Introduction

‘Ideally, political life should be governed by moral principles’. Sceptics might question the feasibility of this desideratum, but nearly everyone agrees that it would be good if politics were guided by principles of justice. Here, by principles of justice, I mean those special kinds of normative principles that determine the legitimacy of political arrangements, most notably of states or state-like units.

Principles of justice so understood occupy a somewhat ambiguous position within contemporary normative theory. In particular, there appears to be a tension between these principles’ claim to rest on valid grounds, on the one hand, and their distinctly political – as opposed to ethical – nature, on the other. This tension is what I call the problem of political normativity (where ‘political normativity’ refers to the kind of normativity underpinning principles of justice). The aim of this paper is to illustrate, and solve, this problem.

In the first part of the paper (sections 1, 2, and 3), I introduce two jointly necessary conditions for any plausible account of political normativity, which I call (i) non-arbitrariness/non-mysteriousness and (ii) political specificity, and show that four prominent approaches to justice all fail to meet them. Those approaches that successfully distinguish political normativity from ethical normativity more generally end up relying on mysterious or arbitrary assumptions, while those approaches that ground justice on valid normative sources fail to account for its distinctively political nature. In short, the approaches that meet the first desideratum violate the second, and vice versa. It therefore seems that defending the political nature of justice comes at the cost of invoking a dubious source of normativity; while grounding justice in an authoritative normative source comes at the cost of giving up its political nature. Is this an inevitable trade-off? Does this mean that a compelling account of political normativity is impossible?

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In the second part of the paper (section 4), I argue that, although this scepticism is motivated by powerful considerations, we should not succumb to it. Building on the conclusions reached in the preceding sections, I develop a fifth, Kant-inspired, approach to political normativity, and claim that it successfully overcomes the difficulties affecting its rivals. On this view, principles of justice are a construction of universal human reason, hence their source is non-arbitrary. However, their content and scope can only be determined by reference to the specific socio-political relations in which we are involved. This shows that we need not choose between duties of justice being ‘political’, and their source being authoritative. For once, we can have it both ways: obligations of justice can be authoritative as well as political. In light of this, I conclude that the problem of political normativity can be solved.

Before getting started, I should note that my discussion will focus on liberal principles of justice only – namely those principles which take individual human beings as the ultimate units of moral concern. Whether my claims about political normativity can be extended to other views about justice is a question I shall not investigate in this paper.

1. Two Desiderata and Four Models
Let me start by positing two crucial desiderata for any plausible account of justice. I call these desiderata the ‘non-arbitrariness/non-mysteriousness desideratum’ and the ‘political specificity desideratum’.

Non-arbitrariness/non-mysteriousness: The normative source of principles of justice should be non-arbitrary and non-mysterious. That is, the justification of principles of justice should not appeal to a dubious source of normativity, either because of its arbitrariness or because of its mysteriousness. For instance, the claim that justice is what my uncle Tom says it is would fail to meet the requirement of non-arbitrariness. Unless I can establish that my uncle Tom has some privileged access to the truth about justice, taking his word as an authoritative source of claims about justice is entirely arbitrary. Similarly, claims about justice that rest on ontologically problematic assumptions about the existence of some external moral reality would fail on non-mysteriousness grounds. Unless the existence of ‘moral facts’ can be given some plausibility, claims about justice which presuppose it are to be rejected. The sources of political normativity – just like the sources of ethical normativity more generally – have to be non-arbitrary and non-mysterious from
an epistemic (and ontological) point of view. Only then can principles of justice claim authority over us.

Political specificity: Unlike other types of normative principles, principles of justice should be recognizably ‘political’. That is, they should be tied to certain kinds of institutions and practices. Although what counts as a ‘political’ practice varies across different accounts of justice, we can safely assume that any plausible such account must regard the institutions of existing societies (states) as part of the political realm. In particular, principles of justice can be ‘political’ with respect to (i) the distinctive normative question they address, and (ii) the materials with which they answer such a question. John Rawls’s approach to justice exemplifies both features. First, in Rawls’s view, the political problem of justice differs from both the ethical problem of how an individual should lead her life and the (narrower) moral problem of how an individual should act towards others. The question addressed by principles of justice is ‘How should we assess the conflicting claims of individuals who share the same societal institutions but reasonably disagree about what a good life is?’ Second, in answering this question, Rawls appeals to the ideas of society and of the person embedded in the history and institutions of a liberal democratic polity. The materials with which Rawls designs his principles are therefore ‘political’ all the way down. Their source is the public political culture of the society they are meant to govern.

In this paper I shall consider whether there can be an outlook on justice simultaneously meeting both of these desiderata. In other words, I shall ask: Can there be a compelling account of political normativity which differs from an account of ethical or moral normativity more generally? To facilitate my investigation of this question, I begin by distinguishing between four approaches to justice and, consequently, to political normativity. These approaches differ along two dimensions: the ontological and epistemological nature they attribute to principles of justice (discovered vs. constructed) and the scope of their normativity (universal vs. particular). These approaches can be schematically represented in the following matrix.

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1 People engaged in a debate ‘reasonably’ disagree if their conflicting views can be proven neither right nor wrong.
3 The approaches I am about to present should be regarded as ideal-types. In designing them, I am indebted to Ronald Dworkin’s distinction between two interpretations of the methodological approach underpinning Rawls’s theory of justice: the ‘natural model’ and the ‘constructive model’. Ronald Dworkin, ‘The Original Position’, in
As the matrix shows, both the discovery model and construction model come in universalist and particularist versions, depending on what they take to be the relevant source of principles of justice. Humanist essentialism affirms the existence of a universal human nature, and sees it as the ultimate source of political normativity. Cultural essentialism, by contrast, postulates the existence of different cultures, each characterised by a distinctive essence, and claims that the normativity of principles of justice lies in them. Conventionalists share cultural essentialists’ focus on particular cultures and communities, but deny the existence of something like an ‘essence’ to be discovered in each of them. Instead, they adopt an interpretive methodology, and insist that principles of justice should be constructed by articulating the shared understandings of the members of the society to which they are meant to apply. Finally, constructivists disagree with conventionalists about what the relevant ‘materials of constructions’ should be. While the latter think that the ‘building blocks’ of a theory of justice should be a community’s shared convictions, the former believe that justice should be constructed through universal human reason.

This has been a very sketchy overview of our four approaches to justice (and political normativity). In the following sections, I shall analyse them in more detail, asking whether they succeed in meeting both of our desiderata.

2. Assessing the Discovery Model

2.1 Humanist Essentialism

Humanist essentialism rests on the belief that human nature is characterised by certain ‘essential’ features, and that valid principles of political morality should respond to them. On this view, what justice requires is directly derived from a universalistic account of what it is to be a human being.

A good number of contemporary theorists – especially those who defend the idea of global justice – subscribe (more or less explicitly) to this approach. Simon Caney, for instance, argues that ‘persons throughout the world share some morally relevant properties’, namely a common human essence, ‘and hence if some moral values apply to some persons then they should, as a matter of consistency, also apply to all’. For Caney, these are the values typically protected by liberal principles of social justice.

In a similar vein, Charles Beitz argues that Rawls’s principles of domestic justice should apply globally because of the universal validity of the conception of moral personality on which they are premised. Since all human beings have a capacity for a sense of justice, and a capacity to form, revise and pursue their conceptions of the good, the principles Rawls defends in the domestic context, Beitz claims, should apply to the world at large. If justice is a function of what it is to be a human being, so the argument goes, then principles of justice should apply to each and every person, independently of the particular community to which they belong.

At first glance, this approach seems plausible enough. But there is a crucial epistemological question humanist essentialists must answer if their outlook is to stand further scrutiny. Where does this ‘human essence’, or ‘universal’ moral personality, come from? How do we come to know it? Theorists such as Beitz and Caney remain silent on this point, seemingly taking it for granted. If, however, we do not want to take it for granted, we must distinguish between at least two types of essentialism: externalist and internalist.

Externalist essentialism holds that principles of justice are ‘grasped’ by intuition. What human beings owe to each other by virtue of their humanity is something ‘written’ in the fabric of the universe, to which we gain access via some privileged cognitive faculty. This kind of reasoning appears surreptitiously to underpin much recent literature on justice. For example, G. A. Cohen and so-called luck-egalitarians hold that justice requires compensating for the disadvantages a person suffers through ‘bad brute luck’, but not for those disadvantages she suffers through bad ‘option luck’. Implicit in this view of justice is a conception of individual

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7 I say surreptitiously because I doubt that any of the theorists I have mentioned would explicitly endorse this view.
human beings as autonomous agents. For a person to be really autonomous, so the argument goes, she must be in control of her life, and not suffer from disadvantages, or benefit from gains, she is not responsible for. If I choose to take a risk, then I should bear its consequences, whatever these may be. But I should not suffer from the consequences of risks which I have not wilfully taken.

This view of what it is to be human, and of what justice consequently requires, is often treated by luck-egalitarians as a given. However, it is unclear where it comes from. In particular, the idea that justice requires the neutralisation of the effects of brute luck on human life seems to rest on nothing more than a (powerful) intuition about what it is to be autonomous. Unless luck-egalitarians accept the view that this intuition is revelatory of some deeper moral truth; unless they can substantiate the claim that there is a moral reality out there which we can grasp by intuition, their case for luck-egalitarian justice rests on shaky (mysterious) grounds. To my knowledge, so far no compelling argument for the existence of such an external moral reality has been offered, and certainly not by luck-egalitarians. We should therefore consider a second, more promising route to humanist essentialism: the internalist essentialism proposed by Martha Nussbaum.

Drawing on Aristotle’s philosophical work, Nussbaum develops a novel and particularly compelling version of essentialism, based on a distinctive epistemological perspective. Rather than attempting to discover human essence - hence the grounds of justice - by intuition, Nussbaum’s approach is ‘internal to human history’. The conception of the human being at the heart of her theory of justice is not arrived at by observing the world from an ‘Archimedean point’ external to human existence, but through an ‘inquiry into what is deepest and most indispensable in our lives’.

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9 On this see Miriam Ronzoni and Laura Valentini, ‘On the Meta-ethical Status of Constructivism: Reflections on G. A. Cohen’s “Facts and Principles”’, Politics, Philosophy & Economics, 7 (4) (2008), 403-22. Notice moreover that externalist essentialism is also unlikely to meet the political specificity requirement. To see this, suffice it to think of G. A. Cohen’s claim that principles of justice should not only apply to society’s main institutions, but also to individual conduct. See his ‘Where the Actio Is: On the Site of Distributive Justice’, Philosophy and Public Affairs, 26 (1) (1997), 3-30.

10 Martha Nussbaum, ‘Aristotelian Social Democracy’, in B. Douglass et al. (eds) Liberalism and the Good (London: Routledge, 1990), pp. 203-252, p. 217. Nussbaum’s thinking has significantly changed and evolved over the years. For the purposes of my discussion, I only focus on what might be called her ‘Aristotelian essentialist’ phase.


12 Nussbaum, ‘Non-relative Virtues’, p. 208
By analysing 'myths and stories from many times and places' she finds 'great convergence [...] in singling out certain areas of experience as constitutive of humanness'. Despite being the product of very different societies across time and space, these stories conceive of the human being in substantially identical ways, since in all of them the 'boundaries' of humanness are defined 'by the beast on the one hand, the god on the other'.

First, all of these stories acknowledge the finitude of human life. While Gods are perfect and self-sufficient, human beings are needy and mortal. Second, from these different cultures, narratives, and traditions it emerges that, unlike all other living creatures, human beings are capable of choosing and planning their lives: They have a capacity for practical reason. In Nussbaum's view, from this it follows that a just society is one where human beings are in a position to satisfy their physical needs, and have enough freedom to design and pursue their plans of life.

Nussbaum's internalist essentialism appears far less dubious than its externalist counterpart. The general features it ascribes to human beings - vulnerability, finitude, and a capacity for practical reasoning - are certainly plausible. Moreover, being internal to human history, the sources of this particular account of humanity are no mystery at all. It thus seems that the foundations of Nussbaum's version of essentialism succeed in meeting the non-arbitrariness/non-mysteriousness desideratum. But does her universalist account of humanity really translate into the liberal principles of justice she advocates? Can such principles be thought to rest on a cross-cultural, universalist account of humanity, reflected across time and space? I believe not.

Nussbaum famously offers a list of human capabilities - i.e., capacities of being and doing - which any political community must grant its members if it is to be legitimate. Such a list, however, includes a number of items which can hardly be said to enjoy the timeless cross-cultural appeal we would expect from features of human essence (for Nussbaum's entire list, see the Appendix).

Let us consider, for example, the seventh item. This indicates the necessary social basis for individuals to develop their capacity for affiliation. Point B states that individuals should be

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granted ‘the social basis of self-respect and non-humiliation’. This assertion seems to be widely shared. The problem arises when Nussbaum specifies that such a basis of self-respect ‘entails, at a minimum, protection against discrimination on the basis of race, sex, sexual orientation, religion, caste, ethnicity, or national origin’. Far from being culturally neutral, this specification of what self-respect and non-humiliation require rests on distinctly (Western) liberal beliefs.

However attractive and desirable this specification may seem to us, it is implausible to claim that almost all human beings have always considered ‘protections against discrimination on the basis of race, sex, sexual orientation, religion, caste, ethnicity, or national origin’ as necessary for their lives to count as fully human. Think about ancient Rome or Greece. In these societies discrimination based on race, sex, and religion was routinely perpetrated. Or else, think about Plato’s Republic and its hierarchical account of the best form of political organisation. This was based precisely on the view that there is no ‘unique’ human essence, and that discrimination on the basis of different human capacities was the key to a successful and just polis.

In short, although Nussbaum’s internalist essentialism appears less mysterious than its externalist counterpart, if taken seriously, it can hardly deliver the principles of justice Nussbaum herself (or any liberal theorist) wants to defend. We may perhaps agree with Nussbaum that ‘human essence’ is constituted by a mixture of vulnerability, finitude and capacity for practical reasoning, but we can hardly get from there to what are essentially liberal-democratic principles of justice. On the model of discovery, then, such principles cannot but rest on a dubious ‘externalist’ essentialism.

Let us now turn to the question of how Nussbaum’s essentialism fares in relation to the criterion of ‘political specificity’. In this respect, there appears to be a tension in Nussbaum’s thought. Although her principles are meant to be specifically ‘political’, her Aristotelian perfectionism makes it hard for her to disentangle the ‘political’ from the wider categories of the ethical and of the moral. After all, if the aim of political institutions is to enable human

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18 Conveniently, for Plato, philosophers were at the top of the social hierarchy, warriors in the middle, and ordinary citizens at the bottom.

19 Some might want to press another objection to Nussbaum’s Aristotelian view, namely that it incorrectly derives an ought (principles of justice) from an is (the features of human nature). Nussbaum’s answer to this (frequent) criticism of her outlook is that her philosophical search for human essence is of an eminently evaluative kind. It is carried out by evaluating the elements which are so important to human life that, a life deprived of any of them, would not count as human at all. If this is the case, my worry about Nussbaum relying on an essentially Western liberal account of justice becomes all the more warranted. For her principles of justice seem to be based precisely on those characteristics that we, Western liberals, typically regard as essential (important) to a fully human life. See Nussbaum, ‘Aristotle on Human Nature and the Foundations of Ethics’, p. 102.
beings to lead flourishing human lives – to fully develop their human potential – how is ‘political morality’ different, at a fundamental level, from morality and ethics more generally?

Nussbaum would reply that the specific task of political arrangements is not to ensure that each individual leads a good human life, rather, it consists in providing citizens with opportunities to function well. This is why, instead of specifying the goal of political institutions in terms of central human functions, she focuses on persons’ capacities to achieve those functions, namely their capabilities. Political principles are those which establish the social conditions for individuals to lead flourishing human lives.

In light of this, we can conclude that, in Nussbaum’s thought the requirement of political specificity is met, but only superficially. Although principles of political morality have a specific function and subject – that of enabling human beings to lead flourishing human lives – at a fundamental level they seem to be no different from ethical principles generally. Principles of justice are part of the answer to the ethical question of what it is to lead a good human life. In Nussbaum’s Aristotelian framework, ethics, morality, and political morality are continuous with one another, and they all aim at the realisation of the human good. There is, however, a division of labour between them, and this is what suggests that the requirement of political specificity is met, if only at a bare minimum.

To conclude, since both forms of humanist essentialism – externalist and internalist – have proven unsatisfactory, we should now consider a second form of essentialism.

2.2 Cultural Essentialism

For the purposes of this paper, I understand cultural essentialism as the view that (i) ‘cultures’ are characterised by features that are essential to them, and (ii) the validity of principles of justice rests on their being an appropriate response to such features. So understood, valid normative principles are culture-specific, and must appropriately reflect the essential traits of the culture they are meant to regulate.

This form of cultural essentialism is particularly prominent in human rights discourse. As they are presented in international documents and Charters, human rights are minimal criteria which any political community (state) must respect if it is to be legitimate. They are, in other words, criteria of justice (at least on my definition). Cultural essentialists object to this
widespread conception of human rights arguing that their validity is bound to a particular kind of context, to what they call 'Western culture'.

First, the idea, central to human-rights ethics, that the individual is the primary subject of moral concern contrasts with the crucial importance attributed to communal values in a number of non-Western, especially African, traditional communities. Second, the notion of a right is foreign to most non-Western legal thinking. For example, it only has a marginal status in the Islamic tradition. Third, the Universal Declaration can be aptly described in terms of a general blueprint for a liberal-democratic constitution.

Although these are all valid considerations, the conclusions critics of human rights want to draw from them rest on an implausible account of a ‘culture’ as an isolated entity with an immutable essence. If cultures were self-contained units characterised by intrinsic features, then the cultural essentialist argument might have some initial bite. This view of culture, however, is both mysterious and implausible. The practices and belief-systems which constitute what we call ‘cultures’ are not as fixed as cultural essentialists think they are. If beliefs and practices can change, then certainly cultures can do so too. Consequently, human rights may very well be said to have a privileged relation to the Western world, but cannot be described as essentially Western. To argue for the contrary is to posit an opaque notion of culture, which transcends its members’ ever-changing beliefs and customs. This would clearly amount to offering an ontologically dubious picture of reality, one that fails so blatantly on non-mysteriousness grounds, as to warrant immediate rejection of cultural essentialism.

3. Assessing the Construction Model

Unlike the discovery model, the construction model does not take principles of justice as given, but holds that they should be constructed. As already anticipated, advocates of this approach can be either universalists or particularists, depending on what they identify as the relevant ‘materials of construction’. From now on, I shall label the advocates of the universalistic version of the construction model ‘constructivists’ and their particularist counterparts

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In what follows, I analyse their views in turn, starting from conventionalism.

3.1 Conventionalism

Conventionalists share the view that the relevant source of political normativity is constituted by the shared beliefs and understandings which characterise specific political communities. On their view, principles of justice are constructed by interpreting and systematically articulating such shared beliefs. Although their substantive conceptions of justice differ, Michael Walzer, David Miller, and the later John Rawls, may all be seen as adopting different versions of this particular methodology.

Walzer famously claims that we should design principles of justice by interpreting the meanings attached to different social goods within individual political communities. On this approach, a just distribution of social goods is one that is true to their ‘socially constructed’ meanings. For instance, in a liberal-democratic society, health-care should be distributed according to need, while honours should be distributed according to desert and so forth. Different distributive criteria attach to different goods, Walzer says, not ‘objectively’ or ‘essentially’ but relative to the specific societal context in question. The shared understandings of those who belong to this context constitute the building blocks of principles of justice.

Similarly, David Miller argues that to design principles of justice we should seek to reconstruct the ‘the idea of social justice used by citizens in contemporary liberal democracies when they assess the basic structure of their societies’. For him, reasoning about social justice is a matter of systematising citizens’ shared understandings about how different resources ought to be distributed within society.

Finally, the later Rawls himself advocates a context-dependent account of justice. In his view, principles of justice are constructed by articulating the moral ideals embedded in the social practices they are meant to regulate. In the domestic case, these are the notion of citizens as free and equal, and the idea of society as a system of fair cooperation. In the international case, the

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24 This label is borrowed from Sangiovanni ‘Justice and the Priority of Politics to Morality’.
subject of justice is international law and practice, and the ideals underpinning it are fair cooperation and non-interference between legitimate political communities.  

Although the three views just illustrated differ from a substantive viewpoint, they are relevantly similar from a methodological one, insofar as they all take persons’ already shared understandings – be they about the nature of social goods, about the relationships in which they stand vis-à-vis one another, or about the practices in which they participate – as a departure point in the construction of principles of justice.

How does the conventionalist approach fare from the viewpoint of political specificity and that of non-arbitrariness/non-mysteriousness? From the former viewpoint – that of political specificity – conventionalism appears very promising. Its account of justice is political in virtue of both the question it addresses, and the materials with which it answers it. First, conventionalist principles of justice do not regulate personal conduct. They do not tell us what a good life is, but how social goods should be distributed within existing political communities. Second, conventionalism takes the ‘shared’ understandings of the members of society to be the building blocks of a theory of justice. The ideas on which this approach relies are eminently political – they are not part of persons’ private ethics; instead, they belong to their public, shared, morality. In short, conventionalist principles of justice are ‘political’ in the fullest sense: in their source as well as in their realm of application.

What about the criterion of non-arbitrariness/non-mysteriousness? Unfortunately – and, to some extent, predictably – conventionalism does not fare equally well when it comes to this criterion. Certainly, the idea of people having shared understandings about social goods, relations, or practices is not mysterious. The problem is whether such shared understandings can offer a non-arbitrary basis for the construction of a theory of justice. Unfortunately, our answer will have to be no. Our shared understandings of the practices in which we participate are hardly a valid starting point for reasoning about justice. First of all, one has to wonder why our understandings should be normatively superior to others’ understandings. In particular, if the ‘we’ in question indicates participants in a practice which has an impact on outsiders, there is a strong reason to wonder why our shared understandings constitute a good starting point for

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27 Rawls, Political Liberalism and The Law of Peoples. For this interpretation of Rawls, see Aaron James, ‘Constructing Justice for Existing Practice: Rawls and the Status Quo’, Philosophy and Public Affairs, 33 (3) (2005), 281-316.

28 In some societies, where public and private are not clearly separated from one another, the two may coincide.

29 I offer a more extensive discussion of the arbitrariness of certain types of practice-dependent methodological approaches to the design of normative principles in ‘Global Justice and Practice-dependence: Conventionalism, Institutionalism, Functionalism’ (unpublished manuscript).
them. Unless we can prove that ‘we’ have privileged access to the moral truth, our shared understandings carry no more authority than any other’s.

Second, even if we consider a practice which has no impact on outsiders, when it comes to political morality, the understandings in question are hardly ever fully shared. In existing pluralistic societies there is a great deal of disagreement about how social goods should be understood or distributed, and about the nature of our relations to our fellow citizens. In all likelihood, the ‘shared’ understandings philosophers talk about are understandings shared only by a subset of the citizenry. This means that we are once again confronted with the question of why those who do not share such understandings should find principles of justice grounded in them at all authoritative.30

At this point, some could say that, if political communities were fully homogenous and independent units, then the idea of constructing principles of justice starting from the shared understandings of their members would make some sense. After all, the resulting principles would be authoritative in the eyes of all of them. Unfortunately, this is not a viable escape-route from the difficulties encountered by conventionalism for two reasons. First, a genuine universal agreement is, in all likelihood, impossible to obtain. Second, we can easily imagine a society inhabited by masters and contented slaves (or despotic husbands and tamed house-wives). In such a society, slaves have come to agree with their masters that they ought to occupy a subordinate position within society. De facto, both slaves and masters endorse the principles underpinning their society’s political organisation. Still, any respectable contemporary political philosopher would want to deny that those principles reflect what justice requires.

The fact that ‘our’ societies happen to be liberal – hence they embody ideals we find congenial to our moral sensitivities – makes the conventionalist approach appear more plausible, because the principles it delivers are ones we would not regard as morally objectionable. However, this plausibility is a purely contingent matter, and as soon as we consider what conclusions the approach would deliver in contexts different from our own, its arbitrariness and inadequacies become apparent.31 In light of this, let us now turn to (universalist) constructivism.


31 In this section I have not discussed what Andrea Sangiovanni calls ‘institutionalist approaches to justice’. See his ‘Justice and the Priority of Politics to Morality’, Journal of Political Philosophy, 16 (2) (2008), 137-64.
3.2 Constructivism

Like conventionalists, constructivists think that principles of justice should be constructed by human agents and not discovered. However, they strongly disagree with conventionalists about the particular ‘materials of construction’ out of which normative principles should be moulded. As we have seen, conventionalists focus on persons’ shared understandings of social goods, relations and practices. For them, the building blocks of a theory of justice are the convictions and reasons of those who happen to belong to a particular kind of community.

Constructivists, on the other hand, want to avoid appeal to dubious moral facts without giving up on the project of identifying an authoritative basis for moral theorising. In particular, they are dissatisfied with the arbitrariness of the grounds on which conventionalists typically rely, and believe that a genuinely authoritative moral theory can only be constructed by appeal to universal human reason. Constructivists endorse the Kantian view that the reasons on the basis of which we design our theories of justice should be in principle accessible to all human agents, irrespective of their particular convictions and affiliations. Even if we disagree about what a good life is, and even if we belong to different communities with different traditions and belief-systems, we must recognise the validity of certain kinds of moral principles just in virtue of the fact that we are rational agents.

That said, constructivism indicates a family of views, and not a single monolithic moral outlook. Different theorists have slightly different accounts of universal human reason and of how this translates into specific moral requirements. For the purposes of this paper, I shall focus on two constructivist thinkers in particular: Onora O’Neill and Alan Gewirth.

O’Neill’s constructivism begins with an account of the circumstances of justice. It is because human agents are vulnerable (not self-sufficient), interdependent, and disagree about moral matters, that the need for principles of justice – i.e., principles solving their conflicting

Institutionalism has some features in common with conventionalism, but can escape its most morally repugnant conclusions. I offer a critical analysis of institutionalism in ‘Global Justice and Practice-dependence’.


33 I should note that Gewirth does not call himself a ‘constructivist’. However, much of his work seems to me to be fully in line with the spirit of constructivism, and this is why I have chosen him as a representative of this family of thinkers. I am nonetheless aware that my choice is not an obvious one.
claims – arises.\textsuperscript{34} Since (i) no one can claim privileged access to the moral truth (including the truth about justice) and (ii) people need criteria to adjudicate their conflicting claims, O’Neill concludes that such criteria (i.e., \textit{principles of justice}) must be \textit{constructed}. Moreover, if they are to be authoritative in the eyes of all, they must be \textit{intersubjectively justifiable}: i.e., they must be a construction of common human reason.\textsuperscript{35}

O’Neill summarises the problem of justice with the following question ‘What principles can a plurality of agents of minimal rationality and indeterminate capacities for mutual independence live by?’\textsuperscript{36} In other words, what principles could they \textit{all} accept (hypothetically), and act on, without contradiction? For a principle to meet this condition, its adoption by one agent must not prevent others from acting on it. If we define as ‘\textit{principles of injury}’ all principles that, if adopted, would undermine others’ agency, we can say that justice consists in rejecting such principles. These include principles of deception or of coercion, which cannot be coherently adopted by all. Indeed, if agents assume a principle of injury as the basis of their conduct, they ‘commit themselves to destruction and damage that undermines like action by at least some others’.\textsuperscript{37} In light of this, O’Neill concludes that justice is primarily a matter of rejecting injury, i.e., of respecting other persons’ agency. Only principles of this kind can be intersubjectively justifiable, hence authoritative in the eyes of all.

Gewirth reaches similar conclusions through a different argumentative strategy. He argues that those who regard themselves as actual or prospective agents \textit{must} affirm that they have certain ‘human rights’ to freedom (i.e., control over one’s behaviour) and well-being (i.e., the conditions needed for achieving one’s purposes), and must, at pains of inconsistency, recognise that other actual or prospective agents also have such rights. Schematically put, the argument goes as follows:

1) My freedom and well-being are necessary goods.
2) I must have freedom and well-being.
3) I have rights to freedom and well-being (i.e., claims on others that they do not threaten my freedom and well-being).

\textsuperscript{35} For an account of the central motivation behind constructivism see Ronzoni and Valentini, ‘On the Meta-ethical Status of Constructivism’.
\textsuperscript{37} O’Neill, \textit{Towards Justice and Virtue}, p. 164.
4) I have rights to freedom and well-being because I am a prospective agent.

5) All other prospective agents have rights to freedom and well-being.\(^{38}\)

The force of Gewirth’s argument for the universal scope of human rights lies in it being grounded, like O’Neill’s, in relatively uncontroversial assumptions about human agency and rationality. Human rights, Gewirth argues, logically follow from one’s status as an actual or prospective agent and, as such, they are a construction of universal human reason. To recognise that all agents have human rights is to recognise that one ought to refrain from violating them. In other words, it is to affirm a principle of mutual respect for persons’ agency and, conversely, of mutual rejection of injury.

Let us now consider O’Neill’s and Gewirth’s constructivist arguments from the viewpoint of our two desiderata: non-mysteriousness/non-arbitrariness and political specificity. As far as the first desideratum is concerned, the constructivist methodology seems to do well. No claim is made regarding the existence of something like a human essence, but only claims about what it is to be an agent under circumstances of justice, in conjunction with claims about logical consistency or possibility. Moreover, no appeal is made to the arbitrary beliefs of a subset of humanity. For the constructivist, principles of justice are a product of common human reason. To this extent, the constructivist methodology clearly improves on both its essentialist and contextualist counterparts.

But what about the desideratum of political specificity? Both Gewirth and O’Neill appear to be concerned with the design of specifically ‘political’ normative tenets: human rights principles, and principles of justice. However, the views they eventually advocate seem to lack a political source and/or subject. Gewirth’s human rights are very different from human rights understood as a political construct. They would be better described as basic moral rights. Indeed, that is what Gewirth is ultimately interested in. Of course, one might argue that, in order to respect other persons’ human rights – their freedom and well-being – certain kinds of political institutions ought to be in place. This, however, is not sufficient to differentiate such rights from general moral rights. The point about institutionalisation is an instrumental one (i.e., about implementation), rather than a foundational one.

Similarly, O’Neill’s rejection of injury also appears to extend well beyond our understanding of justice as a political virtue. For instance, we believe deception is morally wrong, but we hardly regard it as falling within the realm of justice (again, understood as a political virtue). There are many acts which might be said to undermine persons’ agency – e.g., some people might be particularly sensitive and their agency undermined whenever others make fun of them. However, we do not think that most forms of mockery should be outlawed on grounds of justice. There may be general moral reasons for objecting to mockery, deception and manipulation, but not reasons of political morality (justice) in particular. This suggests that the rejection of injury is a valid moral principle (a principle concerning how we should act towards others) on a Kant-inspired ethical outlook, but not a principle of political morality strictly conceived (concerning what individuals who share the same institutions owe to each other).39

To conclude, while constructivism scores extremely highly on non-arbitrariness/non-mysteriousness grounds, its perspective on justice fails to satisfy the requirement of political specificity. As it stands, constructivism appears to be a very good approach to moral normativity in general, but not to political normativity in particular.

4. Towards a Solution to the Problem of Political Normativity

Let us briefly summarise the conclusions reached up to this point. We have analysed four different approaches to the design of principles of justice and assessed them in relation to the criteria of non-arbitrariness/non-mysteriousness and political specificity. As I mentioned at the outset, a good account of political normativity – i.e., of the normativity which underpins principles of justice – must meet both criteria. Unfortunately, as they stand, the approaches so far examined fail this double-test. In particular, the two versions of the discovery model have proven problematic on non-mysteriousness grounds, conventionalism seems to rest on an arbitrary basis, and constructivism fails to meet the desideratum of political specificity. This confirms the suggestion, advanced at the outset, that there is a trade-off between political specificity and non-arbitrariness/non-mysteriousness. Approaches which meet the former desideratum fail to meet the latter, and vice versa. Is this trade-off inevitable? Is a plausible account of political normativity impossible?

39 Of course, one could apply this general moral principle to political institutions, in the same way in which one applies it to individuals. But this would not turn what is fundamentally a general moral principle into a principle of political morality. Instead, it would show that there is no fundamental difference between moral normativity and political normativity.
In the remainder of this paper I seek to bring good news, and argue that a plausible account of political normativity can be built by bringing together the virtues (and avoiding the vices) of constructivist and conventionalist approaches to justice. Constructivist approaches show us that normative principles can be designed without appealing to arbitrary premises. Conventionalist approaches, on the other hand, tell us that justice is, to some extent, practice-dependent. We cannot fully make sense of what justice requires without referring to the practices and institutions that characterise our political communities.

Is it possible to combine the non-arbitrariness of constructivism, with the conventionalist view that justice depends on our political practices? Such a combination is not only possible, but necessary. Constructivist principles, by themselves, offer an incomplete account of justice. As we saw in our discussion of humanist essentialism, there is a gap between the very general (and plausible) account of human nature that essentialists like Nussbaum endorse, and the specific principles of justice they advocate. Constructivists avoid this difficulty by defending extremely general principles of justice. Such principles are fundamentally about the rejection of injury or, to put it differently, about respecting other people’s capacities for autonomous action.

For the constructivist, justice requires that each person should have a right to the necessary social conditions to lead an autonomous life, and pursue her own conception of the good. Following Kant, I call this a right to ‘external freedom’ (or simply ‘freedom’). Only a principle of this kind could be unanimously agreed upon by agents concerned with furthering their life-plans.

Although its justification is compelling, the idea of a right to freedom fails to give concrete guidance for action. What it means to respect other persons’ agency clearly depends on the ways in which we relate to them. In other words, it depends on the practices in which we participate. This is why, in order to make sense of the requirements of justice, constructivists must focus on a particular set of existing social practices: including those we typically perceive as ‘political’. As I shall illustrate in the following subsections, the idea of persons’ right to freedom is ‘practice-dependent’ in relation to both its scope (sec. 4.1) and its content (sec. 4.2).

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40 For the label ‘practice-dependent’ see Sangiovanni, ‘Justice and the Priority of Politics to Morality’.
41 I am here using the word ‘autonomous’ in a non-technical sense. I take autonomy to indicate persons’ ability to choose and act on their life-plans, and not their ability to act morally (which is what autonomy means for Kant).
42 Kant, The Metaphysics of Morals, 6: 237. As will become apparent this particular account of freedom is in some respects similar to the republican idea of freedom as non-domination. See Philip Pettit, Republicanism: A Theory of Freedom and Government (Oxford: Oxford University Press, 1997).
4.1 The Scope of Justice: Non-Voluntary Practices

It is undeniable that, by virtue of the particular circumstances in which we live (i.e., circumstances of vulnerability, scarcity, and interconnectedness) we cannot avoid influencing one another’s lives. If respecting others’ right to freedom required refraining from any form of interference in their lives and actions, fulfilling the demands of justice would simply be impossible. So what conditions must be in place for a person to be free? On a Kantian-constructivist view, a person is free - i.e., she enjoys the social conditions to lead an autonomous life - so long as she is not subject to the will of others.43

The idea of freedom so understood is relational: I am free if I am sufficiently independent to be able to design and purse my plans of life, without infringing others’ right to do the same. In a society characterised by slavery, or by extreme poverty, some individuals’ right to freedom is clearly violated, either because they are constantly liable to being interfered with by their masters, or because their poverty makes them exceedingly vulnerable to others’ influence. A proletarian in an industrial society counts as ‘unfree’ because she has no choice but to accept the exploitative job offer advanced by the capitalist.44 Whether a person is free or not depends on the particular nature of the social structures and practices in which she participates.

This observation is fully in line with our ordinary understanding of justice as an eminently political virtue. Principles of justice concern our practices and institutions, and the constructivist focus on freedom – understood in terms of independence - tells us why. Persons’ freedom is a function of the particular character of the institutions and practices they inhabit.

Having said that, we should also note that not all of our social practices are appropriate subjects of justice. Think, for instance, of a game such as hide and seek. Even though ‘hide and seek’ is governed by particular rules which impose limits on persons’ actions, we do not ordinarily think that such an activity should be placed under justice-based scrutiny. Similarly, we do not think that if you and I belong to the same tennis club, or reading group, principles of justice apply to us. Of course, we might still want to evaluate the rules governing such practices from a moral point of view (they might be fair or unfair), but not from that of justice. By


contrast, we do believe that principles of justice apply to our political communities. Why is that?

I suggest, with John Rawls,\(^{45}\) that what makes a particular practice or institution an appropriate subject of justice – hence ‘political’ – is its non-voluntary nature.\(^{46}\) An institution or practice is non-voluntary if joining (or leaving) it is either impossible or genuinely unbearable. Of course, there may be disagreements as to what counts as genuinely unbearable. However, we can safely assume that our judgements on this matter will converge in a good number of cases. For instance, given the current configuration of our world, membership in some society is virtually unavoidable – if anything because only by participating in society can we be in a position to pursue our life plans.\(^{47}\) Since there is no acceptable alternative to being a member of some society, societal membership cannot be regarded as an expression of persons’ autonomy. This is why the rules governing societal organization must be assessed by reference to stringent principles: i.e., principles of justice. If these principles are to be intersubjectively justifiable, they must ensure that each person enjoys a sufficient degree of independence from others to design and pursue her ends and goals.

Unlike participation in society, decisions about which club or reading group to join, whether to play hide and seek (or any other game) and so forth are precisely part of the design one’s own life plans. Some conceptions of the good life will direct people towards certain types of practices. For instance, some (call them group P) might think that a very rigid routine of collective prayer is a necessary component of the good life. Others (call them group E) might instead believe that a central component of the good life is freedom of artistic expression. Consequently, group P sets up a prayer group and group E a drawing group. The two groups disapprove of one another’s ways of life and practices. However, so long as those who participate in such practices can be said to do so voluntarily, their agency is not undermined, and the internal organisation of such practices need not be placed under justice-based scrutiny. Doing so would defeat the very point of justice, preventing individuals from pursuing their own conceptions of the good.


\(^{46}\) See Serena Olsaretti, Liberty, Desert and the Market (Cambridge, Cambridge University Press, 2004), esp. 138-43. For Olsaretti, a choice is voluntary if and only if it is not made due to the lack of acceptable alternatives.

Similarly, people’s views about lying are bound to differ, depending on their overall ethical outlooks. Some might endorse a Kantian ethical view and believe that under no circumstances can lying be justified. Others with utilitarian sympathies might instead affirm that lying is often permissible (if not obligatory). Provided the society in which they live is just, their different views about lying should not fall under the purview of justice. For instance, I might think that I am morally permitted to tell my parents that I am fine even if I have a bad flu, in order to spare them some worries; while my friend Pepito might believe that it is wrong for me to do so. This disagreement is a genuine moral disagreement, but it falls outside the purview of justice. If anything, justice is what allows disagreements of this kind to flourish: it allows each person to pursue her conception of the good without violating others’ right to do the same. If justice established that we should all adopt a ‘Kantian’ ethical outlook, it would deny the very problem it is meant to solve: that of what principles should govern the lives of people who share the same institutions but reasonably disagree about moral matters. Ethical homogeneity is a negation of, not a solution to, the problem of justice.

This explains why the scope of principles of justice is limited to those institutions and practices in which we cannot be said to participate voluntarily (i.e., those from which we cannot opt out). If justice is about preserving persons’ right to freedom, the social structures from which they cannot escape must be placed under justice-based scrutiny. Since these structures are not joined through actual consent, the rules governing them must be in principle acceptable to all.

Society, which we consider as the realm of the ‘political’ par excellence, is of course one such structure. But families and international institutions may also plausibly count as non-voluntary (at least in relation to some of their members) and therefore as subjects of justice. My proposed approach therefore opens up the possibility for principles of justice to apply outside political communities traditionally conceived, and prompts us to broaden the notion of the political accordingly. Whether a particular practice is voluntary or not, hence whether it qualifies as political, is something to be determined on a case-by-case basis.

Parallel to this broader understanding of ‘the political’ is a broader understanding of what counts as a principle of justice. While the concept of justice – understood in terms of persons’ right to freedom – remains the same across different ‘political’ contexts, suitable conceptions of

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48 ‘Reasonably’ because no one can prove that the other is right or wrong. On the problem of justice, cf. Korsgaard, ‘Realism and Constructivism in Twentieth-Century Moral Philosophy’.
49 Another way to put this is to say that we resort to hypothetical consent (i.e., an intersubjective justifiability test) whenever we cannot assume actual consent to be in place.
this concept might vary across them. This leads me to the second dimension along which constructivist justice turns out to be practice-dependent: its content.

4.2 The Content of Justice: The Nature of Practices and Their Participants’ Beliefs

As I have noted many times so far, principles of justice require respecting persons’ right to freedom. However, what respecting persons’ right to freedom means varies depending on (i) the particular kind of non-voluntary practice we are evaluating and (ii) the beliefs and convictions of its members. Let me analyse these aspects in turn.

Firstly, the ways in which we may undermine persons’ freedom differ depending on whether we relate to them as fellow citizens, as members of different states, as members of the same family or as co-participants in international institutional arrangements. From this it follows that the principles of justice applying to these different kinds of practices may also vary. For instance, a principle of fair equality of opportunity might make sense as a principle of justice for society at large, but it makes little sense as a principle of justice for the family (including children). Justice does not require a small child to have the same opportunities as her parents.

Or else, it is plausible to assume that if a society is to be in a position to guarantee its citizens the necessary conditions to lead autonomous lives, it should be free from external pressures, and not at the mercy of more powerful nations. However, what justice between nations requires will clearly differ from what justice between individuals requires. Principles guaranteeing freedom of movement make sense as principles of justice for individuals, but not as principles for states. Although both types of principles – i.e., principles of domestic and international justice – are geared towards the realisation of persons’ freedom, their content varies insofar as they apply to different kinds of contexts.

Secondly, operationalising the idea of persons’ equal right to freedom requires taking into account the specific historical and cultural conditions in which members of a particular society find themselves. The reason for valuing personal freedom ultimately lies in the value we place on autonomy, and autonomy is a historically- and culturally-situated attribute.50 This means that, to give content to principles of justice we need an account of human needs, ends and goals, and of the resources necessary to fulfil them.51 For instance, things like the ‘near universal desire for education and health’, ‘how different family and labor structures affect opportunities

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to pursue freely-set ends’ have to be taken into account in order to design a social system which can meaningfully satisfy the demands of justice.\(^{52}\)

Problematically, what people value, their conceptions of the good and the ‘functionings’ they need to attain in order to realise them, vary across time and space. As Onora O’Neill puts it, ‘[i]f we view autonomy historically then we are confronted with very wide variations in the amount and types of autonomy which persons of different sorts and epochs typically have’ and value.\(^{53}\) Such cross-cultural variation leaves liberal theorists with a considerable difficulty, for ‘it seems that a serious and determinate liberalism must take a historical view of autonomy but that in taking a historical view of autonomy liberalism becomes ... indeterminate.’\(^{54}\)

John Rawls himself is aware of this phenomenon and in his later work emphasises that there may be a variety of equally reasonable (i.e., plausible) understandings of justice, none of which can claim superiority over others. For instance, some liberal societies might legitimately promote less material equality than others, and there seems to be no compelling reason for condemning them.\(^{55}\) Indeed, the claim that, beyond a certain level, redistribution undermines rather than promotes freedom, has some plausibility.

What can we say about justice if, due to value pluralism, we cannot identify a single criterion on the basis of which to evaluate different societies? Even though we cannot offer a unique and complete answer to the question ‘what is just?’, constructivist principles allow us to exclude those standards which could never express the idea of persons’ right to freedom, hence could never gain unanimous agreement. For instance, a system of domestic laws resulting in poverty and deprivation, or denying certain fundamental liberties to part of the citizenry, could never be interpreted as an expression of persons’ right to freedom. Similarly, a system of international laws allowing some states to dominate others, could never qualify as just. Indeed, it would never be the object of a hypothetical agreement between members of different states.

While we cannot aspire to propose a complete, overarching and universally valid account of what justice positively requires across all societies, constructivism still allows us to identify what justice must exclude. There are some conditions without which a political community cannot possibly count as just, because some of its members are fully dependent on the will of others.\(^{56}\) These conditions are (i) fulfilment of basic human rights – such as nutrition, shelter, education,

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\(^{52}\) Uleman, ‘External Freedom in Kant’s Rechtslehre’, p. 597.


\(^{55}\) Rawls, The Law of Peoples.

\(^{56}\) Similar considerations would also apply to other contexts.
health-care, freedom of movement – and (ii) fulfilment of basic political rights – through mechanisms by which citizens can effectively influence their governments’ decision-making processes.\footnote{These criteria are very similar to Rawls’s criteria for a society to be well-ordered in The Law of Peoples.}

Falling short of such minimal criteria of justice, a society clearly becomes oppressive. We can in fact safely rule out that persons concerned with being ‘the makers of their fate’ and pursuing their life-plans would have any reason to accept to live under institutions where their agency and physical integrity is constantly threatened: either because human rights are not fulfilled, or because, lacking mechanisms of representation and accountability, their fulfilment rests on the fragile and arbitrary will of a ruling elite. Beyond these minimal criteria, however, what justice requires is best left to the political process of different individual political communities. The shared understandings of their members (or of a majority thereof) should, in such cases, be regarded as authoritative.\footnote{Cf. G.F. Gaus, ‘The Demands of Impartiality and the Evolution of Morality’ in Brian Feltham and John Cottingham (eds) Partiality and Impartiality (Oxford: Oxford University Press, forthcoming).}

\textbf{Conclusion}

I have started this paper with what I called the ‘problem of political normativity’, asking whether principles of justice could be both normatively authoritative and distinctly political. In the first part of the paper, I have discussed four different approaches to political normativity, each characterised by a trade-off between these two desiderata. In the second part of the paper, I have presented a fifth alternative which meets both conditions: normative validity and political specificity. My proposed alternative results from a combination of constructivist and conventionalist approaches to justice. Like constructivism, my preferred approach sees principles of justice as constructions of universal human reason. However, unlike constructivism in its pure version, the approach holds that principles of justice can only be given concrete content (i) by reference to particular kinds of existing practices – those in which we participate non-voluntarily – and (ii) partly by reference to the convictions of their members. Of course, all I offered in this paper is a conceptual framework, and a lot more work needs to be done in order to move from such a framework to a fully developed theory of justice. Nonetheless, I hope to have shown that the problem of political normativity can be solved, and hence that a plausible approach to \textit{political normativity} as distinct from \textit{ethical normativity} is possible.
APPENDIX

Nussbaum’s list of capabilities (from Women and Human Development).

I. Life. Being able to live to the end of a human life of normal length; not dying prematurely, or before one’s life is so reduced as to be not worth living.

II. Bodily Health. Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.

III. Bodily Integrity. Being able to move freely from place to place; having one’s bodily boundaries treated as sovereign, i.e. being able to be secured against assault, including sexual assault, child sexual abuse, and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.

IV. Senses, Imagination, and Thought. Being able to use the senses, to imagine, to think, and reason – and do these things in a “truly human” way, a way informed and cultivated by an adequate education, including, but by no means limited to literacy, and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing self-expressive works and events of one’s own choice, religious, literary, musical, and so forth. Being able to use one’s mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to search for the ultimate meaning of life in one’s own way. Being able to have pleasurable experiences, and to avoid non-necessary pain.

V. Emotions. Being able to have attachments to things and peoples outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one’s emotional development blighted by overwhelming fear and anxiety, or by traumatic events of abuse or neglect. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.)

VI. Practical Reason. Being able to form a conception of the good and to engage in critical reflection about the planning of one’s life. (This entails protection for the liberty of conscience.)

VII. Affiliation:

A. Being able to live with and toward others, to recognise and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another and to have compassion for that situation; to have
the capability for both justice and friendship. (Protecting this capability means protecting institutions that constitute and nourish such form of affiliation, and also protecting the freedom of assembly and political speech.).

B. Having the social basis of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails, at a minimum, protections against discrimination on the basis of race, sex, sexual orientation, religion, caste, ethnicity, or national origin. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.

VIII. Other Species. Being able to live with concern for and in relation to animals, plants, and the world of nature.

IX. Play. Being able to laugh, to play, to enjoy recreational activities.

X. Control over One’s Environment:

A. Political. Being able to participate effectively in political choices that govern one’s life; having the right of political participation, protection of free speech and association.

B. Material. Being able to hold property (both land and movable goods), not just formally but in terms of real opportunity; and having property right on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure.