic institutions, autonomous and independent, founded on definite beliefs reputed as truths, indeed as

¹³ David Fisher, *War and Morality: Can War be Just in the Twenty-first Century?* (Oxford: Oxford University Press, 2011), p. 2.

¹⁴ Here it is worth noting Daniel Philpott's thesis that the roots of modern sovereignty lie in Martin Luther's distinction in 'Doctrine of the Two Kingdoms and the Two Governments' between the 'realm of the spirit', the site of the individual believer's relationship with Christ that is animated by the Word, and the 'realm of the world', where public order is maintained through the restraint of sinful human beings. The two realms are to be kept separate, which of course entails not only a secular political realm, but also a territorial government to uphold it. As Philpott infers: '[S]overeignty, in substance if not in name, comes directly out of the very propositions of Protestant theology, in all of its variants.' (Philpott, *Revolutions in Sovereignty*, p. 108).

¹⁵ Luigi Sturzo, *The International Community and the Right of War*, trans. Barbara Barclay Carter (New York: Howard Fertig, 1970), pp. 23-86.

¹⁶ Sturzo, *Church and State*, trans. Barbara Barclay Carter (New York: Longmans, Green and Co., 1939), p 21.

¹⁷ *Ibid.*

truth itself.¹⁸ Thus the tribal values of the pre-Christian world are inverted, and human *personality* assumes the mantle previously held by the social and ethnic bonds of that era.

Admittedly, the notion of a Christian international society is at marked variance with the facts of history. As Sturzo reminds us, a fundamental dualism of political and religious powers was the novelty introduced with Christianity, and this diarchy – as he calls it – has characterized every Christian civilization for two thousand years. Indeed, one could argue it was precisely this dualism that allowed political power to dissociate itself from religious authority over the course of the centuries and claim for itself not only autonomy, but also *absolute* autonomy over its subjects through the appropriation of its own personality. In any event, Sturzo concedes the modern state remained the central arbiter of power in the International Community up to his day.

But the state was not the only such power. In fact, the development of such bodies as the Permanent Arbitration Court, the Permanent Court of International Justice, the Pan-American Union, the British Commonwealth, and the League of Nations, reflected the evolution of a relatively new reality that Sturzo describes as the *interdependence* of states.¹⁹ This development was premised for Sturzo on the fundamental law of Individuality-Sociality that underlies all human society: *'The more individuals increase in conscious personality, the fuller the development of their associative qualities and forces; the fuller the development of such associative forces, the more the individuals develop and deepen the elements of their personality.'*²⁰ Thus society crystallizes itself through a continuous process of action and reaction into a number of individual bodies, while at the same time the individual is socialized through the development of these same bodies. This variety leads Sturzo to claim that it is simply not true that political power has to be concentrated in a single body, or that such a body has to be the state.²¹

This vision does not mean that Sturzo thinks there should be no role afforded to states in the international realm. To the contrary, he claims that the state gains in stability to the extent that its power relies less on force than on law. Indeed, the achievement of 'conscious personality' on the part of the various states is a key factor for Sturzo in the progress of the International Community towards its own organization and self-consciousness. But this very progress suggests that modern states are responding through the enactment of treaties and conventions to a reality beyond themselves. This reality, moreover, amounts to an 'unwritten law', or moral force that is oriented towards the protection of individual persons, and which becomes the objective rule of social life in the form of international law.²² The key point here is that Sturzo discerns not only a tendency that underlies the development of the international community, but also a normative thread that runs throughout the heart of human history. In short, states are – and should be – deferring in a progressive manner to the basic datum of human personality, understood as both individual and social in light of its eternally evolving relations.²³

¹⁸ *Ibid.*

¹⁹ Sturzo, *The International Community and the Right of War*, p. 65.

²⁰ *Ibid.*, pp. 44-45, italics in original.

²¹ *Ibid.*, p. 52.

²² *Ibid.*, pp. 74-86.

²³ *Ibid.*, p. 82.

Maritain shares with Sturzo this fundamental commitment to the dignity of the human person, the notion that history moves in a certain direction and that natural law constitutes the foundation of any genuine conception of human society. But Maritain moves beyond Sturzo to the extent that he articulates, first, an array of human rights that serve as the crucial conditions of active agency for members of any political society, and, second, an account of civic friendship—or, as Maritain would prefer, Christian brotherhood—that serves as the glue holding our commitments to such rights and the sense of justice that underlies them together.²⁴ Indeed, in one of his major works written during the Second World War, *Christianity and Democracy*, Maritain articulates the gospel heart of ‘this ideal of common life, which we call democracy.’²⁵

Of course, Maritain was aware that the realization of this ideal of universal brotherhood would require great effort on the part of humanity. Consequently, he sought to articulate a vision of global governance for the post-war era in light of his rejection of the concept of state sovereignty and understanding of the state as a set of institutions designed simply to uphold the common good—defined by the Church as ‘the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment’²⁶—of the body politic it serves. ‘In the eyes of sound political philosophy there is no sovereignty’, Maritain writes,

that is, no natural and inalienable right to *transcendent* or *separate* supreme power in political society. Neither the Prince nor the King nor the Emperor was really sovereign, though they bore the sword and attributes of sovereignty. Nor is the State sovereign; nor are even the people sovereign. God alone is sovereign.²⁷

But this theoretical rejection of sovereignty also reflected the *actual fact* that by the mid-twentieth century the international community alone enjoyed the capacity to become—in Aristotelian terminology—a self-sufficient or perfect society.

Maritain’s subsequent vision of global governance is couched in terms of a distinction between a *merely governmental* theory of world organization that would reduce global governance to the *sole and exclusive* consideration of the *state and government* and a *fully political* theory that envisages the matter under the universal or integral consideration of the *body politic* or *political society*. Thus he envisages a ‘pluralist unity’ of the international body politic that incorporates not only the international and supranational institutions that would be required by a world government or authority, but also the particular political communities of the world with all their customs and institutions.²⁸

²⁴ See Jacques Maritain, *The Rights of Man and Natural Law* (New York: Charles Scribner’s Sons, 1943).

²⁵ Jacques Maritain, *Christianity and Democracy* (New York: Charles Scribner’s Sons, 1944), p. 27.

²⁶ Pope Paul VI, ‘*Gaudium et Spes: The Pastoral Constitution on the Church in the Modern World*’, in *Catholic Social Thought: the Documentary Heritage*, edited by David J. O’Brien and Thomas A. Shannon (Maryknoll, N.Y.: Orbis Books, 1992), no. 26, p. 181.

²⁷ Jacques Maritain, *Man and the State* (Washington, D.C.: The Catholic University of America Press, 1998), p. 24.

²⁸ *Ibid.*, pp. 201-216.

In a similar manner to Sturzo and Maritain, Murray argues that an international community has emerged historically as a natural society (a society that exists by the law of man's social nature), with its own proper good. In Murray's view: 'The law of nature therefore demands that this society be organized in a properly human way for the prosecution of its common good.'²⁹ This good is achieved when the order of justice inherent in the very constitution of international society is secured through juridical institutions that guarantee the protection of rights and the performance of duties—if necessary, under the threat of coercive force.

Murray retains the nomenclature of state sovereignty—unlike Sturzo and Maritain—though he recasts the exercise of sovereignty as the freely accepted obligation to make the family of nations a good family.³⁰ Murray's notion of state sovereignty is not designed to eradicate the state as an important entity in international affairs. To the contrary, he envisions the state as representing the natural sociability of a particular people and, therefore, like his predecessors, as an integral unit of the international community. But he is adamant that the latter be *truly* organized, that is, juridically organized in a manner that controls national sovereignties in order to protect the juridical order and vindicate it in case of violence.³¹

The Cosmopolitan Democrats

The political theorists whom I labeled as cosmopolitan democrats at the beginning of the paper—I have in mind such thinkers as Daniele Archibugi, Allen Buchanan, Simon Caney, David Held, and Thomas Pogge—are, broadly speaking, a group of scholars who acknowledge the increased scope of international law in light of today's broad commitment to certain universal standards of morality pertaining to human rights and democracy yet worry about the lack of institutional structures to enforce it in a legitimate manner. In particular, these theorists lament a democratic deficit at the global level that they trace in large part to the continued delegation of governance to states at a time of wide-scale globalization.³²

But how should globalization be confronted? How should the longstanding notion of state sovereignty be replaced? In Archibugi's view, 'sovereignty should be replaced, both within and between states, by constitutionalism, thereby subjecting every institution to rules, checks, and balances.'³³ This suggestion reflects Pogge's proposal of a vertical dispersion of sovereignty and Held's call for both the centralization and

²⁹ John Courtney Murray, S.J., 'The Juridical Organization of the International Community', in *Bridging the Sacred and the Secular*, edited by J. Leon Hooper, S.J. (Washington, D.C.: Georgetown University Press, 1994), pp. 28-41, at p. 34.

³⁰ *Ibid.*, p. 38.

³¹ *Ibid.*, pp. 31-32.

³² See, for example, Daniele Archibugi, *The Global Commonwealth of Citizens*; Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations of International Law* (New York: Oxford University Press, 2004); Simon Caney, *Justice Beyond Borders: A Global Political Theory* (New York: Oxford University Press, 2005); David Held, 'Law of States, Law of Peoples: Three Models of Sovereignty', *Legal Theory* 8:1 (2002), pp. 1-44; Thomas W. Pogge, 'Cosmopolitanism and Sovereignty', *Ethics* 103:1 (1992), pp. 48-75.

³³ Archibugi, *The Global Commonwealth of Citizens*, p. 98.

decentralization of political power.³⁴ 'If decision-making is decentralized as much as possible', Held explains,

it maximizes the opportunity of each person to influence the social conditions that shape his or her life. But if the decisions at issue are translocal, transnational, or transregional, then political institutions need not only to be locally based but also to have a wider scope and framework of operation.³⁵

For this reason, cosmopolitan democrats call for different levels of global governance—in Archibugi's case, local, state, interstate, regional, and global—in order to enhance democracy as a way of managing global affairs. Archibugi not only cites empirical data supporting the benefits of democracy—less exposure of citizens to violence and conflict, greater protection of their rights, less risk of famine, plus economic indicators—but also argues that democracy needs to be developed at the interstate level in order to enhance its effects at the state level, rather than the other way round as is commonly thought, since democratic states have too often failed to translate their internal ideals into external behavior.

As Caney points out, 'what is being envisioned is a political order in which the units may lack the properties of sovereign statehood like *comprehensiveness* and *supremacy*.'³⁶ Indeed, there may be no one political institution that has final authority. 'This is often said to be a problem', Caney writes, 'but from an instrumental cosmopolitan perspective, it is an advantage since it prevents the centralization of coercive power. It forces people and different institutions to negotiate and cooperate with each other.'³⁷ As Archibugi points out:

The idea that global conflicts can be resolved by means of constitutional and legal procedures rather than by force is based on the conviction that rules may be enforced even in the absence of an ultimate power of coercion. The cosmopolitan democracy project is thus seen to be much more ambitious—to transform international politics from a domain of antagonism to one of agonism.³⁸

Archibugi recognizes that the modern state remains the central political unit of international life. 'In order to participate in world political life', he writes, 'each individual is obliged to become a member of a state, and each community must contrive to speak with a single voice, that of a monocratic government.'³⁹ But the result of this situation is that the world is run by a small band of actors that amounts to 'a directorate, giving rise to what may be defined as an intergovernmental oligarchy.'⁴⁰ For Archibugi, then, citizens of the world have to be able to participate in global choices through new institutions akin to and yet autonomous from those existing within states.

³⁴ Pogge, 'Cosmopolitanism and Sovereignty', p. 62; and Held, 'Law of States, Law of Peoples', p. 23.

³⁵ Held, 'Law of States, Law of Peoples', p. 28.

³⁶ Caney, *Justice Beyond Borders: A Global Political Theory*, p. 163.

³⁷ *Ibid.*

³⁸ Archibugi, *The Global Commonwealth of Citizens*, p. 99.

³⁹ *Ibid.*, p. 5.

⁴⁰ *Ibid.*

One such institution might be a world parliamentary assembly, which, for Archibugi, 'would be the visible and tangible demonstration of the institutionalization of a global commonwealth of citizens.'⁴¹ Such a body would address the gap between the fact that citizens of the world increasingly participate in global processes and the legal rules that still link rights and duties to territorial states. It is for this reason that Buchanan attempts to ground international law on justice as opposed to the consent of states.⁴² For Archibugi, world citizenship of this kind 'opens up the way to a global commonwealth of citizens, which could take thicker forms for certain groups of persons in conditions of extreme need.'⁴³ Here Archibugi has in mind displaced persons. He points out:

Groups of persons deprived of their national citizenship rights could find protection in a more comprehensive world citizenship in which the institutions in charge perform several administrative functions such as the issue of passports, hitherto the exclusive competence of the states.⁴⁴

The Confluence of Catholic Reflection on State Sovereignty and the Cosmopolitan Democrats

We have seen that Sturzo conceives political power as ideally distributed and differentiated in a multiplicity of organs that include the state but are not reduced to it. He admits the modern state has enjoyed an ascendant role in the international realm, but argues that this realm is in the process of evolving towards greater interdependence and co-operation as a result of the treaties, conventions, and league systems of the nineteenth and early twentieth centuries. Consequently, it is no longer possible to speak of state sovereignty in the international context. In Sturzo view:

It must be recognized that every public power is morally, legally, and politically limited by the nature of human personality and by man's social relationships. Thus one can say that the anti-human myth of the sovereignty of the King or People is to-day wholly, or nearly wholly, of the past.⁴⁵

Put differently, the true fount of international law is neither the state nor the International Community but human personality itself.⁴⁶

Maritain's vision tallies with Sturzo to the extent that his notion of world political authority is a World State, which

will have to enjoy, within strict limits and the well-balanced modalities proper to such a completely new creation of human reason, the powers naturally required by a perfect

⁴¹ *Ibid.*, p. 173.

⁴² Buchanan, *Justice, Legitimacy, and Self-Determination*, pp. 304-305.

⁴³ Archibugi, *The Global Commonwealth of Citizens*, p. 118.

⁴⁴ *Ibid.*

⁴⁵ Sturzo, *The International Community and the Right of War*, p. 79.

⁴⁶ *Ibid.*, p. 82.

society: legislative power, executive power, judicial power, with the coercive power necessary to enforce the law.⁴⁷

Thus he is careful to present a *fully political* theory of world organization in light of these 'strict limits' and 'well balanced modalities' as opposed to a *merely governmental* one. As he points out, a *merely governmental* theory would replicate at the global level the way in which the ambition to become a sovereign person was transferred from the Emperor and Kings of mediaeval Europe to the modern States; in effect, it would simply transfer that same ambition to a World Superstate. A *fully political* theory, in contrast, comprises a *pluralist unity* of various political bodies held together by the foundation of a world political society. It is a theory that both includes states and recognizes their lack of self-sufficiency.

Murray's vision, in turn, tallies with both Sturzo and Maritain to the extent that he retains a role for authoritative institutions that can mediate between the individual and any putative global authority. Such institutions—or bodies—will include nation states, which are important for Murray since they reflect the aspirations of, interest, and needs of certain groups. But these institutions will be limited by their accountability to the standards of positive international law. This commitment on the part of the Catholic thinkers to a limitation of political power in the face of international law—itsself grounded in the moral dignity of the human person and his or her subsequent rights—suggests a profound affinity between all three of them and the cosmopolitan democrats as described above. For it reflects the central premise shared by the cosmopolitan democrats that states are no longer able to claim the deep legal and moral significance that their boundaries previously implied during the so-called Westphalian era. One central trait of the contemporary world is that states are now judged according to the general, if not universal, standards constituted by international law. As Buchanan argues, these are the standards of basic human rights and justice for all persons.⁴⁸

As the cosmopolitan democrats have argued, the relatively recent regime of liberal international sovereignty entrenches powers and constraints, rights and duties, in a system of international law, which is administered by states yet goes beyond the 'Westphalian' conception of state authority. Thus the regime comes into conflict, and occasionally contradiction, with national laws. 'Within this framework', Held writes, 'states may forfeit claims to sovereignty if they violate the standards and values embedded in the liberal international order; and such violations no longer become a matter of morality alone.'⁴⁹ These changes amount to transformative developments that have altered the form and content of politics across the globe. As Held attests: 'They signify the enlarging normative reach, extending scope, and growing institutionalization of international laws and practices—the beginning of a 'universal constitutional order' in which the state is no longer the only layer of legal competence to which people have transferred public powers.'⁵⁰ In this respect, we can discern a similarity between Murray's commitment to an order of justice inherent in the very constitution of international society, Archibugi's call for a constitutional order that provides checks and

⁴⁷ Maritain, *Man and the State*, p. 199.

⁴⁸ See Buchanan, *Justice, Legitimacy, and Self-Determination*.

⁴⁹ Held, 'Law of States, Law of Peoples', p. 13.

⁵⁰ *Ibid.*

balances to the various institutions and bodies—including states—in the contemporary international realm, and Buchanan's attempt to legitimate such an order by an appeal to justice that protects the basic human rights of all persons.

Of course, the cosmopolitan democrats are committed neither to Sturzo's notion of a deeper social law underlying international law nor to Murray's broader notion of a natural law underpinning international society. Buchanan, for instance, argues against the view that states should, or at least may, exclusively pursue the national interest in their foreign policies on the basis of his commitment to human rights. 'Because we have a limited moral obligation to help ensure that all persons have access to rights-protecting institutions', he argues, 'we cannot regard our state simply as an institutional resource for pursuing our own interests.'⁵¹ But Murray is similarly committed to justice and human rights, secured through a constitutional order, as the end of international society.⁵² Thus Buchanan and Archibugi confirm Murray's resistance to a theory of international relations premised on the national interest in more ways than one.

More specifically, the fact that none of the three Catholic writers ascribes absolute authority to the bodies, communities, or states of the international realm renders the latter similar to Caney's units of an idealized political order, which for the cosmopolitan democrats lack sovereignty in any comprehensive or supreme sense. Like their Catholic brethren, the cosmopolitan democrats want to jettison the traditional notion of state sovereignty in order to accommodate the myriad units of political and economic life that exist in the world today along with the claims of the individual persons that comprise them. Finally, the value underpinning these commitments is likewise one that is shared: it is a belief in the fundamental dignity of human personality considered at a time when the democratic ethos that has upheld this dignity is increasingly threatened.

In light of these considerations, Maritain's notion of a World State may have less in common with such an institution as it is commonly conceived—in effect, as the sovereign apex of a *merely governmental* theory of world organization—than with the notion of a world parliament as envisaged by Archibugi. More than this: both Maritain's view of a World State and Archibugi's view of a world parliament might be described as reflecting Pope Benedict's recent insistence on the 'urgent need of a true world political authority.'⁵³ Benedict describes the goals of this authority as being to manage the global economy, to bring about disarmament, food security, and peace, and to guarantee environmental protection and migration. Moreover, he claims such an authority would need to be regulated by law, to observe the principles of subsidiarity and solidarity, to work towards the establishment of the common good, and to make a commitment regarding authentic integral human development inspired by the values of charity in truth. Furthermore, it would need to be universally recognized and to be vested with an effective power to ensure security for all, regard for justice, and respect for rights.

The clue for a confluence here between Maritain, Archibugi and Benedict lies in the latter's reference to the principle of subsidiarity, which is designed to help members of the body politic rather than absorb them. This principle has deep roots in the Catholic tradition as set forth by Pope Pius XI in his encyclical, *Quadragesimo Anno* (1931):

⁵¹ Buchanan, *Justice, Legitimacy, and Self-Determination*, p. 102.

⁵² Murray, 'The Juridical Organization of the International Community', p. 38.

⁵³ Pope Benedict XVI, *Charity in Truth (Caritas in Veritate)* (Washington, D.C.: United Conference of Catholic Bishops, 2009), no. 67.

It is a fundamental principle of social philosophy, fixed and unchangeable, that one should not withdraw from individuals and commit to the community what they can accomplish by their own enterprise and industry. So, too, it is an injustice and at the same a grave evil and a disturbance of right order, to transfer to the larger and higher collectivity functions which can be performed and provided for by lesser and subordinate bodies. Inasmuch as every social activity should, by its very nature, prove a help to members of the body social, it should never destroy or absorb them.⁵⁴

These words recall Held's account of cosmopolitanism, a key component of which is the principle of inclusiveness and subsidiarity. In Held's view:

The principle of inclusiveness and subsidiarity seeks to clarify the fundamental criterion for drawing proper boundaries around those who should be involved in particular domains, those who should be accountable to a particular group of people, and why. At its simplest, it states that those significantly (i.e., nontrivially) affected by public decisions, issues, or processes should, *ceteris paribus*, have an equal opportunity, directly or indirectly through elected delegates or representatives, to influence and shape them.⁵⁵

In other words, citizens who are affected by public decisions should have a say in their making. 'Accordingly', Held writes, 'democracy is best located when it is closest to and involves those whose life chances and opportunities are determined by significant social processes and forces.'⁵⁶ Such sentiments not only help to illuminate Benedict's intent when he insists on the urgent need of a true world political authority, but also suggest the confluence of cosmopolitan and Catholic conceptions of state sovereignty. Indeed, it is the moral centrality of the human person as global citizen rather than the supreme authority of the supposedly sovereign state that serves as the foundation for both Catholic and cosmopolitan thinkers.

Finally, let us not forget that the challenge to state sovereignty – and, indeed, the notion of global governance – is not without its critics. Here I will address two principal areas of concern: first, the way in which the cosmopolitan democracy project and its commitment to global democracy suffers from a vicious circularity; and, second, the question of the legitimacy of global governance institutions.

Regarding the concern with circularity, Chris Brown argues: 'a sense that the world constitutes a community is required before a global democracy could be effective, yet such a sense is unlikely to emerge in the absence of some kind of global democracy.'⁵⁷ Now the Catholic Church as an institution represents a global community operating within the realm of civil society.⁵⁸ Consequently, the Church might not only play a role that fosters this sense of worldwide community, provided its members are convinced they are called to play such a role, but also complement the cosmopolitan democracy

⁵⁴ Pope Pius XI, *Quadragesimo Anno*, in *Catholic Social Thought: The Documentary Heritage*, edited by David J. O'Brien and Thomas A. Shannon (Maryknoll, N.Y.: Orbis Books, 1992), no. 79, p. 60.

⁵⁵ Held, 'Law of States, Law of Peoples', p. 28.

⁵⁶ *Ibid.*

⁵⁷ Chris Brown, *Sovereignty, Rights, and Justice* (Cambridge: Polity Press, 2002), p. 246.

⁵⁸ By 'civil society', I mean that realm between individual persons and the state, in which voluntary associations are able not only to debate current issues, but also serve as mediators between citizens and government on matters pertaining to the common good.

project in this regard. Such a calling emerges most fully in the ideal of human brotherhood—expressed more modestly as civic friendship—to which Maritain appeals when envisioning the future of democracy at the midpoint of the twentieth century. But it is also a theme in Sturzo’s work—I referred earlier to his understanding of Christian Revelation as human equality before God—and for Murray, who grappled throughout his life with the tribalism of the American Catholic community.⁵⁹

Regarding the legitimacy of global institutions, both the Catholic tradition and the cosmopolitan democrats share a commitment to the primacy of law over force as a means of ensuring the morally just end of human society. We have seen in all three Catholic writers a firm commitment to the significance of law: Sturzo describes the developments in international law during the nineteenth and early twentieth centuries as the harbinger of the movement away from the sovereign states system and toward their interdependence that he witnesses in his own day; for this reason, he believed that international law reflected a deeper ‘social’ law—the law of ‘Individuality—Sociality’—that modern states ignore at their peril; Maritain includes law as an integral part along with justice and human rights of any genuinely humanistic society; and Murray calls for the juridical organization of international society as an institution integrally constituted by nature itself.

There is a similar commitment to law in the writings of the cosmopolitan democrats. But there is also a sense of the disregard for international law that persists even on the part of the more democratic states. ‘For this reason’, Archibugi writes, ‘although I agree with those desirous of strengthening the rule of law, as far as both its legislative and its judicial components are concerned, it seems necessary to base the rule of law also on an enhanced political legitimacy.’⁶⁰ In other words: ‘Only if the legitimacy of the rules is enhanced will it be possible to ensure that the depositaries of force will “voluntarily” obey them.’⁶¹ Part of the answer here lies in the reform of intergovernmental organizations such as the United Nations General Assembly and the International Court of Justice. In Archibugi’s view, however, only direct participation by citizens in world political life will genuinely increase the legitimacy of the rules. ‘The judicial organs themselves, unless incorporated into a democratic order’ he contends, ‘can be turned into a new juridical oligarchy or worse and may act solely when their action is in harmony with the will of the more powerful states.’⁶²

This latter possibility is a reminder of why the insights of not only the cosmopolitan democrats, but also the Catholic tradition on the matter of state sovereignty are vitally important. The two schools, I contend, thus serve as a highly suitable starting point for any contemporary reflection on the future of global governance.

Matthew Bagot, Spring Hill College
mbagot@shc.edu

⁵⁹ See Murray, ‘Challenges Confronting the American Catholic’, *The Catholic Mind*, May-June (1959), pp. 196-200, and ‘The Return to Tribalism’, *The Catholic Mind*, January (1962), pp. 5-12.

⁶⁰ Archibugi, *The Global Commonwealth of Citizens*, p. 146.

⁶¹ *Ibid.*

⁶² *Ibid.*

Bibliography

- Archibugi, Daniele. *The Global Commonwealth of Citizens: Toward Cosmopolitan Democracy*. Princeton, N.J.: Princeton University Press, 2008.
- Brown, Chris. *Sovereignty, Rights, and Justice*. Cambridge: Polity Press, 2002.
- Buchanan, Allen. *Justice, Legitimacy, and Self-Determination: Moral Foundations of International Law*. New York: Oxford University Press, 2004.
- Caney, Simon. *Justice Beyond Borders: A Global Political Theory*. New York: Oxford University Press, 2005.
- Cooper, Robert. *The Breaking of Nations: Order and Chaos in the Twenty-first Century*. New York: Atlantic Monthly Press, 2003.
- Fisher, David. *War and Morality: Can War be Just in the Twenty-first Century?* Oxford: Oxford University Press, 2011.
- Held, David. 'Law of States, Law of Peoples: Three Models of Sovereignty', *Legal Theory* 8:1 (2002), pp. 1-44.
- International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. Ottawa: International Development Research Centre, 2001.
- Maritain, Jacques. *Christianity and Democracy*. New York: Charles Scribner's Sons, 1944.
- Maritain, Jacques. *Man and the State*. Washington, D.C.: The Catholic University of America Press, 1998.
- Maritain, Jacques. *The Rights of Man and Natural Law*. New York: Charles Scribner's Sons, 1943.
- Murray, John Courtney, S.J. 'The Juridical Organization of the International Community', in *Bridging the Sacred and the Secular*, edited by J. Leon Hooper, S.J. Washington, D.C.: Georgetown University Press, 1944, pp. 28-41.
- Murray, John Courtney, S.J. 'Challenges Confronting the American Catholic', *The Catholic Mind*, May-June (1959), pp. 196-200.
- Murray, John Courtney, S.J. 'The Return to Tribalism', *The Catholic Mind*, January (1962), pp. 5-12.
- Nexon, Daniel H. *The Struggle for Power in Early Modern Europe: Religious Conflict, Dynastic Empires, and International Change*. Princeton, N.J.: Princeton University Press, 2009.
- Philpott, Daniel. *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations*. Princeton, N.J.: Princeton University Press, 2001.
- Pogge, Thomas. 'Cosmopolitanism and Sovereignty', *Ethics* 103:1 (1992), pp. 48-75.
- Pope Benedict XVI. *Charity in Truth (Caritas in Veritate)*. Washington, D.C.: United Conference of Catholic Bishops, 2009.
- Pope Paul VI. 'Gaudium et Spes: The Pastoral Constitution on the Church in the Modern World', in *Catholic Social Thought: the Documentary Heritage*, edited by David J. O'Brien and Thomas A. Shannon. Maryknoll, N.Y.: Orbis Books, 1992, pp. 166-237.
- Pope Pius XI, *Quadragesimo Anno*, in *Catholic Social Thought: The Documentary Heritage*, edited by David J. O'Brien and Thomas A. Shannon. Maryknoll, N.Y.: Orbis Books, 1992, pp. 42-79.
- Sturzo, Luigi. *Church and State*, trans. Barbara Barclay Carter. New York: Longmans, Green and Co., 1939.
- Sturzo, Luigi. *The International Community and the Right of War*. New York: Howard Fertig, 1970.

Teschke, Benno. *The Myth of 1648: Class, Geopolitics and the Making of Modern International Relations*. London: Verso, 2003.

UN General Assembly. *World Summit Outcome*, 15 September (2005).

Should We Ascribe Capabilities to Sentient Animals? A Critical Analysis of the Extension of Nussbaum's Capabilities Approach

Anders Melin and David Kronlid

Originally, the Capabilities Approach had a strong anthropocentric orientation because of its focus on the entitlements of individual humans. However, as a part of the interest to employ it within animal and environmental ethics, it has been discussed whether the Capabilities Approach should consider also non-human life forms for their own sake. The most influential and elaborated contribution to this debate is Martha Nussbaum's extension of the Capabilities Approach to include sentient animals. In this article, we argue that Nussbaum's ascription of capabilities to animals is problematic, since the concept of a capability normally denotes an opportunity to choose between different functionings. When Nussbaum ascribes capabilities to animals, the concept seems to simply denote specific abilities. Such a use is problematic since it waters down the concept and makes it less meaningful, and it may obscure the fact that normal, adult humans, in contrast to sentient animals, can act as conscious moral agents. The aim of granting moral status to sentient animals can be achieved more convincingly by describing our moral relationship to animals in terms of the functionings we should promote, instead of ascribing capabilities to them.

Introduction

The Capabilities Approach has become increasingly influential as a theoretical approach to social justice and development. Recently, it has also been applied to questions of animal and environmental ethics.¹ Originally, the Capabilities Approach had a strong

¹ See, for example, Catherine Butler and Peter Simmons, 'Framing Energy Justice in the UK: The Nuclear Case', in *Energy Justice in a Changing Climate: Social equity and low-carbon energy*, edited by Karen Bickerstaff, Gordon Walker and Harriet Bulkeley (London: Zed Books, 2013), pp. 139-157; Jozef Keulartz, Jac. A. A. Swart, 'Animal Flourishing and Capabilities in an Era of Global Change', in *Ethical Adaptation to Climate Change*, edited by Allen Thompson and Jeremy Bendik-Keymer

anthropocentric orientation because of its focus on the entitlements of individual humans. However, as part of the interest to employ it within animal and environmental ethics, it has been discussed whether the Capabilities Approach should take also non-human life forms into consideration for their own sake. The most influential and elaborated contribution to this debate is Martha Nussbaum's extension of the Capabilities Approach to include sentient animals.² Although there has been some critical discussion of her proposal,³ most of the critics focus on the problematic practical consequences of her approach, especially of her list of animal capabilities, rather than on the more fundamental question whether it is at all appropriate to ascribe capabilities to animals. It is this latter question we want to discuss here. This is an important issue to analyze since the concept of capability was originally developed to be applied to normally functioning adult humans, and it is far from evident that it can be applied to non-humans.

A Brief Account of the Capabilities Approach

The Capabilities Approach was developed by Amartya Sen as an alternative to traditional Utilitarian approaches to welfare economics and has since been expanded into a more general theory of justice by, for example, Martha Nussbaum.⁴ It is generally understood as a framework for different normative judgements, for example, the

(Cambridge, MA: The MIT Press, 2012), pp. 123-144; Breena Holland, 'Environment as Metacapability: Why a Dignified Human Life Requires a Stable Climate System' in *Ethical Adaptation to Climate Change*, edited by Allen Thompson and Jeremy Bendik-Keymer (Cambridge, MA: MIT Press, 2012), pp. 145-164; Kyoko Kusakabe (ed.), *Gender, Roads, and Mobility in Asia* (Bourton on Dunsmore, UK, Practical Action, 2012) and David O. Kronlid, *Human Capabilities and Climate Change Adaptation*, (New York, NY: Palgrave MacMillan, 2014).

² Martha C. Nussbaum, "'Beyond Compassion and Humanity": Justice for Non-Human Animals' in *Animal Rights: Current Debates and New Directions*, edited by Cass R. Sunstein and Martha C. Nussbaum (Oxford: Oxford University Press, 2005), pp. 299-320; Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, MA: The Belknap Press of Harvard University Press, 2006); Martha C. Nussbaum, 'Human Dignity and Political Entitlements', in *Human Dignity and Bioethics. Essays Commissioned by the President's Council on Bioethics* (Washington, D.C., 2008), pp. 351-380.

³ See, for example, John P. Clark, 'Capabilities Theory and the Limits of Liberal Justice: On Nussbaum's *Frontiers of Justice*', *Human Rights Review* 10:4 (2009), pp. 583-604; Marcel Wissenburg, 'The Lion and the Lamb: Ecological Implications of Martha Nussbaum's Animal Ethics', *Environmental Politics* 20:3 (2011), pp. 391-409; Ramona Ilea, 'Nussbaum's Capabilities Approach and Nonhuman Animals: Theory and Public Policy', *Journal of Social Philosophy* 39:4 (2008), pp. 547-563; Simon Hailwood, 'Bewildering Nussbaum: Capability Justice and Predation', *The Journal of Political Philosophy* 20:3 (2012), pp. 293-313; Katy Fulfer, 'The Capabilities Approach to Justice and the Flourishing of Non-sentient Life', *Ethics & The Environment* 18:1 (2013), pp. 19-38; David Schlosberg, *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford: Oxford Scholarship Online, 2007) and Elizabeth Cripp, 'Saving the Polar Bear, Saving the World: Can the Capabilities Approach Do Justice to Humans, Animals and Ecosystems?', *Res Publica* 16:1 (2010), pp. 1-22.

⁴ See, for example, Amartya Sen, *Commodities and Capabilities* (New Delhi: Oxford India Paperbacks, 1999); Amartya Sen, *Development as Freedom* (New York: Anchor Books, 1999); Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000) and Nussbaum, *Frontiers of Justice*.

assessment of individual well-being and the assessment of social conditions. It focuses on what people can be or do, such as their opportunities to learn, enjoy social relationships, and be mobile, in contrast to other accounts of well-being, which are exclusively concerned with subjective categories, such as happiness, or on the means to well-being, such as wealth or income.⁵

'Functionings' and 'capabilities' are two fundamental concepts within the Capabilities Approach. Functioning refers to what people actually are or do, such as being mothers or fathers, expressing themselves through art works or being volunteers in NGOs. They can be both complex and very elementary, such as the functioning to be well-nourished. Capability refers to the opportunity to function in a certain way. A key element of the Capabilities Approach is the emphasis on personal freedom concerning how one wants to live one's life. Accordingly, Nussbaum states that in the case of adult citizens, a fair distribution of capabilities, rather than functionings, should be the political goal. This means that persons should be given the opportunity to, for example, have leisure time or to live in sexual relationships if this is the kinds of functionings that they value, or they should still be allowed to work 14 hours a day or to live in celibacy if these are the kind of functionings they value instead.⁶ Along the same lines, Sen also distinguishes between functionings and capabilities, and argues that it is an essential part of a good human life to be able to exercise choice.⁷

Nussbaum's Extension of the Capabilities Approach to Animals

As stated above, Nussbaum's early formulations of the Capabilities Approach are concerned only with entitlements of human beings. One central tenet in her early formulation of the Capabilities Approach is that certain capabilities should be assigned to all normally functioning adult humans, since they are beings with a capacity to consciously form their lives. The concept of capability is closely linked to the concept of human dignity.⁸ However, in *Frontiers of Justice* and some other later works Nussbaum argues that sentient animals should be included in a theory of justice. She formulates her own view of our moral relationship to sentient animals partly based on a critique of Kantian social contract theory. Such theories reject that humans have obligations of justice to non-human animals, because they suppose that the human form of rationality is the only ground of dignity and because they describe political principles as deriving from a contract among equals. According to Nussbaum, such theories should be criticized for two reasons: we need to recognize that many non-human animals possess a high level of intelligence, and we should reject the idea that only beings who can join a contract as equals can be subjects of justice. She is critical of Rawls's theory, which she sees as a form of Kantian social contract theory, since he denies that our behaviour towards animals should be regulated by principles of justice. Nussbaum criticizes Rawls' contract theory for not taking into account how intelligent animals are and how capable they are of

⁵ Ingrid Robeyns, 'The Capability Approach', *Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta, online at <http://plato.stanford.edu/entries/capability-approach>, (accessed 2015-02-10).

⁶ Nussbaum, *Women and Human Development*, pp. 87-88.

⁷ Amartya Sen, *Inequality Reexamined* (Oxford: Oxford Scholarship Online, 2003), pp. 40-42.

⁸ See, for example, Nussbaum, *Women and Human Development*, pp. 71-72.

forming complex relationships. For Rawls, only beings that have a capacity for a conception of the good and a capacity for a sense of justice can be considered moral persons, and only moral persons are entitled to be treated with justice. However, Rawls admits that we can have duties of compassion towards animals since they can feel pleasure and pain.⁹

Nussbaum believes that the contract doctrine is inappropriate for handling ethical issues related to animals since we cannot conceive of animals as being participants in a contract. Contrary to Rawls, Nussbaum argues that our treatment of animals also raises issues of justice. She says that it is not only morally wrong to treat them badly; it is unjust since they have a moral entitlement not to be mistreated. The capabilities approach sees individual animals as agents and subjects, as creatures that are ends in themselves. Animals are active beings that have a good and they are entitled to pursue that good. It is not enough to regard them as objects of compassion, since such a view does not acknowledge the fact that someone is to blame if they are made to suffer. Humans should not only look upon animals with compassion, instead we should also avoid and hinder acts that cause them suffering.¹⁰

For Nussbaum the concept of capabilities is closely linked to the concept of dignity, since she understands the promotion of capabilities as a way of realizing a life with human dignity. She states that 'dignity is not defined prior to and independently of the capabilities, but in a way intertwined with them and their definition'.¹¹ As Nussbaum points out herself, her view of dignity has evolved over time. In *Women and Human Development*, she describes dignity as a unique human characteristic by pointing out that humans have a way of performing certain functions, such as eating, which is distinctly human. To live a dignified human life is to exercise one's rational powers and to consciously form one's life in cooperation with others.¹² However, in later works, Nussbaum points out that non-human sentient animals possess dignity since they, too, are complex living beings with capacities for activity.¹³ Nussbaum argues that the Capabilities Approach should include the moral belief that every sentient animal should be able to live a flourishing life with the type of dignity relevant to the species to which it belongs.¹⁴

One important reason why Nussbaum wants to ascribe capabilities to animals is that she emphasizes the similarities between humans and animals. According to her view, also other animals have forms of rationality, and the human rationality is just one specific form of practical reasoning.¹⁵ Nussbaum points out that some characteristics that often have been regarded as uniquely human, such as practical intelligence, altruism and empathy, can be found also in animals.¹⁶

⁹ Nussbaum, *Frontiers of Justice*, pp. 327-332.

¹⁰ *Ibid.*, pp. 329-338.

¹¹ *Ibid.*, p. 162.

¹² Nussbaum, *Women and Human Development*, pp. 71-72.

¹³ Nussbaum, 'Human Dignity and Political Entitlements'.

¹⁴ Nussbaum, *Frontiers of Justice*, p. 351.

¹⁵ *Ibid.*, pp. 159-160.

¹⁶ *Ibid.*, p. 363.

A Critical Discussion of Nussbaum's Extensionism

We welcome Nussbaum's attempt to integrate concern for animals for their own sake within the framework of the Capabilities Approach. Such a move is important if we want to apply the Capabilities Approach to individual and collective actions, which affect the lives of animals. Her argumentation is in line with recent trends within ethics. It has become increasingly common to accept the moral belief that also animals should be taken into account for their own sake and that animals should be included within the sphere of justice. However, we do not think that ascribing capabilities to animals is a convincing way to integrate concern for them for their own sake within the Capabilities Approach. The main reason is that according to the common definition of what a capability is, it seems to require the unique human ability to make rationally considered choices.

First of all, Nussbaum has a tendency to emphasize the similarities between humans and sentient animals, but she pays less attention to the morally relevant differences. She seems right in claiming that Western philosophy has often neglected the ability of sentient animals to be agents and subjects. The view that we should recognize that also animals can be agents is common in today's ethical debate. Sue Donaldson and Will Kymlicka, for example, criticize the tendency within traditional animal rights theories to conceive of humans as the primary agents of the relationships between humans and animals. Instead, they argue that also animals have the capacity of agency. They can either choose to live close to human settlements to take advantage of the opportunities it brings, or choose to avoid humans.¹⁷ Moreover, Donaldson and Kymlicka claim that some animals also have a form of morality. Similar to Nussbaum, they emphasize that some social mammals, such as primates and canids, can exhibit altruistic behaviour. Furthermore, some mammals can develop and act according to social norms.¹⁸

However, what is lacking in Nussbaum's discussion about the alleged capabilities of animals is a more detailed understanding of what distinguishes animals from humans. Her argumentation is unconvincing since she does not show why we should ascribe capabilities also to animals, in spite of these differences. Even if we agree that animals can be agents, we can still claim that humans have a unique ability to reflect on their ends of their actions. It can be argued that there is not only a quantitative, but also a qualitative difference between human rationality and the rationality of sentient animals. Humans are not only more intelligent, but also have a unique level of self-awareness. Even if we agree with the idea that animals have a form of morality, we can still argue that humans have a unique ability to make conscious moral choices.

The differences between animals and humans are described in a persuasive way by Gary E. Varner, who argues that humans have a unique level of self-consciousness.¹⁹ He is critical of the standard belief that humans differ from animals since they are rational, make and use tools, and have a language, since scientific studies have shown that some animals also have these characteristics to some degree. However, Varner states

¹⁷ Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford: Oxford University Press, 2011), pp. 65-66.

¹⁸ Donaldson and Kymlicka, *Zoopolis*, pp. 117-118. The belief that animals have some form of morality is also defended in Marc Bekoff and Jessica Wild, *Wild Justice: The Moral Lives of Animals* (Chicago: University of Chicago Press, 2010).

¹⁹ Gary E. Varner: *Personhood, Ethics, and Animal Cognition: Situating Animals in Hare's Two Level Utilitarianism* (Oxford: Oxford Scholarship Online, 2012).

that what makes humans different from animals is our complex use of language.²⁰ He makes a distinction between three kinds of sentient beings: (1) persons, (2) near-persons, and (3) the merely sentient.²¹ Only humans can be considered persons, since only humans have a biographical sense of self. Only humans can conceive of their lives as a story with a past, a present and a future, since it requires the use of a highly complex language. Normal adult humans create their identity by shaping an autobiographical narrative, either explicitly or implicitly. It is this ability, which makes normal, adult humans morally responsible for their actions.²² Varner claims that some animals, such as primates and dolphins, can be considered near-persons, since they can be conscious of their immediate past and future. However, there is no good evidence that they can have the biographical sense of self that normal, adult humans have. Although some primates have been taught sign language, they have not been able to learn a sufficiently complex language that enables them to develop a biographical sense of self.²³

Varner states that there is some evidence for the fact that also some animals, and not only humans, can have second-order desires, that is, desires about one's desires.²⁴ However, normal, adult humans do not only have simple second-order desires, but also a certain conception of what kind of person they want to become and how they ought to act in order to become such a person. They have a greater ability than animals to reflect on the purposes of their actions.²⁵

According to the common understanding of the concept of capability, it cannot be applied to sentient animals since it is defined in contrast to the concept of functioning. It was originally developed to acknowledge the importance of having freedom of choice in areas that are specifically human, for example, the importance of being able to choose which occupation one wants to have and what religion one wants to belong to. The Capability Approach emphasizes the value of personal choice and the ability to distance oneself from cultural traditions or one's immediate desires. According to the common definition of the concept of capability, it requires the ability to reflect on what purposes one wants to achieve in life and the ability to choose between different options, based on these reflections. Such reflections can concern what choices are compatible with one's long-term interests and one's moral ideals. As far as we know, only normal, adult humans (not young children or adult humans with serious mental disabilities) can make such choices.²⁶

Even if one agrees with Nussbaum's statement that sentient animals have the ability to act intelligently in order to reach certain ends, we should not infer that they have the same ability as humans to question those ends. As stated above, it can be argued that sentient animals cannot reflect on what purposes they want to achieve in the way

²⁰ A similar conclusion is defended from an Aristotelian point of view in Alasdair MacIntyre, *Dependent Rational Animals: Why Human Beings Need the Virtues* (Chicago, IL: Open Court, 1999).

²¹ Varner, *Personhood, Ethics, and Animal Cognition*, pp. 134-135.

²² *Ibid.*, pp. 135-143.

²³ *Ibid.*, pp. 148-155.

²⁴ For a discussion of the distinction between first and second order desires, see, for example, Harry G. Frankfurt, 'Freedom of the Will and the Concept of a Person', *Journal of Philosophy* 68:1 (1971), pp. 5-20.

²⁵ Varner, *Personhood, Ethics, and Animal Cognition*, pp. 169-170.

²⁶ Nussbaum's ascription of capabilities to humans with serious mental disabilities in *Frontiers of Justice* can also be questioned, but that is an issue that we do not discuss here.

that normal, adult humans can. Therefore, Nussbaum's ascription of capabilities to sentient animals is ambiguous.

It is of course possible to use the concept of capability in different senses when applying it to humans and sentient animals, respectively. This is what Nussbaum seems to do in *Frontiers of Justice*. In the first chapter, she refers to the same distinction between capabilities and functionings that she has put forward in earlier works, such as *Women and Human Development*. Nussbaum points out that the political goal should be to promote people's opportunities rather than to force them into certain functionings. For example, people should be allowed to vote in elections or to practice a religion, but they should not be forced to do so.²⁷ In this context Nussbaum seems to presuppose that having a capability requires having the ability to choose to perform or refrain from certain kinds of actions, based on reflections on what ends one wants to achieve. This presupposition is in line with her emphasis on the value of practical reasoning and on the human ability to form one's life in cooperation with others, which characterizes her view of capabilities in earlier works.²⁸

However, when Nussbaum describes the capabilities of animals, she seems to use the concept in another sense. She describes, for example, a tiger's behaviour to kill prey animals as a capability.²⁹ Since she recognizes that a tiger cannot make a conscious decision not to kill prey animals, she does not seem to assume in this context that having a capability presupposes having an ability to make conscious choices based on reflection on what ends one wants to achieve. In this context, the concept of capability seems to denote simply an ability to act in a specific way.

Nussbaum sometimes describes the capabilities of animals as basic, innate capabilities.³⁰ This concept comes from *Woman and Human Development* in which Nussbaum distinguishes between basic, internal and combined capabilities. The concept of basic capabilities denotes the innate characteristics of humans that are needed for developing more advanced capabilities. Some of the capabilities of a newborn child can function directly, such as the capability for seeing, while others are rudimentary, such as the capability for love and gratitude. Internal capabilities are developed states of an individual, which enables him or her to exercise different functionings, such as the functioning of political participation. Finally, combined capabilities are internal capabilities combined with the external conditions that are necessary for the exercise of certain functionings. For example, in order to have the combined capability of political participation, one needs not only an internal capability, but also certain social and political conditions.³¹

If we assume that the ability of seeing of a human infant can be categorized as a capability, then it also seems appropriate to categorize the different abilities of sentient animals as capabilities. However, to regard the ability of seeing of a human infant as a capability seems to conflict with the understanding of a capability as an opportunity to make a rationally considered choice between different functionings, which Nussbaum

²⁷ Nussbaum, *Frontiers of Justice*, pp. 79-80. See also Nussbaum, *Women and Human Development*, pp. 87-88.

²⁸ See, for example, Nussbaum, *Women and Human Development*, pp. 71-72.

²⁹ Nussbaum, *Frontiers of Justice*, p. 370.

³⁰ *Ibid.*, p. 361.

³¹ Nussbaum, *Women and Human Development*, pp. 84-85.

puts forward in other parts of *Woman and Human Development*. If we understand a capability as merely an ability, it is questionable whether we can maintain the distinction between capabilities and functionings.

By using the concept of a capability to denote simply an ability, Nussbaum waters down the concept and makes it less meaningful. Such a use of the concept of capability seems to conflict with the general emphasis on freedom of choice within the Capabilities Approach. One important purpose for introducing the concept of capability is to emphasize that a dignified human life requires the opportunity to choose between different functionings. According to the Capabilities Approach, a woman who has been taught that education is not for women and who lives her life as a housewife does not live a dignified human life, in spite of the fact that she has no preference for education. By using the concept of capability to denote simply a specific ability, we lose some of the focus on the value of freedom of choice within the Capabilities Approach.

Moreover, by ascribing capabilities both to normal, adult humans and sentient animals we risk obscuring the morally important difference between them. Normal, adult human beings have a moral responsibility for their actions that sentient animals do not have. For example, to state that a human have a capability to kill sentient animals is different from stating that a tiger has the same capability, since a human can be morally blamed for killing an animal, while a tiger cannot. Nussbaum points out that animals can exhibit altruistic behaviour but having the ability to act altruistically is not the same as having the ability to make rationally considered moral choices, since the latter requires an ability to reflect on what purposes one wants to achieve.

In general, the purpose to grant moral status to sentient animals can be achieved in a more convincing way than by ascribing capabilities to them. The distinction between capabilities and functionings that is central for the Capabilities Approach is not applicable to sentient animals, since they do not have the same ability as humans to reflect on the purposes of their actions. Therefore, we can describe our moral relationship to sentient animals solely in terms of what functionings we should promote. Nussbaum argues herself that promoting functionings, rather than capabilities, should in many cases be an appropriate political goal for people with severe mental impairments since they have a limited ability to make considered choices.³² The same line of reasoning could also be applied to animals. Even though the concept of functioning is normally used within the Capabilities Approach to denote the options that individuals with capabilities can choose between, functionings do not necessarily imply a freedom to choose since they can be very elementary, such as the functioning of a tiger to kill prey animals.

Nussbaum claims that we ought to respect the dignity of sentient animals and that we therefore should promote their alleged capabilities, but such a respect is better expressed in terms of the functionings we should promote. We should acknowledge that we normally mean something else when we claim that we should respect the dignity of humans and animals, respectively. Respecting the dignity of a human being is normally understood as a question of respecting the rationally considered choices of that individual. However, since an animal does not have the same ability to make such choices, respecting its integrity is normally understood as a question of letting it live the kind of life that is characteristic for it. One should take into consideration the set of needs

³² Nussbaum, *Frontiers of Justice*, pp. 172-173.

and interests that are related to its characteristic form of life.³³ Such an understanding of the dignity of animals recognizes that the life of an animal is much more determined by the kind of species it belongs to than the life of a human. As humans, we have many more options to choose between regarding how we want to live our lives. To take an obvious example, an animal that is born as a carnivore will remain a carnivore for the rest of its life and it cannot make a conscious choice to become a herbivore later in life, whereas a human child who is born into a family of meat-lovers and has grown up with a meat-based diet can choose to become an animal rights activist and vegetarian when he or she becomes a teenager or adult.

Conclusions

We welcome Nussbaum's attempt to integrate concern for animals for their own sake within the Capabilities Approach, but we do not believe that ascribing capabilities to animals is a persuasive way of achieving this end. According to the common definition of what a capability is, it requires the unique human ability to make rationally considered choices. Nussbaum seems right to claim that also animals should be regarded as subjects and agents, but her discussion about the alleged capabilities of animals lacks a more detailed view of what distinguishes humans from animals. Even if we agree with her claim that sentient animals are intelligent and have agency, we can still assert that humans have a higher level of self-awareness and a unique ability to reflect on the purposes of their actions.

When Nussbaum ascribes capabilities to animals, the concept seems to simply denote specific abilities. However, such a use of the concept is problematic since it waters down the concept and makes it less meaningful, and it may obscure the fact that normal, adult humans, in contrast to animals, can act as conscious moral agents. Moreover, the aim of granting moral status to sentient animals can be achieved more convincingly by describing our moral relationship to animals in terms of the functionings we should promote, instead of ascribing capabilities to them.³⁴

Anders Melin, Malmö University
anders.melin@mah.se
David Kronlid, Uppsala University
david.kronlid@edu.uu.se

³³ For such a use of the concept of dignity, see, for example, Sara Elizabeth Gavrell Ortiz, 'Beyond Welfare: Animal Integrity, Animal Dignity, and Genetic Engineering', *Ethics and the Environment* 9:1 (2004), pp. 94-120.

³⁴ This article has been written as a part of a research project on energy politics and justice, funded by the Swedish Research Council, Dnr 421-2013-781.

Bibliography

- Bekoff, Marc and Wild, Jessica. *Wild Justice: The Moral Lives of Animals*. Chicago: University of Chicago Press, 2010.
- Butler, Catherine, and Peter Simmons. 'Framing Energy Justice in the UK: The Nuclear Case', in *Energy Justice in a Changing Climate: Social Equity and Low-carbon Energy*, edited by Karen Bickerstaff, Gordon Walker and Harriet Bulkeley. London: Zed Books, 2013, pp. 139-157.
- Clark, John P. 'Capabilities Theory and the Limits of Liberal Justice: On Nussbaum's *Frontiers of Justice*', *Human Rights Review* 10:4 (2009), pp. 583-604.
- Cripp, Elizabeth. 'Saving the Polar Bear, Saving the World: Can the Capabilities Approach Do Justice to Humans, Animals and Ecosystems?', *Res Publica* 16:1 (2010), pp. 1-22.
- Donaldson, Sue and Kymlicka, Will. *Zoopolis: A Political Theory of Animal Rights*. Oxford: Oxford University Press, 2011.
- Frankfurt, Harry G. 'Freedom of the Will and the Concept of a Person'. *Journal of Philosophy*, 68:1 (1971) pp. 5-20.
- Fulfer, Katy. 'The Capabilities Approach to Justice and the Flourishing of Non-sentient Life', *Ethics & The Environment* 18:1 (2013), pp. 19-38.
- Hailwood, Simon. 'Bewildering Nussbaum: Capability Justice and Predation', *The Journal of Political Philosophy* 20:3 (2012), pp. 293-313.
- Holland, Breena. 'Environment as Meta-capability: Why a Dignified Human Life Requires a Stable Climate System', in *Ethical Adaptation to Climate Change*, edited by Allen Thompson and Jeremy Bendik-Keymer. Cambridge, MA: MIT Press, 2012, pp. 145-164.
- Ilea, Ramona. 'Nussbaum's Capabilities Approach and Nonhuman Animals: Theory and Public Policy', *Journal of Social Philosophy* 39:4 (2008), pp. 547-563.
- Keulartz, Jozef and Swart, Jac. A. A. 'Animal Flourishing and Capabilities in an Era of Global Change', in *Ethical Adaptation to Climate Change*, edited by Allen Thompson and Jeremy Bendik-Keymer. Cambridge, MA: MIT Press, 2012, pp. 123-144.
- Kronlid, David O. *Human Capabilities and Climate Change Adaptation*. New York, NY: Palgrave MacMillan, 2014.
- Kusakabe, Kyoko (ed.). *Gender, Roads, and Mobility in Asia*. Bourton on Dunsmore, UK, Practical Action, 2012.
- MacIntyre, Alasdair. *Dependent Rational Animals: Why Human Beings Need the Virtues*, Chicago, IL: Open Court 1999.
- Nussbaum, Martha C. *Women and Human Development: The Capabilities Approach*. Cambridge: Cambridge University Press, 2000.
- Nussbaum, Martha C. "'Beyond Compassion and Humanity': Justice for Non-Human Animals', in *Animal Rights: Current Debates and New Directions*, edited by Cass R. Sunstein and Martha C. Nussbaum. Oxford: Oxford University Press, 2005, pp. 299-320.
- Nussbaum, Martha C. *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge, MA: The Belknap Press of Harvard University Press, 2006.
- Nussbaum, Martha C. 'Human Dignity and Political Entitlements', in *Human Dignity and Bioethics. Essays Commissioned By the President's Council on Bioethics*. Washington, D.C., 2008, pp. 351-380.

- Ortiz, Sara Elizabeth Gavrell. 'Beyond Welfare: Animal Integrity, Animal Dignity, and Genetic Engineering', *Ethics and the Environment* 9:1 (2004), pp. 94-120.
- Robeyns, Ingrid. 'The Capability Approach', *Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta, online at <http://plato.stanford.edu/entries/capability-approach> (accessed 2015-02-10).
- Schlosberg, David. *Defining Environmental Justice: Theories, Movements, and Nature*. Oxford: Oxford Scholarship Online, 2007.
- Sen, Amartya. *Commodities and Capabilities*. New Delhi: Oxford India Paperbacks, 1999.
- Sen, Amartya. *Development as Freedom*. New York: Anchor Books, 1999.
- Sen, Amartya. *Inequality Reexamined*. Oxford: Oxford Scholarship Online, 2003.
- Varner, Gary E. *Personhood, Ethics, and Animal Cognition: Situating Animals in Hare's Two Level Utilitarianism*. Oxford: Oxford Scholarship Online, 2012.
- Wissenburg, Marcel. 'The Lion and the Lamb: Ecological Implications of Martha Nussbaum's Animal Ethics', *Environmental Politics* 20:3 (2011), pp. 391-409.