

## PRELUDE

### Morality, Law and Politics

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*Who's Afraid of International Law?* developed, as Gerry Simpson says in his introduction, from one of the series of the Wednesday Lectures of the same title. Only Catriona Drew's essay was commissioned for the book. The Wednesday Lectures, with normally six lectures in each series, has run in Melbourne since 2001. Irrespective of their particular focus – reconciliation, the invasion of Iraq, terrorism, the dignity of politics or even our relation to nature – most of the series probed the ethical complexity of politics. 'Politics: the Glory and the Misery' was the emblematic title of one series.

The lectures were addressed to a hard thinking, educated public. Always engaged with serious issues of the times, they nonetheless avoided the polemics of the culture wars that poison at its source any impulse to acknowledge, in a spirit of intellectual generosity, that simplistic or foolish elaborations of a position are sometimes the distorted expressions of traditions that need to be taken seriously and perhaps reclaimed. We seldom fully understand the deepest source of our ethical beliefs. Sometimes we must recover what we believe from what we mistakenly believe that we believe. When I use 'we' as I have just now, I do not intend it as an empirical generalisation. I offer it, as I say in my contribution to this book, as an invitation to agree that things are as I suggest they are, an invitation that depends on a degree of shared understanding though many of its salient elements are often not at the forefront of our minds. Inevitably, some readers will sometimes reject the invitation.

As the originator and convener of the Wednesday Lectures, I took the ethical complexity of politics to be, for the most part, a function of the complex relations between morality and politics. Looking

back over fifteen series, it astonishes me that it was not until 2009, when I called that year's series 'Gaza: Morality, Law and Politics' (Gerry Simpson contributed to it), that I realised fully that one could not think well about morality and politics if one did not consider the relations of law to both. Lectures on reconciliation, terrorism, multiculturalism, the invasion of Iraq and others did, of course, explore whether this or that conduct was lawful and whether the law on this or that was adequate. How could they not? But they did not discuss the place of law in the formation of a political persona that, for convenience, I will simplify as being citizenship. The reason was that I did not think of law as being an ethically interesting domain in its own right, an ethical domain *sui generis*, interdependent with and answerable to morality and politics, but a servant of neither. (Soon I will explain what I mean by '*sui generis*.') I thought it was only morality that enabled law to transcend its role as (roughly) an instrument of social organisation and dispute resolution. Such a confession would, of course, be of no interest if that failing were uncommon.

The anxiety that the relations between ethics and politics are at times troubled beyond resolution has been part of Western thought at least since the time of Socrates, but partly because of Socrates the ethical was assimilated to the moral. The place of law as an ethical realm *sui generis* was neglected. When I speak of Socrates I mean the character as Plato's artistry gave him to us. He, rather than the historical Socrates and his arguments, has haunted Western thought.

The lectures attempted to create a conversational space in which it was possible to speak of the dignity of politics without that sounding like an oxymoron, which entailed retrieving from oxymoron status a conception of the serious place of moral considerations in politics, domestic and international. True, when we suggest those expressions might be oxymorons we do it with a smile, but it is an awkward one, I think. We are not sure whether we believe that politics can have dignity, but doesn't now and won't in the foreseeable future, or whether the very concept of dignity has, at best, only an attenuated application to politics. Or, to put it another way: we don't know

whether we are disillusioned with our politicians while having a firm hold on the standards that inform our disillusionment, or whether we are loosing our grip on the concepts that make those standards what they are.

It is hard for us to speak seriously of politics (or of anything else – teaching or nursing for example) as a vocation rather than as a profession or career; of political honour (when was the last time a politician resigned for the sake of honour rather than brazening things out?), or even of government, rather than of running a country as though it were an enterprise. This part of our language doesn't have much life in it. We seldom question why being successful in business should be thought a qualification for government, or even for the post of treasurer in a government. When ways of speaking begin to die, the realisation that it is happening usually sneaks up on us. By the time we notice it is often too late to do much about it. Think of how managerial newspeak colonised universities. If we can't speak with authority and authenticity of the dignity of politics, then morality, often of a moralistic, high-minded kind, tends to usurp ethical concern, or we are tempted first to disillusionment and then to cynicism.

It will be evident by now that I do not equate ethics with morality. Though the distinction between morality and ethics is an old one, there is no agreement about how to draw it. I think of the ethical as a realm in which we think about how to live, about the meanings of things in our lives. We think about morality, of course, but also about law, politics and other matters – about the demands intrinsic to the various forms of love and how to rise to them, for example. I think of these, as I shall later try to explain, as distinctive realms of value, *sui generis*, in complex ways interconnected, and sometimes in conflict. Love in all its forms has ethical standards intrinsic to it, standards that distinguish love from its many false semblances. Love of one's friends may conflict with love of country, both with morality, morality with politics and both with law. So, though I write in the singular of 'the ethical', I would not do so of the values in its domain. There are many conceptions of morality – not only of what to do but

also of what it is, what kind of place it can or should have in our lives. The same is true for the other forms of the ethical.

Betrayal, murder and cruelty are examples of moral wrongs. When Socrates said that it is better to suffer evil than to do it, he had such wrongs in mind, among others, of course. When he said that he could not give up philosophising even under the threat of death because 'an unexamined life is not worthy of a human being', he expressed a sense of ethical impossibility, but it would go against the grain for us to call this 'moral impossibility'. Like Socrates, some people believe that they must live their lives with lucidity for reasons that are not prudential: they may believe that they must seek a truthful understanding of their past, though not because they hope it will have practical benefits for their future. Others believe that understanding the past matters only insofar as it serves the future. From the first perspective the second might look superficial, but surely not immoral.

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Commenting on my work Sophie Grace (then Tim) Chappell said that I do not stand on the battlefield of theories offering a new defence of one of the theories or arguing for a hybrid of two or more of them. The theories Chappell had in mind were in moral and political philosophy – deontology, utilitarianism, and virtue ethics. You don't have to be a contender – as I assume many readers are not – in order to recognise the battlefield and the assumptions that constitute it. In this introduction I invite readers to occupy a perspective from where the assumptions are more visible than they are to the combatants and from where what is at stake in the battles looks very different.

To value something because we see dignity in it is to respond to a dimension of it that cannot be fully accounted for by its instrumental value. Dignity is a value *sui generis*. That might sound like an academic term of art that hides obscurities rather than clarifies or banishes them. I shall now try to explain what I mean by it and hope

the reader will come to see it as an expression of convenience that means nothing mysterious.

Morality is the form of the ethical in which the point can most easily be made. Courage is a virtue that is useful to achieve things that matter to most human beings and that can be characterised without ethical concepts. It is obviously useful in any society that requires some members to risk their lives because of their roles – policemen and soldiers for example. It is useful for individuals not to fear bullies who would deflect them from pursuing what matters to them. But courage is valued also because it is noble; a value inseparable from its functional value, but that cannot fully be appreciated by reference to it. One also needs courage if one is to possess other virtues – fidelity, compassion, justice and truthfulness, amongst others. Those virtues also have obvious functional value, but as with courage, we value them in ways that transcend that value. Fidelity in friendship has obvious practical value in sustaining the goods of friendship, but the terribleness of a serious betrayal of friendship is not accounted for by whatever functional role it possesses.

Victims of injustice often suffer physical and psychological trauma, but they also suffer the injustice of its affliction, which is often an irreducible focus of their torment and of their need for the injustice done to them to be acknowledged in the spirit in which the physical and psychological damage is ameliorated. Apology, forgiveness, atonement or punishment are appropriate responses to that resentment and torment. Compassion and empathy must be informed by that realisation. The demand of the indigenous peoples of Australia for an apology is an example. Apology is not enough, but the cultural warriors of the right who said that it was irrelevant, that the *real* moral work of reconciliation is done in the practical work of ameliorating the misery of many aboriginal people, did not realise or refused to realise – that the work of amelioration will count as reconciliation only when it is acknowledged that the injustice of dispossession created the need for it, and infuses the felt misery, through and through. That is why people were deeply moved when

Kevin Rudd apologised, as prime minister, on behalf of the nation. Simone Weil expressed beautifully what I am trying to convey:

The just must be thanked for being just, because justice is so beautiful a thing ... Any other gratitude is servile and even animal. The only difference between the man who witnesses an act of justice and the man who receives a material advantage from it is that in such circumstances the beauty of justice is only a spectacle for the first, while for the second it is the object of a contact and even a kind of nourishment.

We should therefore not allow slogans like 'morality is made for human beings, not human beings for morality' to tempt us to deny that morality is *sui generis* because we believe the alternative is religion or metaphysics. Against such a slogan I offer another one whose simplicity I hope is not misleading: morality is not the servant of our desires and purposes: it is their judge. There appears to be no end to which we aspire, no purpose that we wish to realise, that is not answerable to morality. We may all desire happiness, but morality judges not only the means by which we can secure it, but also the kind of happiness we can decently enjoy. So it is with other ends like wellbeing or flourishing: morality judges the kind of wellbeing or flourishing that we hope to achieve. Morality judges not only the means by which we achieve our purposes: it also judges the purposes.

'Humanity' in slogans such as 'morality is made for human beings' is already an ethically inflected term, just as it is when we speak of seeing or failing to see the full humanity of people or peoples, of dehumanization, of the common humanity of all the people of the earth or that some ways of being and living are not worthy of our humanity. For that reason the appeal to what it is to be human implicit in such slogans, fails to do the work its rhetorical function sets for it because the appeal is not to an ethically neutral conception of humanity. Indeed one might say that someone who lives out the debunking intent of those slogans will live a morality not fit for a human being. But there is, I believe, no ethically neutral conception

of humanity, nothing reason can deliver that will adjudicate between the various, sometimes conflicting, ethically inflected ways of speaking of our humanity.

It is not mysterious that we value courage for its nobility as well as for its capacity to serve and protect what we value as individuals and as a community. It is not mysterious that victims of injustice suffer not only the natural physical and psychological harms that are characteristically the consequences of injustice, but also the injustice done to them, which is an irreducible source of torment. That there are conceptions of morality and other forms of the ethical that are *sui generis* is a cultural achievement of entirely human origin, (though, for reasons I have given, it is misleading to say they are inventions, products or even creations). I do not believe that they need (or have) metaphysical or religious support: they are not discoveries of how things are in the very fabric of the universe, nor can they be underwritten by whatever a theory of human nature could deliver to us.

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Earlier I said that the reason why the Wednesday Lectures did not explore the complex relations between law, morality and politics, was because I had assumed that insofar as law has an ethical status that transcends its role as an instrument of social organisation and control, then it is because morality confers that status on it.

Scepticism about whether morality should have a serious place in law has a long history, but it is hard to see how now, for us, any theory of the matter could justify the denial that the moral wrong of murder or rape is intrinsic to its criminality. My qualification 'now, for us' registers the acknowledgment that what I am about to say is not a claim about the essence of law or citizenship: it is about how, contingently, it has historically evolved for us. It could have been otherwise. Like morality conceived as *sui generis*, how it has come to be is not underwritten by reason, by the facts of human nature or the laws of any science. But the contingency of its evolution does not make the inseparability of law and morality dispensable or

even peripheral to our understanding of law and citizenship. Fear of the consequences of the acknowledgment of contingency for our justified confidence in what we ethically believe, goes deep. But to acknowledge, as I argue in my contribution to this book we should, that our ethical commitments and reflection on them is inescapably in medias res, in the midst of things culturally and historically, should not make us afraid of relativism. As Bernard Williams puts it well in *Philosophy as a Humanistic Discipline*:

Precisely because we are not unencumbered intelligences selecting in principle from all possible outlooks, we can accept that this outlook is ours just because of the history that has made it ours; or, more precisely, has both made us and made the outlook as something that is ours. We and our outlook are not simply in the same place at the same time.

We are answerable in law not just for harms we cause one another, but also for the moral wrongs we do when we cause that harm, wrongs that are the focus of a grievance whose character is not fully explained by reference to the harms that can be characterised without reference to moral concepts. Such moral wrongs are, for the most part, against other human beings considered only as human beings or, perhaps, as fellow human beings. Indeed acknowledging that wrongs are not reducible to the natural harms we cause others is *a form of the recognition* of them as fellow human beings. From the point of view of morality, wrongdoers whose acts fall under the criminal law act in the first instance against their fellow human beings.

However, it is not only as human beings that we are answerable to one another under law: it is also as fellow citizens. To be sure that we are answerable not only for the harms we cause one another when we wrong one another, but also for the wrongs, is part of what it means to be a citizen, a member of a political community. But the fact that the victims of wrongdoers are wronged by their fellow citizens is fundamental to the description of those wrongs as crimes. The difference shows in many ways. If the victim forgives the person who wronged her, then she forgives that person as a fellow human

being rather than as a fellow citizen; forgives a wrong rather than a crime. The law responds to the action as a crime; it cannot forgive the perpetrator of the crime, but it can show mercy. And though no one has the right to demand that the victim forgive, citizens can demand that a relevant political authority pardon a criminal. The criminal offends against his victim twice over, as it were: as a fellow human being and as a fellow citizen. Because he acts against her as a fellow citizen, he offends against the community of citizens whose law he has broken.

What I said about forgiveness I would also say about remorse: when it is for a criminal deed it is for that deed considered as moral wrong rather than as a crime. In much of my work I have argued against the common idea that remorse is an emotional response to an independent understanding that one has done wrong, violated one's principles, or failed to live virtuously. Instead, I have argued, it is a form of recognition of what it means that we have wronged someone. It is a form of recognition in which how terrible it is for the person one has wronged to suffer that wrong and of how terrible it is that we did it, come simultaneously, each interdependent with the other.

"My God, What have I done? How could I have done it?" These are the characteristic expressions of remorse; bewildered remembrance or perhaps, for the first time, a full realisation of the meaning of what one has done; incredulity at the fact that anything *could have* that kind of significance. They are not really questions. Insofar as they carry an implication that we did not fully know what we were doing, it is not failure of the kind that would interest a court, or that leads us to say that the criminally insane do not know what they do or that they do not 'know right from wrong'. Just as contact with great goodness – when good is constantly returned for evil, for example – inspires wonder that there could be such a thing in the world, so in the case of remorse we are painfully struck by the mysterious and inescapable reality of the moral realm. Remorse is, I believe, a state in which we come to the fullest and most authentic realisation of what it is to wrong someone. Ironically, perhaps, in the incredulous realisation of the meaning of what we have done

we are awakened to the full reality of another person – our victim – to a degree that is rare. Most of the time we are only partially aware of the full reality of others; sleepwalkers through the forms of inter-subjectivity. Remorse is unique among the forms of human suffering because we cannot legitimately seek consolation in the knowledge that others are as guilty as we are, or even more so. The lucid, remorseful recognition of what we have done leaves us, as I put it in *Good and Evil: An Absolute Conception*, ‘radically singular’, because we cannot seek uncorrupted consolation in fellowship with others who suffer as we do.

Again I would not claim that this is true of every serious conception of remorse, but for us, heirs of traditions that taught that every human life is a miracle, inalienably precious, or as we now more commonly say, possesses inalienable dignity, this should be a recognisable conception of it. In the generality of its occurrence it is partly constitutive of our understanding of what it means to do and suffer wrong. In individual cases, it reveals its deepest meaning, to which we are often partially blind. That is why its characteristic expression is pained bewilderment and incredulity.

Evidently it would be a parody of a murderer’s serious remorse if he were to express it by exclaiming, ‘My God what have I done! I have violated the criminal law, and offended against the constituency of law-abiding citizens?’. As citizens we can hope that criminals are remorseful. We may even believe that it is intrinsic to some of our duties as citizens to require our judicial system to establish conditions of sentencing and punishment that would enable them to be remorseful, for their sake and for the sake of their victims, rather than because their remorse would give us reason to hope that they would not reoffend. But usually remorse should play little, if any, role in sentencing criminals or in the conditions of their release. In most circumstances, it is sufficient for them to ‘have paid their dues’, in order for them to be accepted back into the civitas. That, of course, does not mean that we should welcome their company in many of the forms of social life.

I hope that what I have said shows why law matters to us in ways that go beyond its value as a form of social organisation. We care about it because it creates a community that requires and enables its members to express their concern about the wrongs some of them suffer and to hold those who wrong them justly to account. It ensures, because justice requires it, that wrongdoers remain part of the civitas, morally, legally and politically, rather than banished. This gives point to speaking of the dignity of law, but – and this is the drawback to which I referred earlier – it makes it look as though morality confers that dignity by adding to instrumental value something that transcends that value.

But there is more. In a paper written post-September 11 in which he lamented proposals by prominent American jurists to render torture lawful in some circumstances, Jeremy Waldron said he was ashamed at the dishonour they had brought on American law and jurisprudence because they had proposed something which is entirely contrary to the spirit of ‘our form of law’.<sup>1</sup> He writes:

It is dispiriting as well as shameful to have to turn our attention to this issue ... I want to place particular emphasis on the fact that these efforts to modify the prohibition on torture are undertaken by lawyers. Sure, our primary objection to torture ought to be articulated in regard to the immediate situation of those who are going to suffer the treatment that Dershowitz, Bybee, and Yoo appear to condone. But the defense of torture is also shocking as a jurisprudential matter. That views and proposals like these should be voiced by scholars who have devoted their lives to the law, to the study of the Rule of Law, and to the education of future generations of lawyers is a matter of dishonor for our profession. Reading the memoranda of Judge Bybee and Professor Yoo and the mooted proposal of Professor Dershowitz shook my faith in the integrity of the community of American jurists.

<sup>1</sup> Jeremy Waldron, ‘Torture and Positive Law: Jurisprudence for the White House’, *Columbia Law Review* vol.105, no.6, October 2005.

The prohibition against torture, he goes on to say, is emblematic of the spirit of that law: expressing a value that is constitutive of what he calls 'our' law. Waldron says that law 'is not brutal in its operation; law is not savage; law does not rule through abject fear and terror, or by breaking the will of those whom it confronts. If law is forceful or coercive, it gets its way by methods, which respect rather than mutilate the dignity and agency of those who are its subjects ... There will be an enduring connection between law and respect for Human dignity.'

Waldron believes, I am sure, that breaking the will of a person by torture or by other means is always morally terrible, but if I understand him he also believes that the jurists he criticised had dishonoured the law as the expression of a value *sui generis*. For him, the law against torture has an inextinguishable moral dimension, but that does not exhaust its ethical dimensions. He offers an ethical perspective on what it can mean to break the law, which is different from but not in opposition to, those offered by morality and politics. Indeed he says that 'in the end, a legal prohibition is only as strong as the moral and political consensus that supports it'. He notes: 'And there is the difficulty. The moral and political consensus is weak and uneasy'. Here we see a conception of law as answerable to morality and politics, but whose distinctive value cannot fully be explained by the way it is answerable to them, singly or taken together.

Waldron's criticism, from the perspective of the integrity of law as a value *sui generis*, of the jurists who justified some forms of torture, enables me to illustrate what I have been saying about the complexity of the relation between morality, law and politics. Consider the following possibilities. Someone who believes that torture cannot be justified morally might nonetheless oppose it becoming lawful, not because of the prudential reasons for which such a stand is often justified – the bad consequences that might ensue were it to become lawful, including the bad moral consequences for judicial and penal institutions and other public initiations – but because she believes, as Waldron does, that torture is an offence against the essential nature and dignity of law. But a politician might believe, without

inconsistency, that torture can never be morally justified and that it is an offence against the spirit of law as Waldron understands it, but that nonetheless it must be done in certain circumstances – to protect lives, of course, but also to protect the very conditions of political association. Torn between incommensurable imperatives, political, legal and moral, such a politician might say that if she is true to the responsibilities of her vocation she must sometimes do what morally and legally she must not do.

Just now I distinguished between protecting lives and protecting the conditions of political communality. A quote from an article that David Grossman wrote for the UK *Guardian* when Israel was repeatedly attacked by suicide bombers will help me explain why. He described the effect of constant suicide bombings on life in Israel:

Just a few weeks of life in the shadow of terror will show every nation that believes itself enlightened just how rapidly and sharply it can turn needs into values, let fear determine its norms. Terror humiliates. It rapidly returns a human being into a pre-cultural, violent and chaotic existence. It determines where society's breaking point is. It entices certain groups, not small ones, to join it, and to actively seek to use force to destroy and crush everything they hate. Terror contains something that acts like a decomposition enzyme – the decomposition of the private human body and the public body – A country that fights terror fights not only for the physical security of its citizens. It also fights for their reason to live, for their humanity, for everything that makes them human and civilized.<sup>2</sup>

Grossman was not trying to defend the torture of terrorists in such circumstances. What he said should not be enlisted in support of the claim that there comes a point when the sheer number of lives lost to terrorist attack justifies torture. Grossman drew attention to how the unrelenting constancy of terrorist attacks can destroy something that is not measured in the number of lives lost in those attacks.

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2 David Grossman, 'Terror's Long Shadow', *Guardian*, 21 September 2001.

They destroy the conditions of a life that is 'human and civilised', the conditions of a civil political space – the conditions of political communality, in fact. In such circumstances one would seriously mischaracterise the responsibility of politicians to protect those conditions as the responsibility to protect the lives of their citizens, though if they do the former they will also do the latter.

It is also important to see that more is at stake here than national self-interest or the national common good, even when these are conceived as having moral considerations intrinsic to them. Some people believe that it is sentimental to hold nations to account morally for their conduct towards one another, especially when they are at war or engaged in armed conflict, as we now are with ISIS. They believe that for the sake of the national interest, for the sake of the common national good, we should severely curtail the rights of suspected terrorists and be prepared to torture them if that would save many lives. They believe that the concept of the national interest marks a morality-free zone, not because they would deny that the state should sometimes be answerable to morality, but because they believe that on those occasions morality is a constraint *external* to the concept of the national interest, often compromising it.

For other people, however, the concept of the national interest is inseparable from the conditions under which a politically serious person could love their country lucidly and without shame. For them moral considerations are not external to a politically serious and realistic conception of the national interest: they are intrinsic to an enriched conception of it. That is one of the things that, for them, distinguishes love of country from its false semblance, jingoism. They will remind people that although politicians have a defining obligation to protect the lives of their citizens, they are also prepared to send thousands of them (sometimes conscripts) to fight and die in wars, not so that more lives will be saved than would be lost, but so that the values that are undermined in the name of national security are protected. The difference between these positions is not just a difference about how to act ethically: it is a difference in the framework within which ethical problems – moral, legal and political – are

conceived and about the kind of importance they can have in our lives.

I have often argued for the second position – that terrorists threaten only our lives, but it is we who threaten our values by the means we use to protect ourselves. Often that argument has weight, but in circumstances such as Grossman describes, it would be mistaken, crass indeed, to suggest that citizens abdicate some of the defining ideals of their national life because they fear for their lives.

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The belief that morality and politics may at critical junctures conflict irreconcilably has been expressed, albeit in different forms, at many times in our cultural history. Machiavelli is the best-known example, though I have in mind the man who said that he loved his city more than his soul and made it clear how dearly he cared for his soul, rather than the demonised figure of popular culture. More recently and in a different idiom, we have Max Weber's classical essay 'Politics as a Vocation', in which he distinguished between an 'ethics of absolute ends' and an 'ethics of responsibility'. He spoiled the distinction by identifying the ethics of absolute ends with Christian pacifism, but its relevance survives that.

Socrates (and Plato, I think) believed that there is a conflict between ethics and politics because they believed that it is better to suffer evil than to do it. In the dialogue in which Socrates announces this precept, his incredulous interlocutors remind him that anyone who believes it will be unable to protect themselves and those who are dependent on them against anyone who is cunning enough to ensure that they have only evil means of defence. Only a dishonourable person, one who is shameless, they went on to say, could renounce so radically the means to protect those for whom we are responsible – who might be 'racked and castrated and blinded with hot irons [then] crucified or burnt at the stake'.

The Socratic ethics is not what Weber called an ethics of absolute ends because Socrates was not a pacifist. He knew that force had



often, and fiercely, to be met by force. Only when the use of force was unjust or evil did he demand that it be renounced. Nonetheless, like the ethics of absolute ends, his is a morality of renunciation and for over-determined reasons, renunciation cannot be the ethics of politics. If there is anything that looks like an absolute requirement on politicians, it is that they must protect the conditions under which political communality may survive into the future.

For that reason an important strand of Western political thought has been haunted by the belief – or fear – that morality and politics may be in deep and irreconcilable conflict, not because politics is too disreputable for a morally good person to take part in, but because at critical points moral and political conduct answer to incommensurable conceptions of responsibility, both of which will be acknowledged by any serious person, or at any rate, perhaps more accurately, anyone who recognises that our humanity is constituted in ethically diverse ways. That does not mean, of course, that morality and politics are not in deep ways answerable to one another. Morality cannot ignore the claims of politics or politics those of morality. Indeed, for almost everyone who has taken the conflict seriously, the mutual answerability of morality and politics to one sometimes generates tragic conflict. I would now add law as a party to that conflict.

Another longstanding and powerful strand of Western thought debunks that perspective. It holds that the conflict that is portrayed as between morality and politics is really a conflict within morality and one, moreover, that can always be resolved by the creative adaptation of morality to political circumstances. This strand of our tradition takes itself to express the only conception of morality that has thoroughly and clear-sightedly purged itself of religious commitments. If morality is of human origin, then, I suggested earlier – it is almost irresistible to infer – morality's purpose must be to serve human wellbeing as that can be understood without prior moral commitment. Sometimes, this thought continues, it will be necessary to recast morality creatively so that it can better fulfil its purpose. From this perspective, the belief that morality and the

world might be tragically mismatched looks like precious and self-indulgent muddle because it is of the essence of morality to respond creatively to complex circumstances.

There can be little doubt that this latter conception is gaining ground and that it expresses the spirit of the times. People often speak of morality as though it often needs updating if it is to serve its purpose through changing times. If, however, one accepts that morality is *sui generis*, that it does not serve purposes that can be identified independently of its distinctive concepts, and that the same is true of law and politics, then there is no reason to think, that we can always adapt ethically to circumstance to prevent terrible suffering.

Contemporary discussions about ethics and politics, especially about morality and politics, are more often conceptually structured by the tension between the two strands of our tradition that I have sketched than we acknowledge or even realise if our sense of the possibilities has been limited by the assumptions that constitute the battlefield to which Sophie Grace Chapell referred. Our failure, especially, to realise fully how often the Socratic tradition informs our sense of the conflict between morality and politics often leaves us with only a partial grasp of the concepts under which we describe what is ethically at stake for us in politics. This is both cause and effect of the impoverishment of our political discourse that makes it difficult for us to speak unselfconsciously of the dignity of politics. And this one – perhaps the main – reason why the ethical complexity of politics tends to become reduced to a conflict within morality, why the ethical responsibility of politicians is identified as moral and why people in politics is almost always taken to be moral principle.

For Socrates – I am again thinking of the character that Plato created – the claim that a politician might rightly say that if she has to answer to the distinctive responsibilities of her vocation she must do what morally she must not do – would be an example of

an ethically crooked proposition, one that posits a conflict between ethical necessities that cannot exist for someone who properly understands the claims of morality. When the claim of morality is fully understood, he believed, it silences voices that tempt us to believe that there are ethical imperatives that could legitimately conflict with it.

Many people, including philosophers, believe it can never truly be ethically necessary to do what is morally wrong, though they are not at all attracted to the Socratic affirmation that it is better to suffer evil than to do it. Others who accept that there can be situations in which one does something morally terrible whatever one does and, even, that on some of those occasions the concept of justification has no application, believe that in such situations the conflicting ethical imperatives must be moral ones. Michael Walzer, who has written extensively on moral dilemmas politicians may face, believes that they are always moral dilemmas. He believes that what I have been characterising as a conflict between morality and politics, conceived of as different, interdependent, but sometimes conflicting, realms of ethical responsibilities, is a conflict within morality made especially dramatic by the fact that in politics, especially on occasions of what he calls 'supreme emergency', actions can have far reaching and terrible consequences.

Most situations in which someone does something morally terrible no matter what they do, are situations in which, nonetheless, one course of action strikes them as the lesser evil. They will then be clear about what to do, and others who understand their situation are likely to agree. At other times, however, the concept of a lesser evil and therefore of justification, lapses. In those situations, good people can disagree about what they must do without accusing one another of error or bad faith. More importantly for the claims of this essay, they cannot know in advance what they will feel morally compelled to do. That being so, it is hard to see how a politician who believes she cannot do what is morally terrible, even when the existence of the nation she leads is threatened, can be criticised for abdicating the distinctive responsibilities of her vocation if her dilemma is

conceived to be within morality. If what she does in protecting the nation is one horn of a moral dilemma about which morally good and informed people can disagree, then she cannot know in advance what she will do.

Yet we know she *will* be criticised. She will be told that she should not have become a political leader because it is of the essence of political responsibility that politicians must do what is necessary to protect the nation and the distinctive life of its people. Lucid politicians, they will say, must know in advance what the responsibilities of their vocation are and be prepared to act on that knowledge against even the most serious claims of morality.

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I remarked earlier how varied are the ethical inflections of the way we speak of humanity when we do not mean to speak directly of the species *Homo sapiens*. The ethical inflections are diverse for two reasons. Firstly there are many forms of the ethical – morality, politics, law and love for example. Secondly, the forms of the ethical are also various because there are different conceptions of morality, of politics, of love and so on.

'Be a human being for once in your life', is not an injunction to be more fully a member of the species *Homo sapiens*. Nor did Socrates mean that an unexamined life is not worthy of the species *Homo sapiens*. Sometimes such ethical inflections are the expression of moral duty; sometimes they are not. Always reference to humanity functions not as an explanation of why someone should do something, but as an ethical reminder of what it means to be human. One might therefore wonder how much the concept of humanity helps us to understand the ethical inflexions associated with it. Perhaps the real ethical and conceptual work is done by the concept of a person or a rational agent. Those concepts do not conflict, as the ethically reflected ways of speaking of our humanity appear to, with the obvious possibility that beings who are not human beings – aliens for example – or, one day, robots – might become fully part of our

ethical community, including our moral community. At issue here is not whether the characteristic lives of human beings generate ethical content for human beings. The more fundamental question is this: Is the concept of humanity necessary to our understanding of what it means to wrong someone, of what it means to be morally necessitated in ways I characterised earlier, and, therefore, to our understanding of the distinctive kind of seriousness morality can have in our lives, as I characterised it in my account of remorse, for example.

I cannot speak adequately to that question in this introduction, but I would draw attention to the striking fact that we often speak of our humanity as something to rise to, something we can betray, and something we can regard as a gift. 'Humanity' as it is thus ethically inflected is not a natural kind of concept, which is to say that if it turned out that beings towards whom we behaved as though they are human beings were in fact not members of the species *Homo sapiens*, we would not thereby believe we had been mistaken in treating them as human beings. We would not necessarily think that either we had been mistaken in treating them as fellow human beings or that the scientific classification of what it is to be a member of the species *Homo sapiens* is mistaken. The reasons for this, which I have developed in *A Common Humanity: Thinking about Love and Truth and Justice* and in *The Philosopher's Dog* are, I believe, to be found in Wittgenstein's *Philosophical Investigations*. If I am right in claiming that our ethically inflected ways of speaking of humanity can extend to beings who are not members of the species *Homo sapiens*, then one reason why people believe the concept of a person or a rational agent does the work that is carried in those inflections, loses its attraction. How distant from us those beings can be in their appearances and ways of living and be accepted into the fellowship of humanity, cannot, in principle, be determined in advance by any theoretical considerations. We must see how we respond.

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Because we have lost a sense of the dignity of politics and, interdependently with that, of politics as a vocation, we find it hard to think of politics as a realm that could define who one is in a way that goes deep ethically. For that reason while many people would agree that our humanity is ethically constituted in diverse ways, that there are ethically diverse realms of life in which we are called upon to live to our humanity, they also believe that politics cannot be one of them. Indeed some might say that our humanity is fully realised only when we are disengaged from politics – that the business of politics is to free us from politics so that our humanity can flourish in various essentially apolitical forms.

Hannah Arendt offered a radically different way of thinking about politics and our humanity. When I think of Plato's Socrates, I have a sense of someone astonished – struck in wonderment – at his encounter with the ethical in the guise of morality. In a distorted but excellent film, his greatest interlocutor, understood that. It provoked him to say in response to Socrates' affirmation that it is better to suffer evil than to do it, that if Socrates is right, then 'the whole of human life is turned upside down'. Reading Arendt I have a similar impression of someone celebrating the wonder of her joyous but troubled encounter with the ethical in its perhaps most interesting political form. It strikes me as apparent in many of her works, but the implications for what I have been arguing shows in her discussion of why genocide should be called a crime against humanity and why it is: paradigm of that crime (*Eichmann in Jerusalem: A Report on the Banality of Evil*). To be sure that is not a joyous discussion, but the celebration of diversity as partly constitutive of the political realisation of our humanity, is implicit in it. To show its bearing on the introductory essay, I must elaborate her account of the ethically distinctive nature of genocide.

Thinking about what should be the proper characterisation of Holocaust crimes, Arendt was impressed by the remark of the French Prosecutor at Nuremberg who said that the Nazi crimes against the Jews and Gypsies were crimes against humanity because they offended against 'the human status' rather than because they

were particularly inhumane. That led her to claim that we should think of genocide as 'an attack upon human diversity as such, upon a characteristic of the human status, without which the very words "mankind" or "humanity" would be devoid of meaning'. The tone in which she speaks of humanity when she explains that genocide should be a crime against humanity because it is a crime against human diversity is obviously ethically inflected, but the inflection is not moral. Indeed, those who objected to what they took to be her cold tone in *Eichmann in Jerusalem* did so partly because they believed that the ethical dimension of genocide, what makes it 'the crime of crimes', is its moral dimension. That is why they thought her account of genocide to be absurd and offensive.

It does, of course, sound like a parody of what the Jews and Gypsies suffered under the Nazi genocide to say there was torture, infinitely many forms of degradation, brutality and murder in the spirit of ridding the earth of vermin, but what really captures the essence of that and other genocides is that they are crimes against human diversity. But that is a just parody only if one takes the phrase 'an offence against human diversity' as intended to direct us to the moral dimensions of genocide. I hope my discussion has made clear that it does not. Of course genocide has many moral dimensions: I discuss them in my contribution to this book and will quote some of that discussion here so that it is immediately before the reader's mind:

Survivors of genocide who know of the genocidal intentions of their persecutors suffer different and deeper trauma than those who have survived mass murder only. People who are victims of genocide and the contempt that has been intrinsic to our paradigms of it suffer terrible natural harm, such as pain and fear, and terrible evils such as murder, rape and torture. In addition they suffer the distinctive evil of being treated as pollutants of the earth, as vermin or in other ways as undeserving a place in the world. Worse still, some of them suffer the knowledge that their loved ones were the victims of the same contempt. That conditions, through and through, the nature of their trauma.

The moral dimensions of genocide can change without the criminal or the political dimensions doing so. That is why crimes of markedly different moral severity can fall under the concept and still retain the gravity inseparable from it, even when, as in the case of the Stolen Generations, not a single murder was performed in the absence of a genocidal intention. From one perspective the diversity of peoples and their cultures is just a contingent fact about the species and its biological and social evolution. From Arendt's perspective, the manifestation in the political realm, in political practice, became constitutive of our humanity in one of its ethical manifestations.

When I discussed Waldron's response to jurists who defended torture, I said that his understanding of law and its distinctive ethical dimension as something sui generis offered an ethical perspective on what it can be to break someone's will that is different from, but does not compete with, the moral perspective on it – that, indeed, it depended on the moral perspective. I think the same is true of the ethical perspective on genocide as a crime against human diversity, against the human status.

Arendt's account of genocide, as I have elaborated its ethical complexity, explains why genocide is rightly called 'the crime of crimes', the 'gravest' of the crimes against humanity, though some of the crimes that count as genocide could not soberly be described that way if one took those expressions to be moral descriptions. It is therefore an example of the ethically diverse ways we speak of humanity. Her account also shows up as relatively superficial the idea that genocide is a crime against humanity because, as the United Nations General Assembly of 1946 says in its preamble, it results in 'great losses to humanity in the form of cultural and other contributions represented by these human groups'. More important for the purpose of this discussion, because she was so deeply a political being, Arendt saw more clearly than others that crimes against human diversity are crimes against the community of nations, as that is constituted under international law and, at the same time, crimes against the political order itself. For her, genocide is the paradigmatically political crime. It can never be committed

as a lucid response to what is perceived to be political necessity. When genocide and politics are seen from Arendt's perspective, 'the political necessity of genocide' is an oxymoron.

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I hope my discussion has taken us to a point that offers a perspective on the ethical complexity of politics quite different from those available on the battlefield when 'dirty hands' is the topic. Politicians soberly aware of the responsibilities of their vocation ('role' or even 'office' are concepts that are too shallow in this context) will understand the defence of the existence of their nation, considered not only as a body of citizens, but also as a people, as being a defence of the kind of diversity without which the very words 'mankind' or 'humanity' would be devoid of meaning. In such circumstances they act to protect their own nations and also on behalf of humanity as it is realised in politics, especially in politics between nations. It is therefore important to see that the responsibility of politicians to protect the conditions that make their nations homes for distinctive peoples, even at the cost of acting against morality and law, is not an expression of excessive nationalism, let alone of taking the nation or state to be of absolute value. It is, to the contrary, a form of loyalty to the political expression of our humanity. Were political leaders not prepared to do this, were they to follow a morality of renunciation, then 'the human status', as realised in the diversity of peoples, would be hostage to the improbable good fortune that the nations that comprise that diversity would face no enemy that forced them to choose between defeat and doing evil. That, I suspect, is why citizens, aware of the ethically complex dimensions of their political identity, will always expect their leaders to act against morality and law if that is the only way to protect their life as a people. It is why they do not look upon a moral refusal to do evil for the sake of the nation as an ethically serious option for someone who is prepared to accept the burden of their political identity. I doubt that Simone Weil would agree, but in *The Need for Roots* she tells us what is at stake:

We owe a cornfield respect, not because of itself, but because it is food for human beings.

In the same way we owe respect to a collectivity – country or village or any other – not for itself but because it is food for a certain number of human souls.

One sack of corn can always be substituted by another sack of corn. The food that a collectivity supplies for the souls of those who form part of it has no equivalent in the entire universe.

Does what I have said about the tensions between morality, law and politics justify what politicians will do if the existence of their nation is under serious threat? When people ask that question, 'justified' normally means morally justified. Clearly, morality cannot justify politicians in such circumstances. Does that mean that the political imperative is higher than the moral imperative, that it should override it? I believe that there are no grounds external to morality and politics that could support that 'should'. It is of the utmost importance to remember, however, that the times when the existence of a nation and hence the historical and cultural identity of the people it protects are under real threat are rare, whereas the times when politicians claim such a threat exists are frequent. We must therefore always be on guard, not against the threats politicians proclaim, but against their tendency, to betray, with our connivance, loyalty to jingoism or what Ghassan Hage calls 'paranoid nationalism', and therefore the values we cherish.

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Further proof of a community of nations constituted as a community by the consent of its members to answer to international law, or at least those parts of it that deal with crimes against humanity, torture, genocide, and the laws of war, for example. In the conclusion of this essay, I must acknowledge, however, that there is considerable disaffection with international law amongst citizens, practising lawyers and in the academy. It has at least two important sources

– the fact that its implementation is depressingly partial (in both sense of the word) and that it is perceived to be Eurocentric in its applications and in some of its fundamental concepts.

The UN resolution of 1946 to which I referred earlier described genocide as a ‘shock to the conscience of mankind’, as ‘contrary to moral law and to the spirit and aims of the United Nations’ and a crime ‘which the civilized world condemns’. Raphael Lemkin, who coined the term, and who developed the first account of the concept, believed passionately that its establishment in law was an imperative for a ‘civilised jurisprudence’. Many people have pointed out that ‘civilised’ is a word that is itself ethically compromised by its association with a racist incapacity of Europeans who formulated international law to see depth and meaning in the lives of cultures that they then described as ‘primitive’, which included the cultures of most of the peoples of the world, some of who were victims of colonial genocides.

Racism was then and is now often marked by an incapacity to see depth in the lives of Blacks, Asians and Central and South Americans. At issue here is not the truth of the factual stereotypes to which racists often appeal in order to defend their attitudes, but rather the meaning they are able to see or fail to see in the lives of the peoples they denigrate. When James Isdell, Protector of Aborigines in Western Australia in the 1930s, was asked how he felt when he took children of mixed blood from their mothers, he answered that he ‘would not hesitate for a moment to separate any half caste from its aboriginal mother, no matter how frantic her momentary grief might be at the time’. They ‘soon forget their offspring’, he explained. It was literally unintelligible to him that ‘they’ could grieve as ‘we’ do, that grief for a dead child could lacerate a black woman’s soul for the remainder of her life.

One sees what is at issue here if one reflects on why it is impossible to see depth in a face that looks to us as aptly caricatured in the *Black and White Minstrel Show* face. One could not cast such a face to play Othello. Not even God could see in such a face the full possibility of human expressiveness. (I have elaborated on this at length in *A*

*Common Humanity*.) For that reason it was unintelligible to most whites, when international law developed after World War Two, to believe that blacks and Asians were able fully to understand the gravity – moral, legal and political – of the ethical expressions used in the 1948 resolution. Because they found it unintelligible, in the way I illustrated by reference to the *Black and White Minstrel Show*, that anything could go deep in the lives of the victims of their denigration, they found it unintelligible that they could be wronged, by ‘us’ or by ‘them’, as ‘we’ can be wronged, that they could understand what it is to do and to suffer such wrong, or have consciences that could be ‘shocked’ as those of ‘civilised’ people could be.

To acknowledge, however, that there are no peoples and no ethnic groups, who are as racists see them, is not yet to acknowledge a common humanity with them; not at any rate, if the idea of a common humanity requires that we care about people and peoples when they suffer and when they are grievously wronged. Whether such a recognition on the substantial realisation of the ideal of a common humanity would of itself be sufficient to establish an imperative to an international order under law that would name those wrongs and prohibit them, and to write preambles that would indicate what it would mean ethically to commit those wrongs, is perhaps arguable. But no argument is needed because there is such an order and there are such preambles. Those instruments of law and the ethical concepts in the preambles to them (the reference to ‘the Dignity of Humanity’ in the Universal Declaration of Human Rights and the Convention Against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment, for example) are flawed for many reasons. The Eurocentric bias evident in their inception persists in their applications and in some of their defining concepts. That will change, I am sure. But the idea that all the people of the earth share a common humanity will be empty unless the citizens of all nations care and show that they care when their fellows in humanity are grievously wronged. Respect for international law and its enforcement is one of the most important ways to do it.