

Across the space of human activity there are many different kinds of subject (persons, states, churches, tribes, corporations), and many different systems of norms (law, morals, religious codes, treaties). I am interested in the question of their normative separateness. I aim to supply some reasons for thinking that one system—morality—not only applies to all the others, regulating their relations, but also might be necessary to secure their internal authority.¹

I begin by laying out some considerations often taken to favor a more limited territorial ambition for morality. The arguments I find most interesting have to do with claims certain groups make to normative autonomy and so to (some) independence from moral authority, either for morally problematic practices that define them, or for the reasons and principles they regard as providing sufficient justification for actions and practices. I think such claims must be taken seriously, though not necessarily in their own terms. I will argue that a reasonable approach from the side of morality is available, but to reach it requires rethinking the structure of moral regulation such that it can be integral to and not merely constraining of separate normative claims. Understood in this way, morality can both respect the legislative autonomy of groups and retain its unbounded ambition.

A second source of morality-limiting claims derives from the observation that the space of human activity is divided into normatively “separate spheres.” It has been argued that because interpersonal morality and politics and international relations have significantly different functions and therefore involve different kinds of activity, they are normatively distinct and even possibly on a par with each other. The claim is often attached to the Rawlsian axiom that “the correct regulative principle for a thing depends on the nature of that thing.”² But from the important and evident fact that different domains require different regulative principles, nothing follows about their shared moral foundation or their moral relations to one another. Regulative

principles determine how an institution is to do its work; they neither set goals nor exhaust applicable norms.³ It may be that the separate spheres are in some deep way normatively distinct, but if they are, it will be for a different reason. Since I am skeptical about this, I take it to be an advantage of the revisionary view of moral regulation that it helps us understand the appearance of this kind of normative separateness.

One argument in this area that I will briefly look at holds that there are features inherent in political action and international relations that inevitably generate conflict with core moral values, conflict that morality cannot resolve. Politics requires deep compromise and shady alliances; as countries and corporations go about their legitimate business, it is in the nature of things that innocent persons will be harmed or treated in ways morality cannot condone. Individuals acting as the agents of these larger entities can't hew to moral principle and serve the ends of their office. We will have to see how deep a worry this is, and whether, if true, it leads to any conclusion about the limited scope of morality.

In the last section of the paper I turn to a different sort of morality-limiting argument, one that arises from claims for remedy or repair for past injustice. The question is whether, over time, moral wrongs can get effaced by normal social life built on top of and out of them. I will suggest that the revised view of moral requirement introduced to handle issues of normative autonomy also gives us conceptual traction on some of the intergenerational claims groups make against each other. Temporal distance matters, but it needn't make morality matter less.

Overall, I will argue, the pressure of claims against the idea of unbounded morality encourages finer articulation of the way morality regulates actions and institutions. As a moment of methodology, it speaks to the importance of not dismissing resistance to morality out of hand.

I.

Let us begin with a line of argument for limiting morality drawn from the fact that much

of human social life is organized in normatively structured groups—a church, an ethnicity, a people—on the basis of which members (and groups) claim entitlement to live in normatively distinct ways that, as it happens, do not entirely track morality.⁴ The kinds of thing I have in mind include non-cooperation with some public regulations, de facto discrimination in intra-group employment or housing, gender subordination. The entitlement claim need not imply relativism about values. Even if some groups are, morally speaking, judged worse than others, it is the supposed irrelevance of this fact to the individuals' entitlement to live in their ways—at least within a range of better and worse—that is at issue. If, in addition, groups claim standing and so authority to regulate the lives of their members (the source of their authority may be historical or divine) then morality's ambition to be universal and unbounded would seem to be in trouble. Let's call this the moral problem of social pluralism.⁵

There are pluralist elements at many different levels of social life. Various practices (about gender relations, child-rearing, fidelity, but also etiquette and humor) are not co-instantiable in a common culture, and there are different ideas of what lies behind practices to make them authoritative in their locale. Some elements are contingently not co-instantiable because they are different and equally permissible solutions to coordination problems (which side of the road you drive on), or, to take a more intimate kind of case, markers of interpersonal boundary conditions (whether asking about the profession of a new acquaintance is a mark of respect or an invasion of privacy). But accepting that there are various ways for individuals and groups to organize interpersonal life does not by itself throw any shadow on morality's authority (suppose each is respectful, allows for intimacy and also separateness, etc.).⁶

Things get harder when we consider practices that are normatively opposed: that is, from the point of view of one, the other is to be condemned.⁷ We can imagine patterns of marriage or paternal authority, exclusionary practices, labor and welfare protections (or their absence), views about corruption (or, as it might be said, “the price of doing business”). In its most unmediated

form, each group and subgroup claims to be authoritative not just about its way of life (what they do), but also about how the way of life is to be understood (as, e.g., spiritually necessary or properly respectful): a claim to exist in their own way and in their own terms. Individuals may be happy or not within a way of life; whether a group permits exit (in principle or in practice, because of penalties it imposes) is itself an internal matter for the group. One familiar response—toleration—is a limited pragmatic strategy when disagreement is deep.⁸ It cannot, nor is it intended to, extend to the ways groups think about or justify what they do.

So what are we to imagine? Multiple communities and ways of life, adjacent and interacting, or embedded one within another. Each has defining internal norms, among which are norms that set terms of engagement with other, differently-normed groups (perhaps different norms of engagement for different kinds of groups). The communities are substantially, not just matter-of-factly, different. One group regards infractions of its rules as threats and punishes severely; another believes everyone is fundamentally innocent, but sometimes erring and in need of gentle correction. Or, to take a different pairing: one takes equality and non-discrimination as fundamental values; another embraces a sectarian hierarchical system of authority and power. Were they politically separate cultures they might peacefully coexist; they might engage in trade, though they might monitor cultural exchange if they strongly disapproved of each others' ways of living.⁹ They would have few non-instrumental reasons for doing things that advance one another's interests. If, by the accidental history of such things, one group has a minority presence inside the other, it will be an uneasy presence.¹⁰ If majorities judge minorities within as corrupt or dangerous, they may insist that minorities forego defining practices. Larger social groups and states may take themselves to be warranted in intervening outside their boundaries to protect or liberate persons or groups whose treatment they judge is, by their lights, insupportable. When it is part of a group's identity that it be actively engaged in averting evil as it sees it, it is not easy to show how we can both respect the group's autonomous authority and restrict its

principled action. A Rawlsian “overlapping consensus” is available only for groups with sufficient common values or aims that can also survive the consequent modification of some of their central commitments. It is not available where groups resist what they see as assimilation, or its trans-national cultural equivalents, and want to sustain differences (sometimes at the cost of their own normal evolution).

Two side-points are worth mention here. First, in discussions of social pluralism, there is a tendency to freeze a moment in a group’s history as defining of what it is. That something will cause it to change is then taken to be a per se objection, as if a culture could be a thing that doesn’t evolve.¹¹ Second, we should not simply assume that groups or cultures have survival rights. Though there may be Millian goods to be had from “experiments in living,” and the loss of a culture or a language is (usually) to be regretted, it is not clear that this is the basis for a moral claim or right to exist. Preservationist impulses in this domain are peculiar. It is one thing to value a way of life that people want to live, another to want it preserved, like a habitat or a painting or an endangered species.

It’s not obvious on what grounds groups as such *could* have a claim to exist. There may be grounds in national and international law (for some kinds of groups, not all), but they either presuppose some other basis for the claim, something that antedates their authority, or they represent a moment of recognitional invention. Skepticism about the claims of groups *as such* does not imply that groups *in fact* have no claim; the question is about where the claim comes from. Groups may claim all sorts of justifying reasons for their existence (a chosen people, a sacred text, first possession), but it’s not clear how such reasons can reach beyond the group norms they justify. Since the kinds of groups in questions are social or cultural entities that make a certain kind of life possible for individuals who frame their lives in their terms, one might expect the best argument to be based in individuals’ claims or interests. And I think it is.

However, to support claims of independent normative authority, it won’t be enough that

people want to live with others in some way that seems to them desirable or right, or take themselves to belong in an essential way to a tradition that has its own norms and values and sources of authority. The existential claim—If I am not an X, I am nothing—is important psychologically and socially, but not true.¹² In any case, the claim it would support would be too strong. If a community of persons is self-defined by living in a place and relating in certain terms, sharing clubs and going to the same church, sending their children to the same schools, are they done some wrong if they are prohibited from using restrictive covenants, even if the cost is the eventual loss of shared identity? It's hard to see how.¹³

So what sort of ground in individuals could establish a claim that gives groups standing that limits interference with their autonomous normative activity? Identity is not itself sufficient. It may be inconsistent to make a *bare* identity claim for oneself and not respect a like claim made by others; it is *not* inconsistent to think one's own identity is for substantive reasons more important than others. But while it's not unreasonable to think that some groups should have greater autonomy than others, if they should, it's not for the reason that its members think it so.

II.

Some might be more tempted than I am simply to take groups that make authoritative internal pronouncements to be self-defining. If one were so tempted, it might seem reasonable to proceed by analogy with individuals' claims about their pursuit of happiness. People desire what they do; morality's primary job is to say what they may not do as a means of getting what they desire. So groups too may legislate internally as they will, so long as some standard (whatever it turns out to be) is not violated. This kind of account treats claims associated with group identity as having the formal structure of basic liberty claims: claims not to be interfered with in some domain so long as there is not a sufficient reason for the interference. In ruling out some things, the standard will in effect rule out some groups. But it will not judge a group as illegitimate in

its claims of authority (as opposed to what it would authorize) because the standard assumes rather than establishes group standing. One might think that this is enough if the standard is sufficiently powerful. I am doubtful about this, both because I am not sure there is such a standard, and because I think determinations of permissibility are not responsive to the range of moral problems normatively autonomous groups raise.

When looking for a standard that transcends groups and might limit them, it's natural to turn to some version of universal human rights. They bring the idea that, whatever the context, *this* may not be done. Unfortunately, what we count as human rights are either vague and indeterminate—rights to justice and respect—or an open-ended list of things judged of first importance for all persons. The 30 articles of the Universal Declaration of Human Rights provide a rich, aspirational list that includes rights to, among many other things, free and compulsory primary education, marriage and divorce, to work and to have equal pay for equal work, to join unions and to have unemployment protection, even a right to what is necessary for the free development of one's personality. It is hardly a vision of mere moral limits, and its literal implementation would leave the norms and practices of many groups in almost any social pluralism on shaky ground.

The more generic rights (to justice, respect) will rule some things out—slavery, rigid caste systems, forced prostitution, torture—but it's not clear that their rule can penetrate deeply enough to show that the surviving practices are appropriately under the authority of the group. And not all moral wrongs are violations of human rights. Does having children do unpaid work in a church or for a charity bring us into the domain of wrongful child labor? Can a group both restrict its membership and be a point of access to important social goods? These are exactly the sorts of questions that force the moral problem of pluralism—questions about the space in which normatively autonomous groups should be free to legislate—but they elude the conceptual resources of universal rights discourse. (One might instead see the universal rights as raising the

question; it's the answer that eludes them.)

It's worth noting that even if we had a stronger basis for determining the permissible range of groups' legislative authority, there would be problems. When a standard is normatively separate from the activities it regulates, what matters is the extent to which the standard is satisfied or violated. And that introduces vulnerability to practical paradoxes (permitting constraints on the freedom for some produces more freedom overall) and disturbing causal connections (frightened children grow up to be more easily pleased, law-abiding adults). Moreover, it's odd to regard groups as having standing (a liberty claim on non-interference) just because they exist and internally legislate.¹⁴ Odd and nontrivial. Once we admit standing, there's a presumption in favor of the entity that has it that's consequential for other groups and individuals, even if it's no more than a shift in where the burden of justification lies.

III.

But external standards are not the only model of moral authority. Rather than regarding the role of moral principles or requirements as establishing a kind of regulated instrumentalism—morality from without, as it were—they can instead be partly constitutive of the activity they govern—what we might call “morality from within.” Formally, the parallel would be with practices and game rules (forms of legal argument, rules of chess). So understood, moral requirements would at once secure standing for an activity and regulate what can be done in its name by setting terms for what counts as a well-formed action in the domain they govern. Persons can still have purposes independent of the constituting rules: one can play a game to impress a friend or argue a legal case for money. And the independent purposes can in turn affect the norm-constituted pursuit, enhancing motivation, or weighting otherwise underdetermined choices. However, the activity cannot be explained without the norm, and substantial change to a constituting norm changes the activity.¹⁵

I believe that we can make better sense of the wide ambition of morality in this second way: not as an external regulating norm, but as an internal object-constituting norm. Morality's primary domain is intentional action—the actions of individuals separately or acting within practices and institutions—and so very wide indeed. Consider the more familiar relation of morality to ordinary actions for ends. On one picture, the basis of ordinary action is secure: minimally, that I desire something is a reason for acting; that my acting may conflict with morality is an extrinsic reason not to act as I want. On the object-constituting view, it is only insofar as desiring (*this* desiring) is a morally supported source of activity that it gives a reason, and since the reason is then already (partly) a moral one, one might say that moral constraint in a sense already belongs to it.

What we gain from this way of looking at morality's rule is a theoretical account that makes an internal connection between formal normative elements and the facts and values they manage. Consider some examples somewhat closer to the issues we have been considering. If a principle of freedom of action descends from the moral value of autonomous choosing, it makes sense that freedom not be weighed against interests, since autonomy is the condition that makes those interests matter.¹⁶ In similar fashion, it will make a difference whether we understand protections of speech and association as *political* rights insofar as they are essential to democratic processes, or as *moral* rights because they are the social conditions of rational judgment. The significance of the right is expressed in the kind of protection it offers, so the political right of free speech might have a different extension than the moral one (and they might pull in somewhat different directions). In another domain, we might look to this kind of connection with value to explain why rights or moral claims of bodily autonomy and integrity are not violated (or overridden) if someone is pushed out of the way by emergency personnel rushing to an accident victim. If, as seems reasonable to think, such rights reflect the value of autonomous choosing in the form and direction of one's life, the justification for the emergency

actions need not be about the degree of stringency of the right, or about balancing it against the rights of others. The value of autonomous choosing is fully acknowledged in the emergency personnel's actions. That is - the protection that such rights provide are of a kind that, and only as extensive as, the value that underlies them requires.¹⁷

In general, to talk of rights or basic claims in this way is to indicate the presence of something of moral value. The value functions to introduce formal deliberative principles that determine the kind of moral space the right or claim occupies: how it interacts with other moral values, as well as claims and interests, in reasoning to action. So conceived, rights are not rules for action; they don't tell us directly what to do or avoid. They are neither abstract nor indeterminate. They are convenient ways to reference deliberative rules (or sets of rules) for judgment and decision-making, rules that express moral value. General or universal rights, if there are any, would indicate regions of value where social context makes no difference to deliberative outcome.

If we ask whether it makes sense to assign rights so understood to groups, we would be asking whether there are morally significant things individuals need or require that are had in this way (not whether groups are of moral value independent of the needs and interests of individuals who are members). If it is of no value to members of a group that they are members of it, even for a group that was historically significant, it makes no sense to think of it now as a source of legislation for its members. External interests (interests of non-members) in the existence of a group may be real, even partly defining of them (oppositionally, for instance), but that can hardly justify legislative authority.

To make this a bit less abstract, let's consider a conjectural account that has this form. Suppose that the rationale for the putative independent authority of a cultural or religious group is the value of a richly articulated shared cultural or spiritual life to individuals' moral character (say, as part of a healthy human personality). This would be a plausible moral ground for a

moral claim of the sort we are looking for. Now when we ask about children's unpaid work or exclusionary membership rules, our answer will depend on how or whether these activities are internally related to the grounding moral value (that they can be drawn from or instantiate the value in its role as an end). A group that seeks to integrate children into defining communal or spiritual values through participation in its rituals will have a claim of the right kind. A group that uses its children as cheap labor will not. Groups defined by deeds or attitudes that morality cannot countenance for any purpose (misogyny or racial persecution) will have no standing (there is no route from the deliberative end to these deeds and attitudes). That some group cannot go on, or go on as it wants to, doesn't put the value that supports an autonomy claim for groups in tension with morality. It is the same as with our personal projects: that morality doesn't permit everything doesn't undermine our claim to have a life that we shape for ourselves.¹⁸

So, however different the internal values and customs of different groups are, the basis of any group's claim—for authority, on the state for protection, on other groups for recognition or toleration—would be the moral value (whatever it is) that groups have for their members. A group may as a matter of fact *claim* its standing because it believes itself to be divinely elected; it *has* its standing because it plays the relevant morally significant role in human lives.¹⁹ Standing is an objective status; the terms or conditions of group standing are common and reciprocal. They need not match, and likely will not match the values that define any group. That being a member of a group is humanly important can be a reason to join a group, but it would be a curiously ironic group that existed for no other reasons than to serve that need.²⁰

This mismatch of reasons is not trivial. To be granted standing for reasons at odds with those one holds to be the right ones can seem insulting. The terms of recognition imply that a group has a place in a pluralism of groups, some of which they may find objectionable (intrinsically or as a social partner). From within, the terms may seem to imply an imposed and

artificial equality. But that is not all. The conditions of standing will affect how a group's values are presented, in what terms its claims can be made, and what it can claim. It is constrained to regard other groups that have similar standing in the public culture, and itself in relation to them, in ways it otherwise might not. Its speech, even when directed at its members, will be under pressure to respect common values. Indeed, its public speech may need to be in a common public language, one that introduces alien and discordant notions into its culture. It is conceivable that all of this could be accommodated in bad faith—councils of elders meeting secretly to preserve values that are inconsistent with public culture, hidden ceremonies—but in fact, the power of common public culture makes it difficult to sustain the divergence. It is not necessary to dictate the internal life of a group in order for the recognitional practices of the common public culture to affect the group's values: consider the effects of tax rules and standards of accountability, the protection of the civil and political rights of individuals, meeting mandatory education standards, and so on. Though one can readily understand resistance to all of this as a forced socializing effect, it seems no more compelling as a ground for complaint than the one I would have if I complained about moral upbringing costing me an effective desire for violent response to all insults.

Like persons, legislating groups will have rights whether or not they claim them. And if they have these rights, they will have some of the permissions and powers that go with them, as well as being subject to whatever restrictions apply to groups in virtue of their status and its moral basis.²¹ Although to *have* the right does not require the acceptance of common grounds, to *claim* the right does. In particular, making the claim is tantamount to actively participating in a common public culture; the claimant must then accept that recognition of other groups and by other groups will be in common terms, and that they are rightfully regulated by norms that sustain the common public culture that gives them standing.

This is not to say that all claiming groups are equal. Some groups will not have standing

because they only play a limited role in people's lives—they do not rise to the level of making the claim. Others will fail because the core actions or defining attitudes they sanction are not compatible with the justifying moral value.

Although standing is a status notion (securing legislative authority), and so suggests equality of treatment for those who have it, there can be reasons to think that some groups are owed differential treatment, not because they provide special value to their members, but because of the history of a group's relation to other groups: a history of past exclusion or injustice, for example. They may then have a claim to moral repair, a claim that can make things complicated. A group's differential claim might coincide with what they also have a right to on common grounds (e.g., fair opportunity). If they get what they deserve on the latter basis, one of their legitimate claims (to repair) would not be met because what they get is not provided in response to past injustice.²² The conditions of common culture might then entitle them to more (or to something different) than they would have had a claim to otherwise. So, for example, past exclusion or other forms of unjust treatment might call for special efforts to acknowledge a group's value and history (public expenditures for museums or exhibitions) or to sustain it in the present (support for separate education). We will be returning to questions about moral repair in the last section of the paper. Here I want simply to mark the fact that equality of status is not the last word about equality of treatment.

At the outset I said that it is a reasonable expectation of morality's authority over other normative claims that it should be consistent with the recognition of and respect for differences in culture and ways of life that are evaluatively substantial and group-defining. So we must ask: given the transforming effects canvassed, is morality as I've represented it a respecter of difference rather than a formula for homogenization?²³ What is asked of a group or way of life is whether and how membership and adherence to the group's directives supports a certain moral good. If it does, the group has standing; members can reason *from* its specified conception of the

good, now regarded as a morally recognized regulative end, *to* the activities and ways of life that define the group. Surely a wide range of practices can survive this condition. And when they do, it gives others reasons to respect a group's differences, as substantial, not as mere preferences.

Again, it may be helpful to look at the analogous transformation as it occurs in ordinary moral life. One comes to adulthood pursuing multiple activities, each with its own norms, each having its own attractions. It can happen that because of structural or scheduling or other kinds of conflict, one cannot just continue to do everything, or not in the same way. In making adjustments, we try to rethink what we are doing from a vantage point of a whole or healthy life, or even from the perspective of the activity to which we wish to devote ourselves. A passion for piano is channeled into playing as an accompanist, to make room for career and family. One does not forego the pleasures of playing, but they enter a different structure of reasons—other commitments may regulate their place in the whole.

If pluralism is substantial, we should expect there to be practices about which there is moral disagreement: absent the group claim for them, they would not need to be allowed. The argument for allowing them to persist will have to be, in part, in terms of the value that secures group standing. So on our working assumption, for practices that undermine moral personality, there is no more to be said. But were we considering such practices as gender-segregated schooling, or the use of mild forms of corporal punishment, or the requirement of dowry payments, one can see how, in some contexts, though not all, these could serve the relevant moral end. The moral end might not explain their origin, or a group's motivations in caring about them; it would provide their justification.

IV.

Having made something like an instrumental argument for group status, it is worth

explicit notice that not all end-based accounts of moral requirement are formally the same. In my part of the woods, allergy to utilitarianism has made many suspicious of any end-based deliberative theory. However, the inadequacy of utilitarianism does not come from its end-based deliberative form, but from its fundamental value or final end and the rule of practical inference (maximizing instrumentalism) that is appropriate to that end. A moral theory with a different anchoring end or value, and rules of inference appropriate to it, will have a very different character. Even the sense in which its end is “to be promoted” will not be the same—i.e. not directly maximizing (think of how one promotes the end of friendship, or the end of respect for persons).²⁴

Several things follow from this way of regarding the regulative structure of morality. First off, deliberative outcomes can be internally responsive to variation in conditions and so to differences that matter for social pluralism. What respecting persons or autonomy or even identity amounts to will not be the same in all circumstances. Attachment to a piece of land for a farmer is different, and can be treated differently (say, in exercises of eminent domain) than that of a land-defined people. (If the law cannot countenance such differences, morality can.)

Second, once we recognize the distinctive deliberative form of non-utilitarian (or non-consequentialist) end-based morality, there are important changes to the way we think about means. In the pure instrumental case, means are causally adequate to an end or they are not. If one then adds moral constraints, one has two values rather than one, and an unstable hybrid theory.²⁵ By contrast, when a deliberative moral theory has an anchoring end that represents a moral value, there can be value-integral constraints on means. The distinction is actually quite general. If I am strictly in the business of making a profit, environmental concerns are competing ends that show up as extrinsic restrictions on means, whereas diverting profit to make capital improvements is a means integral to my end. If I am in the business of raising children, their needs require careful attention to how (and by whom) they are met, humane and moral

concerns are integral to the activity; economic issues are only contingently and extrinsically relevant. The decision that one cannot afford to build a new factory is a response to an integral economic constraint; a parent's decision that she cannot afford inoculations for her children is not. And to take a purely moral case: when providing aid to others is a moral end, "do no harm" is integral to its pursuit. If it's just my job, it's a possible extrinsic constraint. The way means are to be evaluated, and so the collateral costs that we might need to bear, are a function of the kind of value an end embodies.

Morality will set us various ends and sub-ends. Actions that would as a means undermine some, might not undermine others. If trust is our goal, I can't deceive you as a means even if it makes you feel more trusting of me. But if your life is in imminent danger and you can't be saved without my deceiving you (you are too frightened), my deception by-passes your deliberative agency, but only because it is not available; it does not then subvert our shared end.

Taking this idea a step further, we might say that how a kind of behavior is understood within a group can be part of its permissibility conditions. (Consider a group in which women take care of children and men hold public offices. It's one thing if the arrangement results from individual choices, quite another if it comes from a belief that the roles are pre-ordained.) This may seem to strain the idea of permissibility, normally a standard for what may be done and not for how we think about what we do. But note two things. One is that in the cases we are considering, we are often looking at practices (or practice-like configurations) and the actions they justify. Like ends, a practice is regulative both of the actions that fall under its authority and of the reasoning to them. If an action deliberately depends on the practice that supports it—if it is practice-constituted—then the action is wrong or impermissible if the practice is.²⁶ This is true even if, externally and contingently, the action is the same as one that can or, under another description, ought to be taken, and even if we have reason not to interfere with its performance (for that reason). The question about when to interfere is separate from the determination that an

act is wrong. As described here, it will be regulated by different ends.

V.

At this point we have assembled at least the elements of an argument about the moral problem of social pluralism. The argument has two phases: first, that there is no obvious nonmoral route to showing that groups have standing (or can make legitimate claims on one another), and second, that there is a moral deliberative route to securing standing that would permit an array of substantial difference in group practices, though not necessarily in the groups' favored terms, and without preserving all the practices a group might think central to its way of life. I want to turn now to consider whether an argument of this form has any bearing on the separate spheres question—that there is something about politics or international institutions that adds an additional challenge to morality's scope and authority.

The question needs to be set out carefully. It is one thing to hold that states can do things to individuals that persons may not do to each other (punish or incarcerate or tax). There are views that explain this by a principle of moral transfer: rights that individuals held are given over to an institution in exchange for benefits that can come from state action. (One could argue in similar fashion about an international order, were there one created by comparable transfer.) Other views provide a direct moral basis for the things states may do (if the state is a necessary condition of rational action, its existence conditions—the power to tax, punish, etc.—are conditions of the conditions of morality.) It is quite another thing to argue that the normative needs of the state or the global order are of a kind that do not connect directly with morality (or only in delimited areas such as humanitarian rights) and sphere-appropriate normative principles predictably if not inevitably authorize actions that morality would condemn.

There is no reason to suppose that states or multi-national corporations are ends-in-themselves, or that they are entirely divorced in their purpose from the needs and interests that

anchor moral justification. What distinguishes the spheres is, first, the arena in which action takes place: person-to-person, state-to-person, state-to-state, corporation-to-corporation, and so on. And second, they are distinguished by the institutional practices necessary to go about their business (friends, colleagues and family, police and tax collectors, trade associations and mutual defense treaties). There are intermediate values: trust and decency (or respect); legitimacy; authority; fair trade practices. These values are realized in different ways: individual virtue; democratic self-determination; treaties. But the differences in practices and intermediate values do not show that we are outside the domain of the moral. If the practices and values belong to different kinds of projects used in the organization of human affairs, then it's not clear why we can't say of the separate spheres what we said of social and cultural groups: morality needn't judge actions in each sphere by all of the same norms. From the fact that we ought to keep promises despite its being disadvantageous to do so, yet we may break contracts (a kind of promise) when they are disadvantageous, it doesn't follow that contract is not a moral institution.²⁷ The same deliberative question can be asked in each sphere: how do actions (or practices) stand in relation to the specific moral norm or end that provides justification for a region of human activity?

If, for example, the decisions of an international trade association had the effect of increasing unregulated child labor, or decreasing opportunities for collective bargaining, or endangering workers in the informal economy, we could mount criticism that the decisions flouted moral standards which are part of the justificatory norms for groups that make seriously consequential decisions that affect others.²⁸

Something similar obtains in the relations between morality and law. We do not expect law to track individual morality (or the morality of any other specific domain). Law has a special role of introducing order, predictability, reliance conditions: these are practice-related values that make coordinated action possible (and so serve a moral end). It could not play its

role and adjust its decisions to the array of intersecting moral requirements there are. So it need be no moral criticism of a legal decision that generosity would have dictated a different outcome.²⁹ But, given the moral end that's overall justifying, it is a criticism if the law shows bias or its institutional practices are degrading. If, further, one thinks that law is itself a moral domain, part of the work of its constituting norms will be to articulate relations with the other regions of morality.

This brings us to the second type of separate spheres problem: to the extent that there are distinct normative domains, there is a question about how it will be for individuals who must act in normatively separate roles. One doesn't want to make too much of this. Almost anyone who has an institutional role will act in ways she would not and sometimes could not act as an independent moral agent. It's as true for welfare case-workers as it is for generals. Well-designed and transparent institutions can lessen the degree of discordance. The harder cases are said to arise, usually in politics, when, because of an institutional role, a person takes herself to be compelled to do something that "crosses the line"—for the sake of the institution she believes in, she must betray the innocent, make a deal with a criminal group, authorize a terrible deed. The problem is supposed to be that, on the one hand, we grant that the terrible deed had to be done, but on the other, we don't want to forgo saying it was wrong to do.

I have never felt the theoretical force of the dirty hands cases. I understand the warning about politics that underlies it, and the caution we should have about who we put in positions where we expect there to be hard decisions. But why assume that it is part of the postulates of a sound moral theory that the fit of morality to the world must come out even (if the modal ought generates a contradiction, we should be concerned with the adequacy of the modal ought). The individual may or may not be trapped between spheres.³⁰ Occasions of unthinkable actions can arise from wildly unusual circumstances (and philosophers' imaginations) which create a perverse choice set: that is, a situation in which normal moral actions are burdened with

exceptional costs and kinds of action that are ordinarily off the table as means look to be the sole way to avert horrible effects or to gain profoundly needed benefits. Ordinary virtue may not be the best guide in such cases, but virtue is not the same as morality. So the better question is whether, if perverse choices are forced on us, we should say that morality has run out or let us down?

Morality would let us down if perverse choices were common or only rarely the result of human failures; if, like tsunamis, they could not be foreseen or prevented, or if there was no way to manage their aftermath. But this is not the case. Part of what we are supposed to do as a moral agent is work on the world (including ourselves) so that the fit with morality is better. All too often, the perverse choice set in the political sphere is the result of decisions that should not have been made, by ourselves or others, at earlier times.³¹ We are not, then, acting *de novo*, as it were; a better question may be about remedy or repair: whether the deed can be integrated into a sound and public moral understanding.

Sometimes what we should do is revise our understanding of basic moral concepts and look to identify relevant moral features in unexpected locations. If the rule of action we know is not adequate to the issue we face, we may discover that it is our choice set that is unnecessarily constrained, and we can sometimes be creative and expand it as well. In a now familiar example about the practice in orchestra auditions of some decades ago, it seemed that the values of impartial evaluation and gender equity seemed in conflict. Hard as judges might try, they were unable to satisfy both moral masters. Changing audition practices so that there was a visual barrier between players and judges changed the overall equity outcome enough so that whatever the results in a given competition, one could have confidence that both moral masters had received due regard. In a sense, morality had failed to guide. But the failure was in part about agents' grip on the values of access and equity, but also in part on how the world could be changed to be a better home for them. Interestingly, expanding the choice set in such a case not

only resolves the problem, it tells the agents something about what the problem was. A different solution—quotas—might have suggested the problem was a different one and deflected attention from the cause in unconscious discrimination. Though the outcomes might be the same, the differences in route (and thought) are morally significant. The quota solution is more likely to leave a trail of grievances; the other, disappointments but no grounds for complaint.

From the perspective of moral theory, the anchor for moral invention is the deliberative structure attached to evaluative premises (moral ends). Precisely because we are not attempting to leave morality behind, but rather to use it to make progress, our creativity is answerable to moral standards of justification. We cannot just point to an undisputed important goal to justify means; the means we are permitted must be shown possible within the deliberative compass of a moral end. There are further constraints that come from the community of moral judgment in which we act (or the lack of such a community). Actions of ours that impose new terms of interaction on others need to be both reasonable and intelligible from the point of view of those affected. At least ideally, co-deliberation should be possible.

VI.

There are a variety of benefits to be gained from the integration of moral thought that looks to ends and principles of deliberation into the structure of practical reasoning more generally. In practical thinking from ends, it is natural to consider questions about precedence, about value, but also about timing. Ends of any consequence give us reasons to prepare, to adopt sub-ends, to change features of our lives or the world so that their pursuit goes more smoothly. We think beyond the episode of an action: there are stages of action that require independent attention, mistakes and interferences that need to be corrected. Some ends we need to be attentive to no matter what else we are doing. There are ends whose importance comes from their connection to the needs of others and whose rhythms of pursuit may therefore be

determined by what others do. And so on. The point is not that the richness is unique to a deliberative account, but that it is natural to find it here.³²

I think this is most visible in the way such a conception of morality can be used to think about moral remedy and repair, a theme I've touched on several times in this paper. In general, problems of moral repair occupy poorly charted territory. Something has gone wrong that cannot be undone or reversed. Even when compensation is possible and reasonable, it often does not repair all the effects of moral wrongdoing. Wrongdoing may set a chain of events in motion that is difficult to untangle; but also, while the wrong done is behind us, and it is not clear how we are to reach back to it, it sometimes cannot just be left there, as a bare unfortunate happening (or bad mark on some agent's moral report card). The delicate maneuvers of apology and forgiveness negotiate some of this territory in the interpersonal case: apology reaches back and encapsulates the wrong done; forgiveness acknowledges that, and also assumes some burden for the sake bringing the wrong to an end, whether or not it also makes possible ongoing relations.³³ But in other cases, of political reparations, for example, apology may not be sufficient and forgiveness not appropriate. Our remaining resources often appear to be entirely forward-looking. Yet principles that direct us to redistribution, or resettlement, or monetary reparations, often leave untouched essential parts of the wrong done, and produce new complaints, often a sense of arbitrariness, especially in those instances where generations of time have passed. It can again seem that morality, or parts of morality, have to be left behind, and that some other values must be drawn on to determine what to do.

In this last section I want to examine aspects of the mix of issues about injustice, innocent benefit, and generational change that are thought to make claims of intergenerational justice between groups so hard. I hope to show that some of the difficulty dissolves when the evaluative norms that are applied are not external, but end-based and integral to the moral position of the groups involved.

So let's consider, in rather abstract form, some of the moral problems that arise when an indigenous population *I* loses its lands to a colonizing group *C*.³⁴ Whether it happened by treaty or sale or corruption, let us suppose that no one (now) thinks the original transfer was moral or just. Many generations of *C*'s descendants have lived on the land and prospered. Many generations of *I*'s descendants did not thrive, and remain unlikely to thrive, in ways that are causally connected to the situation *I* was forced into when the lands were taken. Current members of *I* would make a claim against current members of *C*. The individuals currently in possession of the land have done nothing wrong; depriving them of what they have would be devastating. The injustice was also long enough ago that there is no return to the world *ex ante*. Which elements of the *C*-descendants prosperity is a product of their and their ancestors' industry and which a product of the injustice is hard to say; how the indigenous population would have fared had they been left alone we cannot know.

Now consider the usual terms we have available to think about this. We can start with rights of possession, unjust taking, rights of generational transfer, dignitary and identity injuries, near and long-term benefits and losses derived from the re-arrangement of possession. Since we cannot reverse the injustice or trace its results, we can seem left with a limited palette of responses. Arbitrary compensation; symbolic recognition; monetary awards to make the symbolism amount to something; recovery, where possible, of sacred objects and spaces. The opposite view—everything that flows from a tainted source is tainted—is both implausible as a principle and morally impossible in application. One might want to conclude with Jeremy Waldron that we would do better for all with a forward-looking view that grants the descendants of *I* who are disadvantaged claims in distributive justice—not as descendants of *I* but as needy persons—leaving behind the impossible-to-sort-out claims of intergenerational justice.

But is it clear that there is no plausible way to keep the moral history alive into the remedy? The barrier to remedy is the innocence of the *C*-descendants; they do not deserve to

lose what they have. One might wonder, though, that if desert isn't necessary for beneficial inheritance, why it should be necessary for inheriting burdens. It would be unfair if obligations couldn't be inherited, but that's the question at issue. Suppose after the fact of the wrongful taking there was a consequent obligation to repair the wrong. One kind of repair would have been to return what was taken. That didn't happen. But that wouldn't affect whether the obligation stands. Over time, we think, the history gets too complicated for return to be an option. But since return is not the only possible mode of repair, the obligation to repair can continue. What's the barrier to thinking that each *C*-generation inherits *that* unmet obligation? Or that each *I*-generation inherits an unmet claim. If we think about the actual history of many of these cases, there has been ample room for creativity by the *C*-descendants to find ways to honor the obligation, ways that would repair the wrong without sacrificing the existence and reasonable well-being of their own community. So an initial wrong is often compounded by further wrongdoing. This makes the line of inheritance not so attenuated.

Repair belongs with notions of value and function. One can't repair a grain of sand or burnt out comet. To repair something does not imply that one restores it to its condition *ex ante*, nor that what one winds up with is or is equivalent to the thing one had. The repair to my computer involved an upgrade. Some things that we can't repair, we replace. Where there are things that we can neither repair (in the literal sense) nor replace, we find other ways to fix the situation—offering money or services. There can be brute losses: nothing can replace the watch my father gave me. There are also gains (the new watch is waterproof, its dial visible at night). Moral repair builds on these familiar features and extends them in ways of its own. Think of what's involved in repairing someone's dignity who was wrongfully slandered; it could take time and many different acts by a variety of people, not all of whom were responsible for the dignitary offense. Repairing a friendship after a period of neglect might involve developing the friendship in ways that change it, even change it fundamentally. It needn't be easy to say what counts as

repair, and where the reparative acts are interpersonal, there are many delicacies about who gets to say that enough has been done. Still, it's not impossible to say that someone should have accepted an apology or a replacement or new terms of relationship as making the needed repair.

One reason the subject of moral repair and remedy has not been much explored may be that we tend not to think of obligation and claims of right as open-ended. The deliberative framework, by contrast, encourages this. The structure of ends-based projects (not just ends as effects of single actions) requires responsibility over time and across the serendipity of events. Things tucked away in the past have a tendency to return and implicate current projects. To engage responsibly in some kinds of project is to know that they will intertwine in both predictable and unpredictable ways with future projects and events. Such knowledge affects deliberation about the end (its significance, its fit with other ends) and about means (what we can foresee happening if we take one or another path). Drawing this kind of practical knowledge into our moral thinking makes us better able to respond to actions that involve or affect many persons and whose effects can be at work over a long time. On the deliberative model the obligation to have such knowledge and to make it effective is integral to having an end.

In this light, we might think a bit more about inherited obligations. As I noted, blamelessness is not an obstacle to inheritance. In general, we can be morally on the hook for things that are not the effect of our voluntary doings. Things happen around us to which we are obligated to respond, at some cost, without regard to whether we are at fault or whether the burden is distributed fairly. We sometimes agree to things thinking they will be easy to do. When it turns out to be harder than we expected, we don't get a release. Suppose I agree to house-sit, looking forward to days with my neighbor's splendid DVD collection, but his water pipes burst and the cat gets sick. I surely don't get to walk away or watch DVDs as the waters rise and the cat dies. As the caretaker of his property (having that end), I've inherited a number of his obligations. Yet another way we inherit obligations is via group membership (in voluntary

associations, but also as members of city or a state). Sometimes the obligation weakens or changes as it goes down a chain of inheritance, sometimes not. It may depend on whether the content of the obligation includes reference to a particular performance (I cannot make it the case that my brother John picks you up from the airport, but I can make sure you're picked up). If I inherit property that has a right of way on it, I will often inherit that too (though on my own I would resist granting it).

If inherited and other derived obligations are possible, the question to ask is whether the obligation to repair injustice is one of them. For if it is, the difficulty with counterfactuals or the innocence of those on whom the obligation lands would be irrelevant—irrelevant to the *existence* of the obligation, not to its content. What speaks in favor of the inherited obligation to repair is the same complex tissue of facts that make it difficult to write the moral history. Though we may not be able to trace out the causal conditions of the current state, that's often not reason to doubt that injustice is a central feature of the story, not a mere episode, but part of the foundation and fabric of consequent events. This would be a problem if we were seeking my piece of the obligation or yours, or the separate bases of his or her claim of inherited injustice. But we needn't think in those terms. If we are talking about the history that produced the United States or New Zealand, and so of the fate of Native Americans or Maori, we are talking about groups; and, if anyone does, it is the groups that possess the respective obligations and claims. The wrongful taking of a group's lands is not (or not merely) a sequence of wrongful acquisitions from individuals. Think about giving each individual the equivalent in land of what was taken, just somewhere else and scattered. A great deal of the wrong would remain.³⁵

Groups have different temporal lives than persons, and they may benefit when individual members do not.³⁶ So the idea that current members of *C* have an obligation to current members of *I* doesn't imply that the *C*-descendants have done anything wrong or that they have all individually been the recipients of unfair advantage, or that the members of the claiming group

are in every instance at a disadvantage. It's worth noting that if it is the group that holds the inherited obligation to repair, it cannot be satisfied by individual acts of good will. Giving resources or funding an education for a member of *I* is a fine thing to do, but it is not part of the owed repair. For analogous reasons, no specific descendant of *I* is owed something, though the descendants inherit a claim of repair as a group.³⁷

This brings us back around to our earlier discussion about the moral standing of groups. There we were concerned to find the source of the claim that groups could have moral standing: authority to legislate to their members and to limit the reciprocal authority of other groups. Here we are looking at a possible correlate of this: that with standing comes the normative roles of moral agent and moral subject, and as a consequence, a vulnerability to bearing inherited costs.³⁸

There are no doubt other routes to this conclusion, as well as competing ways to think about groups and intergenerational injustice. I think that the advantages to be had from the account offered here lie not in its uniqueness but in its fertility and scope, as well as in a welcome release from rigid ways of thinking about moral requirement.

Notes

¹ One way some have thought about the relation of morality to the different systems of norms and institutions is as a general constraint—for example, a set of universal values or human rights. For reasons that will emerge—about conflict between norms and about their content—I don't think this is a viable position on its own. It's either empty, or when made effective, much more than simply a set of constraints.

² The complete Rawls quotation is of interest. Rawls says: "There is no reason to suppose that the principles which should regulate an association of men is simply an extension of the principle of choice for one man. On the contrary: if we assume that the correct regulative principle for anything depends on the nature of that thing, and that the plurality of distinct persons with separate systems of ends is an essential feature of human societies, we should not expect the principles of social choice to be utilitarian" (TJ 1999 25).

³ Regulative principles for courts and legislatures do need to be different because what they do is different: *stare decisis* has a central place in one, no more than a pragmatic role in the other. But both systems can be subordinate to the value of constitutional rule. Since regulative principles serve institutional ends, and so other social values, there is no inconsistency in avowing Rawls' version of a separate spheres principle and also holding that morality is *a* or even *the* fundamental value across institutions. Curiously, Bernard Williams criticizes Rawls for holding such as view. (William 5, n1).

⁴ I am assuming that it is not essential to any group that it be against morality. It will be of interest whether the tracking issue is about reasoning and judgment or just permissibility.

⁵ Whether, ultimately, this is to be understood as a moral entitlement is another way of asking the question this paper considers.

⁶ Though it's not necessary that this be so, in many of these cases one can see from within a practice how another might be possible and even attractive. In an open culture, this is one of the ways the arts play a cosmopolitanizing role; the more closed the culture, the less this will occur (cf Plato's *Republic* Book X).

⁷ I am not here worried about inter-group conflict in the usual sense, but the more unnerving occasions when groups find it unthinkable to live near other groups with their "deviant practices."

⁸ The theorist who embraces social pluralism is like an anthropologist of moral institutions; either she does not condemn any but the most extreme practices, or, regarding ways of life holistically, she interprets objectionable-seeming ways of acting as integrated elements of stable and, to the participants, acceptable patterns of living. It's not clear how she can take seriously their differences.

⁹ There's no rule for how much substantial difference is tolerable before the scales tip toward more dramatic incompatibility.

¹⁰ Some minorities flourish in such circumstances by performing tasks that may not be done by the dominant group. Historically, this has rarely been a healthy permanent arrangement.

¹¹ Of course it's a practical problem as well: the anxiety about change can make groups rigid, a posture that is often self-defeating.

¹² One wants to be wary of the romance of identity: many of the identities we prize are, in historical terms, relatively recent, the product of conquests, movements of peoples, and the collective myth-making that is part of creating culture. Injustice too can be a source of identity—shared oppression, a common enemy, can create a belief in a cultural unity where there was none.

¹³ Of course there are obvious moves here—common ownership, liberty claims. About common ownership I'll have little to say, since I am most interested here in groups that share a place. Liberties attach to interests that there are moral reasons to leave to the authority of individuals or groups, so they must wait on a further account of what those might be.

¹⁴ One could say the same about the claim for individuals and their desires too, but it's so familiar to make the claim that it's hard to get purchase on its oddness.

¹⁵ Sometimes what is and what is not a constituting rule may not be clear until a change is proposed. For some activities, it is possible that there is no determinate fact of the matter about this.

¹⁶ Values, in the role that I describe here, function as deliberative ends.

¹⁷ I don't mean this to be an uncontroversial claim. I do mean to flag that our current practice of talking in terms of pro tanto and all things considered reasons involves a substantive view about moral norms.

¹⁸ The fact that the costs to someone of adhering to morality might be too high for him to countenance does not imply they do not bear. "I can't" is often an expression of how profoundly one doesn't want to.

¹⁹ This is one way to read the separation of church and state.

²⁰ Cf. *Bowling Alone* and other accounts of the psychological and social costs of anomie, the health and social value of belonging to a church, etc.

²¹ I am inclined to think that these status rights, in the sense of rights I use here, are also inalienable.

²² Some of the confusion about affirmative action has this source: the more the principle turns to issues of representativeness, the less it is able to be a response to selective past injustice.

²³ An interesting empirical question arises with the mainstream western religions that have, over time, formed an extensive common moral culture. It doesn't seem that the sharing of a value

system has required the sharing of faith.

²⁴ The deliberative rules from ends to intention may be difficult to formulate; but it should be clear that many moral values don't support maximizing instrumentalism and are not served by a morality of constraints. One could interpret Kant's categorical imperative as such a deliberative rule: you act disrespectfully just in case you cannot will your maxim a universal law.

²⁵ Suppose, again to take the simple case, that happiness is the final end. Restrictions either do not belong to the final end, which is theoretically odd given their authority, or they have only a pragmatic relation to it, as in some forms of rule utilitarianism, which makes the theory unstable.

²⁶ Conversely, accidental benefits of a bad practice don't speak in favor of it.

²⁷ Or that we should have no qualms about this feature of contract. Cf. Seana Shiffrin, "The Divergence of Contract and Promise"....

²⁸ Cf. Joshua Cohen and Charles Sabel, "Extra Rempublicam Nulla Justitia" and A. J. Julius, "Nagel's Atlas," *PPA* March 2006.

²⁹ The inappropriateness of generosity does not imply that law (or judges) should not be lenient or magnanimous. The point is about practice-distinctive moral virtues.

³⁰ We want to keep separate the worry that this can happen in politics from the quite different anxiety that it is of the nature of politics to set its agents apart from morality.

³¹ The trajectory of responsibility in role-based action can pass through the individual acting to others.

³² I should note that this complexity of structure is consistent with a morality of rules and principles in ordinary cases. It's not a two level theory—fixed principles for ordinary folk, deliberative richness for the moral expert. It is rather a theory that is responsive to the different roles morality plays and our different needs in the various circumstances in which we look for moral guidance.

³³ Cf. Pamela Hieronymi, "Articulating an Uncompromising Forgiveness"....

³⁴ I borrow the case and some of the worries about its resolution from Jeremy Waldron "Superseding Historic Injustice"... "Settlement, Return and the Supersession Thesis"...

³⁵ Thinking about moral repair can in this way illuminate the nature of the wrong done.

³⁶ It's an interesting moral question whether individuals who survive a group's demise inherit its obligations.

³⁷ One of the morally attractive features of reparative affirmative action is that it addresses an inherited group claim.

³⁸ We would say that an individual's debts cannot (morally cannot) be collected if the consequence is his death. Would the same be true for groups? Could we say: however it reached its current position, so long it is not actively sustaining itself through unjust acts, it has a claim to continue to exist? If there is a reason it does, it would have to be for the moral reasons that support group standing in the first place. It also doesn't follow that it could continue to enjoy its relative privilege without taking on considerable reparative burdens.