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LEVEL: xx

[Chapter 3]

Facing the Agreement Problem in a Second Moment of Moral Judgment

[URL: FacingTheAgreementProblem]

SECTIONS (& perhaps subsections):

- I Introduction
- II Second-order Criteria for Decisions under Disagreement
- III Friendship When Friendship Fails: Choosing and Still Loving; Learning Humility and Detaching Oneself

I have a conceptual motive and a fundamental intuition... The motivating thought concerns the reconciliation of a modernity which has fallen apart, the idea that without surrendering the differentiation that modernity has made possible in the cultural, the social and economic spheres, one can find forms of living together in which autonomy and dependency can truly enter into a non-antagonistic relation, that one can walk tall in a collectivity that does not have the dubious quality of backward-looking substantial forms of community. The intuition springs from the sphere of relations with others; it aims at experiences of undisturbed intersubjectivity. These are more fragile than anything that history has up till now brought forth in the way of structures of communication - an ever more dense and finely woven web of intersubjective relations that nevertheless make possible a relation between freedom and dependency that can only be imaged with interactive models. ... All of these images of protection, openness and compassion, of submission and resistance, rise out of a horizon of experience, of what Brecht would have termed "friendly living together." This kind of friendliness does not exclude conflict, rather it implies those human forms through which one can survive conflicts.

– Jürgen Habermas "The Dialectics of Rationalization" in *Autonomy and Solidarity* (NY: Verso Press, 1986), p.124 f. [This was called to my attention by Kenneth MacKendrick.]

I Introduction

The Agreement Problem means that we cannot look to agreement to solve all (or, it seems to me, very many) moral issues. If this difficulty arose from a few people being s.o.b.s (or, more realistically, from a lot of us being selfish a lot of the time), we could solve this problem, either by

getting rid of the s.o.b.s – what we might term the Pol Pot solution – or by restructuring society and reeducating people to stamp out selfishness – what we might term the Stalin solution. But as I argued in the previous essay, the Agreement Problem is bound up with general features of the human condition: diversity of senses of the Good, and limits of time and other resources. Thus – to take the case of Pol Pot – the elimination of a few “counter-revolutionaries” did not produce – could not produce – the anticipated smooth functioning of society. Unfortunately for the Cambodians, this failure only convinced Pol Pot and the Khmer Rouge that there were still more counter-revolutionaries to eliminate, and so the cycle of elimination-failure-elimination continued.

So at this point in our story we are looking for but still lack a sense of what to do in the absence of agreement. We first need to ask, “Is whether there is anything at all to say beyond agreement?” My sense, certainly, and I think most people’s is that some meaningful sense of morality still exists even in disagreement. The traditional laws of war, for example, have said that even in war, the ultimate disagreement, we should not do certain things: bomb civilians, torture or kill prisoners of war, use human shields, and so on.¹

How can we clarify this residual sense of morality? One way is to take an intuitionist approach: once we pass beyond agreement, we may not be able to say precisely what is moral, but we can be guided by our intuitions, which will lead us to some overlapping consensus.²

Another way is to relax the concept of agreement: if we cannot reach total agreement, we can

¹My slight knowledge of this area comes from Michael Walzer’s *Just and Unjust Wars* (19xx). It seems to me that we are slowly abandoning all rules of war. One horrible example of this is the strategic doctrine of MAD (Mutually Assured Destruction) and “massive retaliation” that the United States adopted between the advent of the Cold War and ... well, we still hold that doctrine, I believe – it’s just hibernating until we have another Soviet Union to use it on.

²I am using Rawls’s term here without necessarily implying that this is Rawls’s view.

look for agreement on norms that everyone agrees *or could agree* to. (This is Habermas's 19xx:xx formulation.) Or we can look for agreement on norms that are agreed to by "most people", or by "all rational people", etc.

The virtue in these positions is that they acknowledge our experience that there is morality beyond agreement. Even if we cannot agree, they say, we should not jump immediately into anarchy, violence, and complete amorality. Their taking this position is valuable because it holds out against arguments that abandon morality entirely. But however important that opposition might be, I don't see these positions as taking us beyond it. They insist that there is a morality, but they don't clarify its nature. The problem is that all of the formulations meant to clarify this morality are, in the end, ambiguous in important ways, meaning ways that allow the corruption of morality by power.

Consider the intuitionist position. Intuitionism provides no defense against our individual emotional distresses, our common prejudices, and our common egocentrism. [xx Somewhere in here give the story of Craig trying to buy me a ticket. I was egocentric, even if not specifically selfish.] While intuition is surely a guide to action, it is not a reliable one. Insofar as possible we want our decisions to be informed by both reason and intuition; neither is complete in itself. It may be that in the end we wind up having to rely on intuition, but in the situation we are presented with here, it isn't clear that reason has exhausted its contribution – and of course the point of this essay is to add more.

Consider now the attempts to clarify our sense of morality by loosening our concept of agreement. The problem here is that the terms of loosening are intuitive or at least subjective, so they too are likely to be corrupted by our distresses, prejudices, and egocentrism. To say that

“most people” agree is only a statistical observation; it makes value judgments about people’s normative preferences without actually considering those positions. At its worst, this becomes a repressive majoritarianism, but even at its best, it does not explain why some people are to be ignored. As with intuitionism, it may be that in the end we find mere head-counting useful, but it is not clear yet that we have passed beyond the possibility of clarification.

Finally, consider the case of demanding agreement only among “rational” (or even merely “reasonable”) people. All of us surely know someone so distressed (or outright crazy, as, say, an alcoholic in the grip of *delirium tremens*) that we would never trust their judgment, certainly not to the extent of holding up all decisions as we await their approval. Here I want to advance both a shallow argument and a deeper one. The shallow argument is that of the old quip that “even paranoids have real enemies”. Even if it is clear that someone is making truly crazy decisions a lot of the time, it is never clear that they are crazy in any particular decision, particularly given that we have the luxury of hindsight in judging their previous decisions as crazy but must decide whether to exclude them only prospectively.

I think this argument has some validity, but I don’t want to be led into a defense of all possible forms of distress and mental illness. This is particularly true when we recall that “rationality” isn’t just meant to exclude crazy people; it is also meant to exclude decisions based on spiritual belief or on intuition. And though people whose values are deeply informed by their spiritual practice may not use the term “rationality”, they too have ways of dismissing the value of opinions held by those who don’t share their spiritual orientation. Here is where I want to advance the deeper argument, the postmodernist position that the sense of what is rational is socially constructed and, to the extent that its origins lie in the play of power rather than just

Reason, arbitrary. Elsewhere in this work I discuss what I see as the limits of postmodernism, but it is clear to me, at least, that we can no longer pretend to innocence in our use of “rationality” as a concept. It may be that reason does exist somewhere out there – I’m not claiming that judgments can be nothing except nonrational – but we can’t use it unproblematically to exclude people from our moral universe.

So to conclude, we are faced with the challenge of clarifying the nature of morality beyond argument. The remainder of this essay does so. The next section presents my account of this sense of morality, and the final section discusses its emotional concomitants.

II Second-order Criteria for Decisions under Disagreement

xx Whether we agree or not, the presuppositions of argumentation remain that we are in a Relationship of *trying* to come to agreement, a Relationship that exists even in the face of current disagreement. His argument concerns our need to assume we can reach an agreement with each other, not the existence of such an agreement. Even if we can’t agree, the requirements do not change, and thus the existence of the Relationship embodying them does not change. The issue therefore becomes how we are to constitute our Relationship, an issue that includes but is larger than any particular norm. We *must* agree, and we must do so in a way that still reflects and supports the nature of our Relationship.

This maintenance of the Relationship gives rise to a number of “second-order rules”, “second-order” because they are not specific norms (zero-order) or specific rule-making processes (first-order), but they are instead rules about the foundational Relationship giving rise to the norms and the processes of making them. Some of these second-order rules concern our

fundamental attitude in M2, some concern the way we engage each other there, some constrain the norms we allow to be established, and some concern how we behave in the aftermath of a norm having been established — all of these I will collectively term “second-order rules”. Before going into their details, however, I note that these rules are not unique to M2; they hold within M1 as well and thus throughout discourse ethics. However, since the universal agreement in M1 makes them unproblematic there, they are not prominent until M2. I also note that these rules constrain norms and guide our discourse, but they do not in the end provide specific norms. I haven’t forgotten that important final step, however! I am simply deferring it to a subsequent section.

• **Fundamental Attitudes:** M2 is a situation in which we deal with conflict. But despite that conflict – or perhaps because of it – we need to carry into the conflict a number of basic attitudes about our situation and each other, attitudes that reflect and support the basic Relationship.

- We all have an equal right to define the specific content of the Relationship. This equality is not the equality of having equal influence over some final compromise but rather the equality of each person having a veto power over the existence of the Relationship – given that this veto can only be exercised for reasons that acknowledge the fact that everyone is in the same situation. For example, withdrawing from our Relationship on the ground that *my* norms should prevail – this withdrawal cannot recognize a consequent, similar right of all others to exercise their own veto on the same grounds.
- Another attitude, or perhaps the same attitude expressed in a different way, is that

“we’re all in this together”. This is like Rawls’s view of the distribution of talents (and problems) in society as a common resource (or responsibility).³

- Part of being “all in this together” is our acceptance that someone – and we explicitly accept the possibility that it will be us – will be hurt by any norm we establish. “Acceptance” doesn’t mean we must like such a norm but rather that we view this hurt as an essential concomitant of our acknowledging and honoring our underlying Relationship. We accept that even if we cannot all agree on a norm, we are all agreeing to hold to the Relationship despite the possibility that the norm we establish will feel like a violation to us and the certainty that it will feel like a violation to someone.
- We also accept that none of us has a privileged position vis-a-vis others in determining what is Right. We have left behind in M1 the chance to make and support such claims. We each still feel ourselves to be Right, are convinced we are Right, and yet we recognize that there is no longer any means of pressing our feelings and convictions on others who themselves have such feelings and convictions.⁴

It is frustrating to feel oneself right and yet accept a status no different

³Rawls (1971) does not clearly address the “problems” portion of this, but the one would seem to follow as the shadow side of the other.

As an aside, I note that in the United States the withdrawal into gated communities – both literally and metaphorically – represents a growing abandonment of what Relationship we have with one another and/or an ever-more-explicit admission that our society is not founded on such a Relationship.

⁴This spirit underlies the U.S. Constitution’s principle of the separation of Church and State: not a rejection of people’s religious understanding of the Good but a recognition that we have no way to prove the superiority of one such understanding over another claim a special status for our view.

from others. There are two ways to deal with this frustration. One is to reflect on one's own partial knowledge and put one's faith in others' judgments as well as one's own. Another is to reflect that even if one is indeed Right, one part of being "all in this together" is the willingness to accept others' problems of moral understanding; it is far more important to maintain the sense of Relationship than it is to win any particular battle.⁵ This dictum will seem less idealistic and/or misguided if we remember that all of this takes place within the context of both

⁵The following anecdote illustrates these two attitudes: Visiting my family about three years ago, I went out with them to a local restaurant to celebrate something or other. There were nine of us, and the final bill was substantial: say, \$198, including the tax and tip. Sara, my sister, said she would pay with her credit card, and the rest of us would just give her our \$22 shares in cash. We duly kicked in our shares, piling the money in the middle of the table. Sara paid the bill and then, picking up the money, discovered that she was short \$20: instead of the \$176 that should have been there (8 other people @ \$22/person), there was only \$156. After due reflection, each of us claimed to have put in h/her share and objected to making up the difference. But this is/was not a discourse ethics response. Here is the response that the second-order rules imply:

1. If we're all in this together, then even though each of us was sure we had put in the right amount, we should divide the \$20 among the eight of us, paying an extra \$2.50 each. (Eight of us instead of all nine, since Sara's share was not at issue.) Even though each of us was "sure" that s/he had contributed properly, no one could be certain and, more importantly, could not advance evidence that would convince the others. So being "all in it together" means that each of us agrees to take on the burden of paying more than s/he believes she ought to.

2. I withheld some information from the above scenario. It is relevant that I got my undergraduate degree in applied mathematics, and just as literature majors are asked for help in spelling, I'm asked to do tasks like computing the tip and dividing up the bill. And I'm quite good at it: usually correct the first time, but always careful, double-checking my figures. I had been asked to do this for this bill as well, so I had paid close attention to paying my \$22 share and thus *knew* that I had paid correctly. But in the heat of the moment, others would not admit my claim, so that even though I had the power to refuse to contribute the additional \$2.50, I could not morally do so.

What in fact happened is that we all refused to contribute a penny extra, which of course left Sara, the only person who we knew paid her share, stuck with the \$20 shortfall, which of course infuriated her. This bothered me ever afterwards, so that while writing this paper I finally figured out that I had been wrong, and I gave Sara \$10 and an apology: \$2.50 as the amount originally owed, \$7.50 to say that I was still in it together with her (where "it" means a situation where other people don't behave well), and the apology to reaffirm our Relationship.

thorough, fair discussion having been exhausted an M1 *and* the other “second-order rules” being followed now in M2.⁶

Let me remark that our transition from M1 to M2 should be accompanied by the invocation of institutions and rituals designed to call forth these attitudes and to focus on the Relationship.

More on this later.

• **Constraints on Norms:** Even though we disagree on norms, M2's basic focus on the Relationship does imply certain constraints on norms.

- The most important and obvious constraint is that no norm can prevent people from expressing their disagreement with existing norms or from continuing the process of M1.⁷ The logic parallels that of classical liberalism in protecting freedom of expression. In both classical liberalism and discourse ethics the constraints arise from the basic conception of the Relationship among people. In classical liberalism's case, mutually self-interested contractors seeking the benefits of cooperative action will never consent to a system of cooperation in which they might be prevented from doing the very thing – advancing their interests – that

⁶Let me clarify this. In an oppressive society, most people's usual experience in public issues is to have their opinions disregarded in the first place. It is infuriating, then, to have it suggested that one humbly accept whatever norm is then established. But this is not what I am suggesting. The attitudes I suggest adopting are predicated on one's having had one's say already, on others having listened closely to one's position. And this only has to do with the discussions of M1 and the yet-to-be-fully-fleshed-out demands of its ideal speech situation. I am also insisting that one's situation and opinions be recognized fully in M2, where “recognized fully” means consistent with the second-order rules.

⁷For example, a Nazi-proposed norm to exterminate Jews would be a nonstarter.

causes them to contract in the first place. In discourse ethics's case, people whose communications to coordinate action always already offer to redeem the validity claims of (factual) Truth, (normative) Rightness, and (personal) Sincerity cannot accept limits on their ability to demand redemption of these claims. In both theories, the constraints could not be violated without contradicting the very theory bringing them into being. In engaging each other in M2, therefore, we accept disagreement over norms. If silencing people's disagreements was a legitimate way of settling disputes, we would have no need for M2 in the first place.

- No one (or no identifiable group collectively) can consistently be subject to greater or more frequent violation than others; ideally, we would take turns winning and losing.⁸ If the norms actually adopted consistently violate one person's free will and not another's, then there is some power differential that needs to be corrected. Furthermore, . . .
- In M2 no one can claim to have special insight into what norm is Right. Such claims lie in the domain of M1, where they can be tested; in M2, though, we are taking our normative differences as given. Obviously each of us will feel we have special insight and our position should be adopted, but in the absence of discursive justification – left behind in M1 – we accept that none of us has a special entitlement. The imposition of a norm violates people's free will to varying degrees. Each of us would like to say that because we are Right, the Wrongness

⁸One couple I know makes decisions by flipping a coin when they cannot agree.

of others implies they must endure the violation that their being forced into our Rightness entails, but we cannot make this claim. So in the absence of any way to rule that any given person must bear a special burden, we constrain our norms to those minimizing the degree to which the free will of any single person or group of people is violated.

Let me add a few words of detailed commentary here. First, this criterion (and the previous one) does not pretend to mathematical precision. I can see no theoretical way of measuring one person's sense of violation against another's, and even if there were such a measure, its application would come under enormous strain when, quite naturally, each person experiences *h/her* sense of violation as so much greater than others'. So in practical terms, I believe, this "minimax" constraint will only say that no one's free will can be violated too greatly. Like the U.S. Constitution's prohibition against "cruel and unusual punishment", this constraint will be variously interpreted, approaching its true minimax form to the degree that people transcend their sense of themselves as having special claims.⁹

Second, I see nothing wrong in principle with people agreeing to their violation by one norm as the price of establishing another, preferred norm. We need not solve the philosophical complexities of utilitarianism to allow this; people can simply work out their deals in practice. But the broader and more fundamental the scope of the norm, the less flexibility there will be, so that there is no tradeoff

⁹But however the constraint is interpreted, it would certainly rule against capital punishment, the most extreme violation of another's free will.

against the norm constituted in what Rawls calls the “basic structure”. Since the basic structure determines people’s life chances in their totality, I can see no possibility of any sensible trades. When the basic structure is determined, the principle of minimum violation has to apply with as much rigor and precision as possible.

The two previous constraints resemble Rawls’s (1971) “maximin principle”, that inequalities arising from the basic structure must make the worst off in the society as well off as possible. Note, however, that in discourse ethics the maximin principle arises not as the assumed outcome of theoretical consideration in a hypothetical Original Position but rather directly from the need for agreement *in practice*. Recognizing that the necessity for agreement will inevitably result for some in a sense of violation, no one will agree to a system in which norms unnecessarily disadvantage them. And the less necessary the violation appears, the more strenuously they will resist the system of decisions.¹⁰

¹⁰Rawls’s “difference [maximin] principle” of justice is subject to the objection that in his Original Position, people might choose a utilitarian (utility maximization) principle instead of maximin principle. Not knowing what social position they would occupy, they could choose to maximize their expected welfare. Rawls advances some good arguments why this would not occur, including some philosophical problems with the concept of utility itself, but while I find his arguments persuasive, I don’t find them decisive. (And although I can’t swear to this, I seem to recall that Lawrence Kohlberg admitted utilitarianism as a possible “Stage 6” form of moral reasoning and/or that Rawls himself has grown to accept utilitarianism as an alternative. Perhaps someone will help me verify and locate this.)

● **After a Norm Is Established:** Once a norm has been established, we have all agreed: not to the norm itself, but to the basic Relationship that gave rise to it. Despite our agreement, we recognize that the Relationship is strained. To deal with this problem I propose the following as useful political directions:

1. The establishment of a norm should be accompanied / followed by the invocation of institutions and rituals designed to focus on the Relationship and call forth the attitudes supporting it. We need to acknowledge that we are still committed to it, not just in our hearts but also publicly, so that the Relationship is established and maintained as the cultural norm.
2. Among the elements of these institutions and rituals is an explicit, public statement that the norm is not a victory for the winners but only the beginning of an experiment assessing its value. Since there is still no universal acceptance of the norm, M1 continues even when M2 ends; the winners do not attempt to secure their victory as a way of ending the search for better norms.
3. The obverse element is an explicit, public statement that this experiment has to be given a fair chance. In particular, the losers don't attempt to sabotage the norm, actively or passively.
4. We continue to engage in a search for systematic power differentials and the associated violation of weaker people / groups, and we revise our system of decision-making in that light. (This is where the postmodern critics are so valuable.) For example, we may discover that certain groups of people – say, women – have difficulty speaking up for themselves, and this difficulty then reinforces an oppression that in

turn reinforces the original difficulty. In such circumstances we might consider adopting policies like, say, “All women must speak before any man speaks.”

5. Finally, the winners need to resist their sense that since Right has been victorious, they need not acknowledge those who were Wrong, i.e., the losers. Instead, the winners need to explicitly, publicly recognize that in being willing to endure the sense of violation, the losers are in fact contributing to the underlying Relationship. And a beneficial consequence of this would be to support the winners’ willingness to lose in subsequent discussions.¹¹

● **M2 vs. Abusive Relationships:** If we can’t maintain these attitudes and carry out these practices, it implies that we are in an abusive relationship and need to reconstitute it in line with the true Relationship underlying our discourse. “Abusive” here means that the relationship does not meet the second-order rules outlined above. Since the concept of “abusive relationship” is clearly important here, and since it already has widespread connotations, I will expand on it a little here, using the example of the relationship between two spouses and letting the discussion generalize to the level of social relationships. My purpose here is to show the close connection between the second-order rules outlined above and our intuitive understanding of “abusive relationship”.

Relationships in which all conflicts are resolved in M1 are obviously not abusive, since every decision is governed by sweet reason and supported by mutual, free agreement. As indicated earlier, M1 satisfies the second-order criteria without much fuss having to be made

¹¹I am indebted to Eileen Theimer for pointing this out.

about the fact. Abuse only arises when the parties move into M2, and the second-order rules become more problematic. Let me cover them briefly to indicate the various possible types of abuse.

We start with the various attitudes fundamental to M2: If one spouse carries the attitude that s/he has a greater right to define the relationship, the relationship is . . . well, not *yet* abusive, but certainly headed that way, when the dominant spouse defines the relationship without regard for the other's interests. If one spouse carries the attitude that the two spouses aren't "in this together", the relationship is also headed for abusiveness, since one spouse will be willing to sacrifice the other for h/her own desires. If one spouse doesn't accept ahead of time that s/he might be hurt by the adoption of a norm, i.e., that s/he does not accept the necessity of having to sacrifice for the relationship, then that relationship is headed for abusiveness.

Now consider how the constraints seem to mark areas of potential abusiveness: If one spouse cannot accept the other's right to continuing disagreement with the norm, then the relationship is abusive. This right to disagree has to continue even when the norm is established; otherwise, the subordinate spouse has lost the right to support the relationship. Where there is no choice, there is no meaningful sense of support and, more fundamentally, no attempt to coordinate action by means of good reasons. If good reasons are not the criterion for agreement, then the spouses' relative power comes into play, meaning that the more powerful is abusing the less powerful.

If one spouse is consistently the loser in the relationship,¹² then that is abusive. In a non-

¹²This phrasing automatically implies that no good reasons have been given to persuade this spouse to agree, since h/her persuasion means s/he freely accepts the norm and thus cannot be said to have "lost" when it is implemented.

abusive Relationship, both partners would at different times endure the sense of violation. Finally, if one spouse suffers an extreme of violation so that the other spouse is able suffer less, we would consider that abuse as well.

Consider finally what the second-order rules call on us to do after a norm is established, and how their violation seems to be abusive. The general point of the rules is to reaffirm and support a Relationship under strain. If they aren't heeded, it indicates not necessarily that there is no Relationship but at least that the parties, and particularly the winner, do not respect it or value it. The relationship between the spouses is then at least potentially abusive, if not already so. If the winner sees the norm not as an experiment but rather as a victory to be seized, refusing to continue discussion of the issue, then the relationship is at least mutually uncaring; it would be termed abusive if this lack of care were matched with one party being the usual winner. If the loser doesn't give the norm a chance to work, trying to sabotage it instead of finding out its value, then h/her original agreement to the norm was no agreement at all but only, say, a tactical retreat to continue battle in another arena. The relationship between the parties is then at least uncaring, and we can only conclude from the fact that the loser seems to be coerced (or the winner only encounters broken promises from the loser) that the relationship is abusive.

Even though this analysis helps us see the existence and exact nature of an abusive relationship, and even though it provides us with an image of what a true Relationship would be, of what use is it in the face of a spouse who will not adhere to the second-order rules, who will not maintain a Relationship, who is abusive? This touches on the larger issue of "Why be moral?", which is discussed in a later section. But some remarks are appropriate here about this specific situation, where the issue is not how to induce people to behave morally in general but

rather how to respond to a specific situation of abuse. The present perspective allows us to distinguish between two quite different reactions that go by the same term: "staying in the relationship". In common parlance, this means that the spouse continues to allow herself – we'll assume the spouse is a woman – to be abused: continuing to live with her husband, refusing to prosecute him for the abuse, acquiescing in his attitude that she deserves the abuse, and so on. But in the discourse ethics perspective, such a reaction is not remaining in the Relationship but rather ignoring its true nature. By refusing to allow herself to be abused – by leaving her husband, or at least his physical and psychological presence –, she recalls her spouse to the *true* Relationship. By removing herself from the situation, she is telling her spouse, "We are still in a Relationship. My removing myself from you does not deny our Relationship, even though you may feel it as such; rather, it confirms its existence and reminds us of its nature."¹³

¹³I am *not* advocating that spouses cling to bad relationships even after removing themselves from the abuse. I *am* advocating that we distinguish removal from disengagement. Disregarding the practicalities of the situation, which may make effective action impossible, there is no reason to tolerate an abusive relationship; the abused spouse is always entitled to demand the Relationship discussed above. But removal from the abusive situation is not the same as removal from the Relationship. The central point here is that one can maintain the Relationship even while removing oneself from the relationship. Whether one decides to maintain this Relationship, whether one sees any realistic chance of transforming the old relationship into the new Relationship: these are decisions only the abused spouse can make. I'm not trying to second-guess her; I'm merely pointing out that there *is* a decision to be made, a decision that involves moral issues (how one has a right to be treated), not just practical issues ("How am I going to feed my children if I divorce him?").

Later (p.50) I argue that the problems of agreement in society are similar to those in marriage. This is one area where the problems differ. One can get divorced and remarried with relative ease, but it is almost impossible to remove oneself from an abusive society. Citizens have to transform an abusive society from within it.

III Learning Humility and Detaching Oneself

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Remember when I recommended Ursula LeGuin to Sara. She was sure she wouldn't like it, and refused to read it, while I was sure she would like it. I believed I knew what her objections were, and knew they were unfounded. She believed she knew why I was recommending it to her, and knew those reasons were mistaken. Neither of us knows who was right.

Recall the dinner where Sara got stuck with the \$10 shortfall.

Note the Münchhausen trilemma

Note that no one has privileged status, no matter what they feel.

IV Second-order Criteria for Decisions under Disagreement

[xx Somewhere, probably in this chapter, maybe in this essay / section, I have to note that people often get confused about the distinction between the Good and the Right, and that this confusion is intimately related with the confusion between the claims made by these domains on one another (i.e., inviting vs. forcing and also between the forms of discourse relevant to the two domains).¹⁴

[I believe that this distinction is the source of – or at least one way to understand and maybe even clarify – Benhabib's (1989) criticism of Ackerman's (1981, 1989) theory of public discourse. Ackerman holds that liberal dialogue about legitimation involve “conversational

¹⁴This might also go as a case study in PIC-DP, with Ackerman Stage 5, Benhabib Stage 5½, and my suggestions Stage 6. But I want to make sure that Ackerman's theory is indeed Stage 5 and that Benhabib does not go on to suggest how to solve the problems she points out.

restraints”, particularly a refraining from public claims that depend on a putatively superior sense of the Good. In the ways of relating perspective, Ackerman’s position does recognize that appeals to one’s own, unshared sense of the Good cannot sway others. The only purpose of such appeals appears to be that they confound the Good and the Right and thus implicitly justify using the coercive power of the Right to support one particular sense of the Good. My brother’s car carries a bumper sticker reflecting the concern about such appeals: “The last time we mixed religion and politics, people got burned at the stake.”

[On the other hand, Benhabib is rightly concerned that such conversational restraints have moral valence and thus themselves need justification, a justification that she does not believe Ackerman provides. Absent such justification, these restraints seem to be mere quietism, a reluctance to rock the socio-normative boat, a capitulation to existing configurations of power.

If I am deeply committed to the belief that prevalent conceptions of sexual division of labor in our societies are morally wrong because they oppress women and hinder their full expression of themselves as human beings, why should I agree not to do the best I can to make this a public issue and to convince others of my point of view? (Benhabib 1989:147)

[xx Note that she appropriately asks this as a question, not a rejection of their position.]

I share her concern.

V Friendship When Friendship Fails: Choosing and Still Loving

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Friendship is constructed as a set of mutual expectations, or at least a set of mutual expectations and a commitment to work things out when coordination of action is difficult. What happens when a friend hurts you? We know of many things to deal with this: You talk things over. You

compromise. You take turns. You wait and watch. You flip a coin. You forgive and move on. You reaffirm that the other is important to you. You talk to a mutual friends. You try to understand. You see a therapist. You pray.

What happens then? What if none of these have changed the situation and/or reconciled yo to it?

The usual result seems to be that affection turns to anger and dislike, even hatred. Now, if you interact at all, it is on a strictly quid pro quo basis: “Show me the money.”

April 2, 2001: I just today recognized the connection with Rousseau’s baffling idea of the general will. I think that when he talks about people subordinating themselves to the general will, he is talking about grasping the nettle. So here is a link to [the essay on Rousseau](#).

When I discussed the first paragraph with the Pol 3652 class, they came up with a number of objections that revealed a need for my clarification:

- Is it implicitly abuse to say someone is going to hell? Is this true even if one is not saying that the person *deserves* to go to hell? Is this true even if one is only saying that one *believes* the other is going to hell? Could the criterion be, “Is it condemnation?”
- Is my statement of my theory self-contradictory, in that I seem to be saying, “My theory is that no one knows who is right.” How can I even put forward the statement when it contradicts its own validity? Answer: I’m not claiming ultimate truth for

it; I merely put it forward contingently. I need to mention that to Robin.

- Robin asks whether people *should* relate to each other as I (or Rousseau) contemplate.

This seems to me like a meaningless question (to a pragmatist), as with the Euthaphro conundrum.[Insert “Try to Praise the Mutilated World” as an epigraph here. In c:/personal/Poems.]

[So Michael Morrell asks me, what if another animal attacks me? Won't I put up a barrier to empathy? And my question: What happens to a friendship if the other betrays me? Answer: We can protect ourselves (it is part of our sense of the Good, which the other cannot violate without some other justification) but still empathize, want to know why it happened, etc. Maintenance of the relationship is primary, even if unilateral. (This doesn't mean giving in.)]

[THE SECTION BELOW IS TRANSFERRED HERE FROM SOMEWHERE ELSE. MAYBE IT NEEDS TO BE ITS OWN ESSAY.]

A. Conflicts between my desires and yours? No! – Just a lack of creative solutions

From this perspective we see the problems we face not as conflicts between people or even between Goods. In fact, these problems aren't even appropriately termed “conflicts”. Using that terminology puts our focus prematurely on considerations of dominance or compromise. It is more appropriate to start from the position that the problem is our current, possibly only temporary, inability to figure out how to satisfy all the Goods. In Fisher *et al.*'s (1991:xx) useful phrase, “The people aren't the problem; the problem is the problem.” Even if I want both of the coconuts and you want them too, the problem might be solved by our agreeing to look for more

coconut palms, or our building a matter duplicator, or ... well, imagination fails me here.

I am not advancing a Pollyanna-ish faith in a magical solution to all problems. Rather, I am making a straightforward logical point with certain psychological implications: we cannot know in advance what creative solutions to a problem are possible, and so viewing the problem as a conflict forestalls consideration of those creative possibilities.

Yet the issue here isn't exactly the strategic point that one can get more of what one wants by looking for creative solutions. That's still an instrumental, objectivating relationship with the other, where one recognizes the other's different Good and the necessity of catering to the other to achieve one's own Good. One can even engage in therapeutic discourse with the other to see how his and/or one's own Good might shift or deepen to permit a better agreement.

The sense of the Good is not a matter for moral judgment. This is not a denial of morality, or of the priority of the Right over the Good, or of the Right as one element of everyone's sense of the Good (as Rawls argues). It is, rather, a clarification of categories. When we are trapped on a desert island together and have only two coconuts between us to eat, my sense of the Good includes my desire to eat both of them. As it happens, my sense of the Good also includes my desire for you to eat and survive, and these two aspects of my sense of the Good are apparently incompatible in those circumstances. However, both Goods are still meaningful to me, still

authentic desires of mine. The claims of morality may well lead us to decide to eat one coconut apiece, but that is a separate issue. I need not feel either ashamed or guilty that I want both coconuts.