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Glen Newey's Brief Against Comprehensive Justification

1.

I begin with a bricolage of ideas from Glen Newey's papers and works: (1) power loops; (2) liberty as security; (3) the reiteration problem; and (4) walls, or the ethics of 'murality' as a response to Ingrid Creppell's ethics of 'mutuality'. These are the keys to unlocking Newey's complaints about (A) what he calls "comprehensive justification" (a too inclusive moral philosophy) and (B) about his framing of politics in *Rogue Theodicy*.

(1) With the idea of 'power loops' that interfere with justification, Glen Newey pays homage to Thomas Kuhn and Michel Foucault. Power can be justified if it is consented to freely but is it justified if in fact power 'loops' around underneath the situation of justification in a way that may predetermine or pressure the outcome? If this is the case, there is no neutral ground upon which to assess the legitimacy of an actions because all such assessments are affected by the force field of an existing structure of understandings maintained ultimately by power. For Newey "the effect of force on the political context of justification" is pervasive. He argues for the "ineliminability, not simply of force itself, but of its effects on how that context is itself understood" (Newey 2019). With Kuhn, the presence of 'paradigms' in science enforces the outer boundaries of legitimacy which can be challenged only by a buildup of anomalies to the paradigm. With the early Foucault, the structure of the 'episteme' constrains what might be thought and argued at any given moment. In each case the 'loop' refers to the presence of power, in the form of a status quo structure or a pattern of indoctrination, that tends to

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restrict dissent. In Kuhn science pedagogy is necessarily authority laden (or authoritarian) because solving problems in science can only proceed with one paradigm at a time, one set of problems and proposed solutions.

Anarchism, the idealized no-power situation, must be the logical fall back for liberal arguments that depend upon a notion of justification untainted by power just as untainted independent skeptical minds is the anarchist fantasy about the scientific community. On this understanding scientists as well as citizens should fortify themselves with sufficient skepticism to resist prevailing patterns of power loop/paradigm enforcement as though one could through an effort of will break through the force fields that sustain understandings.

Historical examples may tend to unravel this argument. There are many seductive messages that normalize inequality. Egalitarians need to resist this. But maybe detached skepticism is not the way to unloop power. Montesquieu argued that to the contrary it was in the egalitarian republic where "the full power of education is needed" (Montesquieu 1989, IV.5). There is no escape from paradigm enforcement. If we want to enjoy the charms of equality, we must first educate ourselves to perceive or to feel its charms and that requires participating in a structure of egalitarian feeling. Newey himself resists the implication of power loops. He was charmed, as we shall see, by the spectacle of the lone dissenter who embodies "wild freedom" (Newey n. d., 51).

(2) Nevertheless, whatever one may ultimately say about wild freedom, liberty in the ordinary sense for Newey is established by security. In an age marked by the threat of terror there are of course many examples of false security. Newey acknowledges this but makes the Hobbesian point that liberty flourishes only in structures that guarantee security. Newey need not just have cited Hobbes. Montesquieu, far closer to the heart of the liberal tradition, makes the security liberty link explicit: "Political liberty in the citizen is that tranquility of spirit which comes from the opinion each one has of his security" (Montesquieu 1989, XI.6, 158).

(3) The search for justification is also stymied by the 'reiteration problem'. If the justification of power arrangements requires a consensus, there is the problem of how to appeal across plural boundaries among different people and among their distinct values and interests. But underneath the search for conciliation across boundaries, Newey detects a more surreptitious activity. Instead of appealing to understandings that might be in effect neutral be-

tween dialogue partners, one (usually the dominant partner) will propose solutions that it is known in advance the other side will not or cannot accept. Instead of solving a problem, Newey claims, this only 'reiterates' it.

If, however, Newey is right, this exchange does solve a problem for the dominant partner. When as expected the other weaker partner rejects the proposal, the way is open for the first to argue that the other is being unjustifiably unreasonable (in contrast to the Rawlsian sense of 'reasonable disagreement') or is exhibiting intolerance, which, Newey sarcastically intones, is 'always unacceptable'. Of course the result could be mutual incomprehension: "From its own perspective, each side may see its opponents as unjustifiably intolerant and its own position as tolerant – or as justifiably intolerant" (Newey 2008, 372).

Manipulation is usually involved: "the content of toleration can always be retailored to fit whatever one now happens to believe is justified" (*ibidem*). The upshot is justified coercion (for whomever is dominant) the remedy for the presence among us of 'unreasonable' or 'intolerant' (or 'deplorable') citizens. For Newey, the invocation of Rawls's argument for reasonable disagreement is incoherent in the face of the claim of plural values (each perhaps worthy but significantly incompatible with one another) even if the invocation of unreasonable disagreement or intolerance is often a convenient way of marginalizing inconvenient citizens. Newey obviously thinks that these procedures for exclusion are sneaky, but does he think they are wrong? Not exactly. Instead he appeals to the picture of politics offered by Carl Schmitt: "Where it is an issue, toleration forces politics to distinguish friend and enemies" (Newey 2008, 367).

Newey's intention here is to remind readers that arguments about toleration can sometimes 'exclude conflict', which is always at the heart of politics. 'Conflict', he is persuaded is definitive of the political circumstances. One should cast suspicion at the central aim of contemporary moral philosophers which, as he put it, is "to endorse a permanent politic-juridical order enshrining the paramount moral value which can bind disparate groups to that order". By contrast he argues there may be no such solution: "disagreement may go all the way down" (Newey 2008, 377-378).

(4) The debate between Ingrid Creppel and Glen Newey is a marvelous set piece. It not only frames the issues Newey has with contemporary moral philosophy – his beef with comprehensive, 'omnicompetent' harmonization – but the positions of Creppell and Newey can be taken as symbols of two kinds of political order.

Ingrid Creppell's "Toleration, Politics, and the Role of Mutuality" could be taken as a frame for the utopian expectations of global order after 1989 (Creppell 2008). Although he could not have anticipated this, Newey's response, "Toleration, Politics, and the Role of Murality" could be taken as a symbol for events that occurred since his passing. For Creppell, toleration is more than a halfway house for the partly acceptable, partly deplorable – what toleration once meant, and what Newey claims it still means. For Creppell this early understanding of toleration was only the beginning in a process whose telos was 'mutuality' and 'the will to relationship'. The goal presupposes that there is a way of framing moral reconciliation which is the task of the philosopher to discover and us to acknowledge. Whether or not it adequately describes contemporary trends for comprehensive settlement among moral philosophers, the 'will to relationship' was an apt characterization of hopes for everyone-is-a-winner globalization. The will to relationship presupposed there is a moral order to which everyone could subscribe.

Not so with Newey's 'murality' with which he slyly sought to displace Creppell's 'mutuality'. For Newey 'walls' are appropriate metaphors for describing a world of plural and incompatible values where nevertheless people could possibly agree that, sufficiently enclaved, there are reasons to tolerate each other. Who occupied what enclave was of course always in dispute. We cannot assign credit or blame to Newey for the new symbolism behind the injunction to 'build that wall'. However, though the facts on the ground are skimpy and the motives misplaced – even then Newey noticed "security fetishism [suggested] cowardice and stinginess" – we make a mistake not to appreciate how powerful a symbol President Trump's new idea of 'the wall' has become in a world where people have lost confidence in everyone-a-winner globalism.

To great rhetorical effect, President Reagan said in Berlin, "Mr. Gorbachev, tear down this wall". The collapse of the Berlin Wall in 1989 and the collapse of (Western) communism inaugurated a world that, if Newey was right, analytical moral philosophers already inhabited: there was a story to tell about comprehensive justification in collective action that excluded no one. There was a story about justice applicable to all. To be sure, many moral philosophers were on the other side of the political or institutional story line: social democracy rather than neo-liberalism plus elections, but the idea of a comprehensive moral settlement, a 'permanent politico-juridical order' was not in question. Now it is.

2. III Rogue theodicies or rogue rebels?

Even though Glen Newey is now gone, is there anything that he had written that might help us think through the moral consequences of the new world order that threatens to emerge? The obvious candidate is his long and magisterial essay, *Rogue Theodicy* (Newey n.d.). Through a comparison of contemporary moral philosophy, specifically that of Rawls, Dworkin and Cohen, with that of traditional understandings of theodicy, which he finds at work in Hobbes' *Leviathan*, the *Book of Job*, and Sophocles *Antigone*, Newey rehearses his complaints about the 'comprehensive' ambitions of moral philosophy which he thought had the unfortunate effect of sidelining freedom. Traditional theodicies by contrast celebrated freedom. Contemporary theories of justice are secular theodicies gone 'rogue'. Traditional theodicies were justifications for the presence of evil in a God supervised world. Even though God could have determined all human creatures to have pursued morally good lives, these lives would have lacked freedom which morality requires so God granted men and women freedom in full knowledge that some would pursue evil. Secular 'rogue' philosophy by contrast tries to fold freedom into the normative prescriptions of a comprehensive theory of justice and right action. This puts the ambitions of the moral philosopher, Newey suggests, on a level with God and in the grip of God-like cognitive certainty that he or she knows what the good life means.

There are virtues in this comparison but let me first rehearse the problems. At one level it seems perfectly reasonable for philosophers to try to say what a comprehensive morality is since every such effort, like every effort in science too, falls under the qualification that it may be provisional. What then really is wrong with prescribing to the best of our knowledge what ought to be done? The political philosopher Montesquieu expressed the desire eloquently: "In a society where there are laws, liberty can consist only in having the power to do what one should want to do and in no way being constrained to do what one should not want to do". He added, as a consequence that this means that "political liberty in no way consists in doing what one wants" (Montequieu 1989, Book 11, ch. 3). In this passage, Montesquieu gives perfect expression to Newey's idea of a rogue theodicy. But the passage also suggests why it would be difficult not to apply these criteria in making laws: if one knew even in a provisional sense "what one should want to do", one should advocate it without fear one was unjustifiably restricting liberty. In

addition, God had hell and damnation awaiting miscreants – also prayer and forgiveness – so it is not exactly the case that for the sake of their freedom, God has given miscreants a free pass. The secular or 'rogue' philosopher has only education, ostracism, and, as Burke put it 'the gallows'.

It is sometimes puzzling what Newey seeks in his animadversion to comprehensive justification. His point about over confidence in the power of philosophical reason is well taken. There *is* something megalomaniacal about philosophy, something that Plato was the first to teach. With rogue theodicies, Newey writes, "no justificatory space remains for the exercise of freedom outside the norms the theory lays down" (Newey n. d.). This seems to mean that the theory itself will not be open to amendment or to future rejection. This is unlikely unless – and it is key perhaps to his thinking – the confidence in the norms is dangerously utopian. The confidence of utopian thought leads its adherents to dispense with 'wild freedom' which it could then be argued suited an earlier less fortunate people but not one in possession of comprehensive justifications. As Newey's approving citation of Berdyaev suggests: what is needed is "a less 'perfect' while also more free society". Newey's fear is of a totalizing intellectual commitment that undermines the freedom to amend, revise or reject.

What does the analogy between traditional and rogue theodicies reveal that is important to see? As the caveats to moral theorizing we rehearsed above indicate, there is often no clear way forward from norm to action. Justification is stymied by power loops. Structures and understandings underwritten by power may distort conclusions that (in some fantasy world) might have been made differently. The reiteration problem is also a roadblock. Sneaky offers that can't be accepted leads to fraudulently justified coercion. This is the *secret inner life* that Newey saw in regimes of comprehensive justification. In these circumstances, reaching moral conclusions is less like tracking reason than making an existential decision. Moreover, the theme of enduring 'conflict' is always present in Newey's writing so it makes some sense that he would invoke Schmitt's 'friends and enemies' if only to remind the adherents to comprehensive justification that probably they have unjustifiably left someone out in the cold.

Newey had no interest in what drew most thinkers to decisionism (Schmitt or Weber), namely the existential choices of leaders, executive, presidents, prime ministers or dictators. His decisionism is that of the little guy. It involves saying no, foot dragging, dissent, rebellion, resistance. In the light

of his cynicism regarding the inner life of comprehensive justification, with its power loops and reiteration problems, Newey thought it important to preserve that "space", as he called it, for the "exercise of freedom" (Newey n.d., 43). In this respect his approach tracks that of Hannah Arendt. Politics requires the maintenance of the distance plural people and their conflicting perspectives need. Citizens need to stand apart in order to stand or, as Newey put it to 'coordinate' together.

The voice of comprehensive theory still haunts the argument. It will say that if people have good reasons to rebel or dissent, by the criteria of the best available norms they shall have the right to do so. This is not I think a bad response. It more or less repeats Montesquieu. There are moves to make from within a moral paradigm, which permits either dissent or acceptance. It is all that we have now and it is good enough. For Newey, however, this misses the untamed vitality of freedom, the source of each person's very power to devise and revise. Newey is holding out for metaphysical acknowledgment of the free imagination.

In this seemingly romantic undertaking, he found dangerous company. It was not only the company of Hobbes's 'rational fool' whose dissent from the 'will to relationship' (contractual obligation) cracked the fragile foundations of mortal i.e political, salvation. It was also Hobbes acknowledgement that "the Kingdom of God could be gained by violence". Under the title, *Éloges de l'Injustice*, Celine Spector (2016) has assembled a whole panoply of potential villains under the heading of *l'insensé*, the senseless, foolish, mad, mindless man or woman who, notwithstanding these descriptions, were deep sources of philosophical anxiety as described by the subtitle to her text: *La Philosophie face à la déraison*. We have evidently backed into Rawls and consensus again, the problem of what is reasonable or unreasonable about 'reasonable disagreement'.

That is one side to the story, an affirmation of metaphysical rebellion on grounds of insufficient reasons to avoid the unreasonable. This is not an entirely satisfying back story for Newey, however. There is however a classical author who fully represents Newey's ambitions, namely G.W.F. Hegel. The *Philosophy of Right* may be exactly the sort of comprehensive moral and political philosophy that Newey was tempted to reject, but from his perspective the text possesses two redeeming features.

The first is its acknowledgment of the necessary incompleteness of its argument. After the fall of Napoleon and after the acknowledged failure of the Revolution, Europe found itself between two worlds, between a resurgent feudal absolutism bound to fail and the hopes of enlightenment inspired

rationalism and freedom whose initial fabrications had already failed. It is possible to read the *Philosophy of Right* not as a summary about life at the end of history but as an edifice of unstable and contradictory principles that urges cautious pragmatism in the face of an unknown future. In this respect Geoff Mann's *In the Long Run We Are All Dead*, is exemplary (Mann 2019). It compares Hegel (see especially 119-125) to Keynes. Both were post-revolutionary thinkers who understood that the very principles that ruined the revolution (misunderstood Enlightenment reason and freedom) were not optional adjuncts but a necessary part of the human condition moving forward.

Second, this reading of Hegel as pragmatist in the face of fragile constructions can be corroborated by digging down into his views on the role of subjective freedom. This is the freedom of the isolated and independent individual "where there is free play for every idiosyncrasy […] where waves of passion gush forth, regulated only by reason glinting through them" (Hegel 2008, par. 184 Addition). Note that reason glints; it does not now dominate or command.

The sphere of 'civil society' situated between family and state is where these 'passions gush forth'. The principles that knit people together, the principles of 'ethical life' (*Sittlichkeit*) presides over family, state *and* civil society. Here we have another picture of comprehensive justification that Newey rejects. But what Hegel takes away, he also gives back. In the circumstances of a (civil) society of individualists, Hegel reaches the remarkable conclusion that here "the system of ethical order" lies in fragments (par. 184). "Ethical life is split into extremes and lost" (par. 184 Addition). For Hegel this is a loss of moral coherence, a rip in the fabric of comprehensive justification, if you will, but it is not a cause for regret. To the contrary it is necessary to acknowledge at the center of modern vitality, a spirit of liberty and reason that emerged in Reformation and Revolution and is still busy breaking things. In making these claims for freedom, Hegel frees himself from the rogue theodicies that Newey criticizes. Men and women *are* free to do evil as well as good. Without this acknowledgement, one would have no adequate understanding of the human being who was subjected to norms of ethical life.

Paragraphs 5-7 of Hegel's text (*Philosophy of Right*) announced the metaphysics of will or the metaphysics of the free personality, both in itself and in its relationship to others. It is the key to the whole text. The argument begins, paragraph five, with something like Newey's freedom as un-determination, which here becomes "my flight from every content as from a restriction,"

"negative freedom" and the "fact of consciousness" (par. 4). It is a picture of the instability of modernity. "It takes place in religion [Reformation] and politics [French Revolution] alike as the fanaticism of destruction".p (par. 5 Addition). Without an acknowledgement however to this will to freedom – this Luther's "here I stand I can do no other" or Descartes's the thinking of existence – we do not have human being in sight.

But the naked will cannot stand alone for long (parr. 6-7). To invoke Ingrid Creppell, Newey's one-time dialogue partner, humans as such need to learn the equivalent of "mutuality". They need, if not a "will to relationship," the completion of the will *in* relationship. In his lecture notes, Hegel illustrates this accomplishment through the medium of "friendship and love". "Here," he writes, "we restrict ourselves gladly in relating ourselves to another but in this restriction know ourselves as ourselves" (par. 7 Addition).

Friendship and love are not politics and Hegel was no utopian philosopher. Nevertheless, the template of conciliation that he saw in personal relationship he also thought governed political relationship. If there is a key realist note in this otherwise romantic analogy, it lies in Hegel's additional comment that in friendship and love "one treats the other as other". One could interpret this as saying that the norms that guide lives – those bugbears of "comprehensive justification" that so annoyed Newey – should not expect us to stand so close that we share every value. We may not possess a consensus on justice and right. We may have only "mere toleration", halfway houses for people who are not enemies, but only distantly friends (or friends because they maintain distance). If, however, in whatever circumstance, we were expected to stand so close under the umbrella of comprehensive justification, Newey intimates that we might expect to witness a return of the explosive force of freedom as un-determination.

To return to the earlier speculation, is it possible that the debate between Creppell and Newey could be regarded as symbolic representation of two historical moments? One was marked by walls tumbling down. The ensuing will to relationship in ethics and the global order in politics nourished one set of utopian i.e. potentially or probably, illusory hopes. The other moment wants those walls to be rebuilt. If there are good reason for us to wall ourselves off from one another, on the ethical and political principles of differential loyalties and obligations, no doubt this will-to-difference nourishes another set of illusory expectations.

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