

Reciprocity in the justification of rights

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Seyla Benhabib argues that rather than aiding us in the resolution of global ethical problems, rights are of a piece with the broad ideational landscape which gives us these problems. Rights are no panacea. Might there, however, be ways of conceptualising rights that give us an advantage over some of these more intractable problems? Benhabib's argument is that the virtues of discourse ethics provide such an advantage. This article, however, argues that her rendition of a discourse ethics approach to human rights does not succeed in extricating human rights from the established dilemmas that theorists of human rights confront.

Seyla Benhabib asks: 'What is the status of rights within a discourse theory of ethics?' (Benhabib 2004, 129). Benhabib is writing about the principle of right in the political theory of, among others, Kant (Reiss 1994) and Arendt (Arendt 1968). This discussion is set in motion by a concern about the rights of those who have been cast out of one state, but who have not been received into another: aliens, asylum seekers, refugees, displaced peoples. In Benhabib's reckoning, their plight is one of the most fundamental questions facing political theory today.

The way in which Benhabib approaches the contemporary issues of migration and cross-border justice depends heavily on notions of rights. The question quoted above appears in the fourth chapter of *The Rights of Others* (Benhabib 2004). It appears at a point in Benhabib's argument where it has become clear that the use of the idea of rights is not a simple way of resolving the dilemmas created by migration and cross-border issues. Rather, the idea of rights is itself recognised as a deeply implicated part of the environment which creates dilemmas, rather than being an external measure which can be applied to alleviate those dilemmas. Rights are of a piece with the broad ideational landscape which gives us all the 'problems' — ethical, practical and otherwise — which arise out of our contemporary global system. They are no panacea (see also Benhabib 2002; Langlois 2001).

Might there be ways of conceptualising rights, however, that may give us an advantage over the more intractable problems in international politics, such as those

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of cross-border justice? Is it possible to extract rights from what we might call the normal operations of the world such that they get us — to adapt one of Benhabib's comments — beyond the usual impasses that seem to paralyse our capacity to move the global system towards some semblance of justice?

Benhabib believes that the answer to these questions is 'yes': yes, it is possible to conceptualise rights in a way that gets us beyond the usual impasses of discussions on rights; moreover, she argues that the route to follow is that of discourse ethics. Discourse ethics overcomes the usual impasses because of its post-metaphysical approach to political theory. On this account, the usual impasses are created because conceptions of the right, the good or the moral law that are used to ground rights theory are too controversial to secure general agreement. They depend heavily on metaphysical commitments (God, human nature, the natural law, the human spirit, accounts of the good, etc) which are attempts to articulate the truth of the human condition; crucially, these accounts are highly controversial: they are not shared by all. By contrast, a post-metaphysical approach does not seek to answer these questions, nor to gain universal agreement on what the answers (or indeed the questions) might be, before using them as the foundation for a theory of rights. The post-metaphysical ambition is not to determine truth as a foundation for political theory and thus human rights, but rather to accept disagreement on these issues, and having accepted this, to find ways of coordinating action and cooperation between human persons and groups of persons.

My main concern in this article will be with Benhabib's claim that discourse ethics provides rights talk with a mechanism for overcoming the traditional dilemmas of rights theory which arise out of diverse metaphysical commitments (understood primarily as commitments to comprehensive ways of being in the world). Benhabib's claim focuses on the post-metaphysical nature of the rendering of rights talk in discourse ethics. I shall argue that, despite Benhabib's claims on its behalf, the discourse ethics approach to human rights as set out in *The Rights of Others* is not post-metaphysical (see also Langlois 2005). Benhabib's account of human rights is presented as a way of overcoming or transcending the usual controversies surrounding human rights in political theory. However, I shall argue that it does not take us beyond the regular debates about these issues — primarily because discourse theory itself has implicit claims of the same nature. The difference that Benhabib's account supplies is the application of a post-metaphysical theoretical strategy; however, in my view this only has the effect of *hiding* certain of the standard problems of metaphysical commitment (commitment to accounts of the good, or the good life), rather than resolving or moving beyond them. In what follows I shall go through Benhabib's articulation of human rights as discourse ethics in *The Rights of Others*, and I shall argue that rather than providing a post-metaphysical basis for

human rights which relieves us of the need to make strong claims about the nature of the good for human persons, her rendering of the status of rights within discourse ethics demonstrates (if only between the lines) the nature of the metaphysical commitments that are required for a theory of human rights to make sense.

Benhabib commences with a brief survey of some of the key Western thinkers on rights — names such as Bentham, Hobbes, Locke, Rousseau and Hegel. Even such illustrious thinkers can make major errors, including those of the naturalistic fallacy (noted by Bentham) and the tendency to use property rights as the paradigm for all rights (Hobbes and Locke). These are well-known issues and I will not pursue them here, but they set the scene for Benhabib's approach: she says that we need fall into neither the traps of the naturalistic fallacy, nor those that are set by the private property paradigm of understanding rights claims. Rather, we should further refine the tool of rights as it has come to us. Her refinement leads her to state the following:

I will assume that right claims are in general of the following sort: 'I can justify to you with good grounds that you and I should respect each others' reciprocal claims to act in certain ways and not to act in others, and to enjoy certain resources and services'. [Benhabib 2004, 130.]

Benhabib prefers such a formulation because it appears to avoid a number of the fallacies which earlier rights theorists have entered into. In particular, she cites Hegel's criticisms of Hobbes and Locke, who treated property rights as the paradigmatic case of rights — the argument of the critique being that a person could only have genuine rights in a system where rights were not up for sale. This objection, needless to say, fundamentally informs what we know today as liberal political theory. The issue which I want to treat, however, arises from the general formulation that Benhabib has suggested in the quotation above for the nature of rights.

The two key components here are first, that there are good grounds to be drawn on which can serve as a justification for the requirement that all parties act in 'certain ways' and not in others; and second, that the 'certain ways' are comprised of reciprocal claims. However, I want to challenge this view of how Benhabib's formulation might work. The language of reciprocity employed seems to place us firmly within the contractual tradition of mutual consent regarding political arrangements. And yet the emphasis in the formulation is in fact not so consensual: the emphasis is on the 'I' that can give 'you' good grounds; the reciprocity comes slightly later. One can't help thinking that it is a reciprocity that is constructed on the

conventions and traditions of the 'I' who is speaking, rather than necessarily on the basis of a shared dialogical outcome from the two persons concerned. In fact, I shall argue that this is the case: the framework is being set by one particular view — a liberal, post-metaphysical, discourse ethics view. Further, I argue that given Benhabib's actual metaphysical commitments (her commitments to a certain conception of the good for human persons), that is the way discourse ethicists should want things to be (protestations to post-metaphysical status aside).

In order to be quite clear about my intentions here, and to avoid confusion, it is important to indicate that Benhabib's stated goals and objectives, along with those of many other discourse ethicists, are about mutuality, reciprocity and dialogue with the other. I don't have any questions about their intentions on this front. My criticism, rather, is that the whole intellectual structure on which their pursuit of these aims rests has the consequence of undermining them. The mutuality, reciprocity and dialogue is predicated (in my view, inescapably) on a substantive normative and philosophical conception replete with metaphysical commitments, which is hidden from view by claims to the famous proceduralism and post-metaphysical approach at the heart of discourse ethics. My view is that goods such as dialogue can only proceed from where one is, and that the more effective intellectual explication of behaviours such as dialogue can be found in the work of substantive liberals who make no pretence of approaching the task from a position to which all can already subscribe. (An excellent recent discussion of this can be found in Appiah 2005; see also Gutting 1999.)

I shall illustrate this broad claim by returning, in the first instance, to Benhabib's statement about the nature of rights claims. When it comes to the 'certain ways of acting' about which reciprocal rights claims are being explored, Benhabib's construction for the nature of rights claims only provides for one voice in the conversation to present reasons, justifications and good grounds — the voice of the 'I'. This seems to speak directly against her overall declared interest in the rights of the other — and in the other's reciprocity in establishing these. In her general formulation of what rights are, the other is not given the slightest indication that his or her grounds, justifications, counterclaims, etc, are considered part of the process of coming to reciprocal agreement.

I may be accused of making too much of this — particularly given some of Benhabib's subsequent comments, to be addressed in a moment. However, I suspect that the omission of the other, the conversation partner, from an authoritative place in the general structure of the nature of rights claims points to a fundamental tension that is usually constitutive of liberal thinkers' greatest moments. This tension is the tension that exists between the liberal desire to include all in the conversation — a desire for genuine dialogue, for tolerance among different people — and the equally

strong liberal desire to draw a line in the sand which says that certain acts are not acceptable, no matter how reciprocal, consensual, tolerant and dialogical we may wish to be. I would argue that here, this impulse is given insurance by the way in which the good justificatory grounds are spoken by the 'I', who does not expect, let alone wait for, a counter argument from the 'you', the other, in the discussion.

To see whether I do make too much of this, let us turn to the next few paragraphs of Benhabib's argument. First, she takes us back to Kant's *Metaphysics of Morals* (Kant 1996), wherein he argues: 'Every action which by itself or by its maxim enables the freedom of each individual's will to coexist with the freedom of everyone else in accordance with a universal law is right' (Kant 1996, 133 in Benhabib 2004, 131). Here again, what Benhabib wants to emphasise are the elements of generality and formal reciprocity, elements which are essential to the idea of the rule of law.

Benhabib's difficulty with Kant centres around the possibility that Kant's views are based on metaphysical assumptions — basing views on metaphysical assumptions is something Benhabib wants to avoid at all costs. Benhabib cites Arendt in this context, noting that Arendt's scepticism about 'the right to have rights' stems from the affirmation that Kant's moral philosophy does indeed depend on metaphysics, and that the doctrines of right and justice which we gladly receive from his pen are indeed, as Benhabib puts it, 'marred by metaphysical commitments' (Benhabib 2004, 131). These commitments place rights claims on shaky ground for Arendt and Benhabib, precisely because the substantive content of the metaphysics created by Kant are beset with problems for us today. More fundamentally, it is claimed, it is not just the specific content of Kant's metaphysics, but the very program of creating a metaphysics, which is the problem — and for the same reason: that we in the Western philosophical tradition have lost confidence in our once-naïve capacity to argue for such fundamental claims, and to believe that those arguments could carry the weight of truth which was claimed for them. Answering her own rhetorical question, Benhabib acknowledges that Kant's rights discourse does depend on metaphysical premises, but that this makes it intellectually uninhabitable for us today. It should be noted that in Benhabib's discussion of these matters, there is some ambiguity about the extent to which she is appropriating the term 'metaphysics' as a way of referring to theorising about the world, in a way that issues in what I have been calling comprehensive doctrines or accounts of the good, and the extent to which metaphysics refers to the projects of transcendental philosophy. Both Benhabib and Arendt are slippery on this point — a point which it is beyond the scope of this article to explore. For my purposes, Benhabib's claim to post-metaphysics concerns the attempt to create theoretical accounts of our political situation which do not rest for their justification on one or another of our disputed comprehensive doctrines about what it means to be human.

In this sense, then, Benhabib seeks a post-metaphysical justification of the principle of right — that is, a justification of the principle of right (and thus of rights) that does *not* depend on intellectual strategies which affirm one or another (exclusive) account of what it is to be in the world. Metaphysics, on this score, makes grand ontological claims to truth; these claims then lead to ethics, which shape our attempts to coordinate our actions in the world. Post-metaphysics, by contrast, merely seeks to get the agreement of those affected by each other's presence and behaviour that they are dealing with each other according to certain agreed norms of action. Metaphysics is about truth; post-metaphysics is about consensually agreed action coordination. Benhabib's goal is to derive a principle of right from our preparedness to cooperate with each other. As she says, we shift to 'those justificatory processes through which you and I in dialogue, and with good reasons, can convince each other of the validity of certain norms — by which I mean simply "general rules of action"' (Benhabib 2004, 132).

My argument here will be that Benhabib's quest for a post-metaphysical account is one that cannot succeed. Further, I shall argue that there is a strong relationship between the claim to have manufactured a post-metaphysical account of the principle of right, and the place and role of the 'I' in Benhabib's above-discussed account of the nature of rights claims. Both seek to make room for the other, but nonetheless intransigently insist that the other conform to the norms of the 'I'. In the case of the general account of human rights, it is by virtue of privileging the good grounds of the 'I'. In the case of the post-metaphysical justifications of discourse ethics, it is by failing to see that being post-metaphysical is impossible (as I argue below), but also by seeking to require all participants in dialogue to accept the arguments of the post-metaphysicians as the 'good grounds' upon which ethical dialogue, progress and institutional design should be based.

In order to help explicate what Benhabib is seeking to achieve with the construction of a post-metaphysical account of human rights, I will quote her directly at some length and then go through the points raised in the quotation one by one.

A postmetaphysical justification of the principle of right would differ from Kant's in the following way: instead of asking what each could will without self-contradiction to be a universal law for all, in discourse ethics we ask which norms and institutional arrangements would be considered valid by all those who would be affected if they were participants in special moral argumentation called discourses. The emphasis now shifts from what each can will via a thought-experiment to be valid for all, to those justificatory processes through which you and I in dialogue, and with good reasons, can convince each other of the validity of certain norms — by which I mean simply 'general rules of action'.

The link between the Kantian legacy of treating human beings as ends and never merely as means and this discursive principle of justification has been succinctly stated by Thomas Nagel: 'If you force someone to serve an end that he cannot be given adequate reason to share, you are treating him as a mere means — even if the ends is his own good, as you see it but he doesn't'. [Benhabib 2004, 131–32.]

First, in response to this quotation, I come back to my earlier points about the exclusion in certain ways of the 'you' from the 'I and you' relationship which is set up within Benhabib's general account of the form of rights claims. At one level, the comments in this paragraph and those immediately surrounding it seem to put my concerns to rest. In particular, it may be argued, this is seen strongly in the quoted paragraph in the move from traditional Kantian thought experiments to the ways of discourse ethics. The move here is one from thought experiments to actual dialogues — between 'you' and 'I'. Indeed, the move is to what we can take to be the real-time construction of 'norms and normative institutional arrangements' which are created by dialogue among all those who are affected by them. This point would seem to be a crucial one — and one which tells against my earlier argument: that is, that the norms and institutions are being created and established by all those who are a party to them or who are going to be affected by them — not just in theory, but in practice.

This seems also to be crucial to Benhabib's understanding of what it is to have become post-metaphysical: that we have moved away from Kantian thought experiments, in our own time Rawlsian veils of ignorance and so forth — political theoretic processes which have nothing to do with real politics or real people, and which have been criticised endlessly because of the manner in which they are deemed to be disconnected from 'really existing communities', societies and institutions. We have moved from these to building institutions through an iterative process with those whom they are going to affect. And the move is done in such a way that the 'I's and the 'you's are equally enfranchised.

But are they? In fact, they are not — not on the basis of Benhabib's argument here, at any rate. There are a number of reasons for this.

First, and principally, Benhabib's argument does not succeed in equally enfranchising the 'I's and the 'you's because of the broader theoretical foundation upon which it is built. This is the crucial question — one which Benhabib explicitly asks — of whether or not it is possible to have a post-metaphysical justification of rights discourse. Her answer, of course, is 'yes', and her whole project is predicated on this answer. And I think one may say without self-contradiction that it is possible, in one sense, to have a post-metaphysical rights discourse if one merely means that one's own position is different to those of the classical metaphysicians: that one's

own view comes after theirs (hence, *post*), and that it has repudiated certain of their goals and aspirations (such as that of identifying the true universal nature of the moral condition of humanity — the ontological claims mentioned earlier).

But Benhabib is seeking something more ambitious than this. She wants to make the argument that *we must all be* post-metaphysical today — and that this all is genuinely universal, it brooks no dissent. And simultaneously, she wants to construct a justification of rights discourse which will apply universally — that will, again, brook no dissent. Indeed, this seems to be central to any successful theory of rights — that it is not relativised, that what is good for the goose is good for the gander, at least at the level of principle. So, while we can imagine different institutional designs for the implementation of human rights — and indeed have such, say as between the USA and the UK — nonetheless the principle that all people should have these rights is one that is to go unchallenged. But, for Benhabib, this principle is to be set up, justified and established on the basis of a particular intellectual framework, which is the post-metaphysical framework.

And here we meet one of two fundamental problems. The post-metaphysical framework is not one that is accepted by all. This may seem sufficiently obvious to us that we do not need our attention to be drawn to it. However, it is crucial for the success of parts of Benhabib's project. As we saw above, I have a concern with the relationship between the 'I' and the 'you' that Benhabib sets up. And the concern exists because while on the one hand she indicates that she wants this to be an equal relationship, a dialogue between egalitarian partners, nonetheless there seem to be overtones of an unequal playing field in terms of the authority of the 'I' as it speaks to the 'you' — and, we might amplify this, as it speaks to the other/s.

The concern then can now be stated concisely: it is that in Benhabib's proposals, in order to be considered *and* treated as *equal* to the 'I', the 'you' or the 'other/s' must first adopt the intellectual and normative framework as that held by the 'I' — the framework of discourse ethics and of a post-metaphysical approach to political rights and political organisation. This suggests a first contradiction in Benhabib's project, which is that her scheme for the equal treatment of all by all must be accepted on the basis of an intellectual program which also claims to give all an equal voice but in fact does not — by virtue of requiring those voices to learn and speak in the language of post-metaphysical dialogical ethics before they can treat with those who would regard them equally.

The problem with Benhabib's program is not necessarily that it has limits or boundaries or ways of viewing the world for which it argues based on considered reflection. I do not want to be taken for a relativist, who would argue that all people

must be allowed to continue to see the world as they see it and that all these views are legitimate. Rather, my criticism of Benhabib is that she gives too much time to those who would argue for respecting diverse views, and ends up then undermining her own truth claims in ethics. Thus, the problem is not that she wants to argue for a post-metaphysical view per se, but rather, that she also wants to argue that the ethical discourse that emerges out of the acceptance of a post-metaphysical approach — and in this case that specifically of discourse ethics — is going to be fully reciprocal to the ‘you’s and the ‘other’s of our world. It won’t be, and can’t be, because it necessarily requires the ‘you’s and the ‘other’s to make a prior, non-reciprocal admission that the post-metaphysical account of the world is superior to their own, and that their own intellectual framework and that part of their identity as a person and a community which is embedded in that intellectual framework must be given up or fundamentally transformed. This is before the parties even get to talking about the issues at stake; it is still at the point where they are considering the terms of their talking. But even at this point, it is clear that if Benhabib’s view is right, theirs is wrong.

In this sense, if we go back to an earlier quotation from Benhabib, the one about the general forms of rights claims, then the words she chooses to use are quite apposite: ‘I can justify to you with good grounds that you and I should respect each others’ reciprocal claims to act in certain ways and not to act in others ...’ (Benhabib 2004, 130) — the justifying and the good grounds are all Benhabib’s and are all directed against any non-post-metaphysical account of the human condition, and they mean that the other’s views are not treated reciprocally, and that, indeed, the reciprocal treatment of the other as a person is also derived from Benhabib’s views, not from a reciprocal meeting with the other on a middle ground.

I confess to having no problem with this inasmuch as Benhabib’s views and mine share a certain set of liberal ethical norms, which I hold to be correct and true and worth arguing for in ways which are unapologetic. Again, there is no room for relativism here: while, on this account, one must always treat one’s interlocutors reciprocally, this does not mean that one must accept their views. All people must be treated in accord with basic human rights — but while freedom of expression is called for, for example, this does not imply an obligation on anyone’s part to agree with or accept what is expressed. From this perspective, the aspects of Benhabib’s theory which draw this distinction are the ones that need to be emphasised more. The nascent or implicit recognition of our capacity — and need — to judge values is the more accurate rendering of Benhabib’s project, and is, in my view, the only way ultimately to preserve the principle of right which Benhabib is concerned with in the first place.

The second set of problems is a little different. These problems have to do with whether Benhabib is correct to claim that her project is a post-metaphysical project — and at the broader level, or so I will argue, they have to do with the possibility of a ‘post-metaphysics’ at all. I shall argue that it is not possible to escape making metaphysical commitments, and that they are needed, as well, to insure Benhabib’s project — and in this sense her project *is* insured and assured, because while she *claims* to be post-metaphysical, she is *not*.

Benhabib says: ‘My question is whether a postmetaphysical justification of rights discourse is possible.’ She then goes on to give us the ‘brief answer’, which I here quote in full:

If I am able to justify to you why it is right that you and I should act in certain ways, then I must respect your capacity to agree or disagree with me on the basis of reasons which equally apply to both of us. But to respect your capacity for communicative freedom — to accept or reject on the basis of reasons — means to respect your capacity for personal autonomy. Human rights, or basic rights, then, are the norms that would undergird and enable the exercise of your personal autonomy. [Benhabib 2004, 132–33.]

Immediately following this, Benhabib makes a number of claims about what this does not mean, what she does not think of herself as doing. They are the following, and I take it that they are a crucial component of her attempt to offer a post-metaphysical account of human rights — it is by *not* doing these things that we avoid many of what we might think of as the metaphysical strategies employed by other accounts.

The first claim is that she is not providing any substantive content for the reasons which apply to dialog partners — reasons now described as ‘good reasons’, not just as ‘reasons’, as in the above quotation. This change is significant because ‘good’ is a positive normative evaluation, but here it is not adduced on the basis of reasons, but seems to be inserted for rhetorical purposes. In the quotation, ‘reasons’ are mentioned in two connections. They are the basis for agreement or disagreement between the ‘I’ and the ‘you’. They are also linked to a capacity for personal autonomy. And they are said to apply equally to both parties. I shall come back to each of these points.

Second, she states that she is not making claims about the kinds of attributes that persons must have in order to be thought ‘capable of discursive justification’ — that is, to be thought capable of being involved in the process of offering discursive justifications for their views, and hence being a part of the dialogue, and the

discourse ethics project more widely. These attributes about which she is not making claims may be 'cognitive, psychological or other'.

Third, Benhabib says that she is not claiming that 'discursive justification exhausts the moral domain' — our understanding of morality is not encompassed or completed by the project of discursive justification. Here, her argument is that we have moral obligations to those who cannot enter into discourses with us. Nonetheless, she argues that norms — presumably from these other parts of the moral domain — must, regardless of their origin, be discursively justifiable 'when and if called into question'.

These three points — no substantive content for good reasons; no personal attributes demanded for entry into discourse; and non-exhaustion of the moral domain with requirements for discursive justification — are all used by Benhabib to back up her claim that she is providing a post-metaphysical basis for human rights. However, I have come to the conclusion that in each of these instances Benhabib does in fact do what she claims she is not doing. I shall explain why in what follows.

To return to the first point, then: no substantive content for reasons. On this point Benhabib seems to be mostly clearly correct: she does avoid making direct claims — for example, that the reasons invoked must be secular, or that they cannot or alternatively must be religious. She does avoid directly giving a prescriptive comprehensive doctrine or account of the good life as determinative of the reasons that will be worked with, that will count as 'good' reasons. However, the very place that Benhabib wants reason, or reasons, to play in her scheme has the curious effect of making them substantive. Because our agreement or disagreement is to be mediated through a reasoning process, because it is this reasoning process which is linked to the capacity for personal autonomy, and because autonomy itself is held up as the touchstone of legitimacy for discursive justification, it is clear that there is in fact a very substantive agenda being pursued here after all. I should like to add that it is largely one which I would want to support, but it is simply not correct to claim it as a non-substantive agenda, or an approach which is going to have no bearing on the substantive reasons which are then invoked by participants in discursive justification. If only for the reason that calling something by its correct name enhances its legitimacy, this becomes an important and central point. Finally, the allegedly non-substantively prescribed reasons are thought to be reasons which will 'equally apply to us both' (Benhabib 2004, 133). It is hard to see how this could possibly be the case if there were no substantive limits on the nature of the reasons employed. This, after all, is why there are such intransigent standoffs over key controversial issues in public policy and private morality: the parties to the debate simply do not accept that the other's reasons are good reasons; certainly they do not

accept that they should apply equally to themselves. And this standoff applies equally, it seems, to the reasons we might bring to bear on the discussions about our intransigent differences. At either the level of our dispute, or the level of what to do about it, the requirement that there be reasons that apply equally to us both can only be seen as a substantively prescriptive move.

Benhabib's second point was a denial that she is making claims about the attributes people must have in order to be thought capable of discursive justification. But here again it is not hard to generate a list out of her surrounding argument. In the first place, it seems that if I am going to have a discourse with you in which we both try to use reasons to justify why we should act in certain ways, then at the very least we need the cognitive and psychological capacities to engage in such a discourse. I will need to be able to talk, to reason, to move from premises to conclusions. I will need to have the intellectual and psychological security to consider another person's arguments — not just over matters of whether or not one should have chicken or fish for dinner, but over the matters which are most important and most central to our lives — intellectually, morally, emotionally, affectively and relationally. These capacities may be shorthanded — and usually are in the liberal tradition — by the term 'personal autonomy'.

The whole of Benhabib's project is aimed at ensuring this personal autonomy — in this sense, the whole project is fundamentally and substantively liberal. But in a curious way, the manner in which she has set up this insurance scheme for personal autonomy requires it of all participants in the first place. I would contend that no discursive justification can be successfully attempted by anyone who does not have a prior and very healthy degree of substantive personal autonomy. Thus, Benhabib's argument does require quite significant entry-level capacities from potential participants. We may note, parenthetically, that Benhabib admits as much a sentence or so later by referring to those who 'cannot enter into discourses with us', by whom she means those such as very young children, those who are differently abled and those with mental illness. She refers us here to her arguments about moral advocacy for such people. But all this goes to show is that there *are* specific capacities one must have in order to participate on one's own behalf.

Again, this is implicitly recognised in the third point that Benhabib makes. The headline here was that discursive justification does not exhaust the moral domain — and this is in part because we have moral obligations to those who are not able to enter into discursive justification with us. But Benhabib cannot have it both ways. By arguing that all norms — regardless of origin — must be justifiable as they are called into question, she does open the whole of the moral domain up to discursive justification. It is true that, at any given point in time, the whole of the moral domain

may not be actively subject to discursive justification. But, nonetheless, Benhabib's principle is that *all* norms must be open to interrogation in this way. Since human behaviour is normative, and this includes all of our moral self-understandings and behaviours, it is rather hard to see how it might be that discursive justification is not exhaustive.

Indeed, it would seem that this actually is especially necessary in precisely the area to which Benhabib refers as she makes the claim: the area of those who are unable to enter into discourses with us, but to whom we still have moral obligations. Surely, in these circumstances — precisely because these people are most likely to be disadvantaged, unable to defend themselves and otherwise at the mercy of forces round them — our moral responsibilities to these others would need to be more highly prioritised for discursive justification than those that we hold towards others who, at least by virtue of having their capacities for personal autonomy intact, may be left for a moment to fend for themselves while we devote our energies to the disadvantaged.

The moral domain, it might be argued, can only be known to be moral — given Benhabib's wider project of discursive ethics — to the extent that the activities within it are legitimated by discursive justification. In this sense too, then, rather than claiming that discursive justification does not exhaust the moral domain, on the contrary the moral domain — all our activities within this domain — is only moral if it can meet the criteria of discursive justification. Once again, the problem here is not necessarily that this might be the case, but rather, that Benhabib — in an effort to be reciprocal to the other — fails to identify her own project with an accurate description of that project.

This is, I think, partly because of the depth of her commitment to human rights and partly because of her distain for metaphysics — in particular, many of the metaphysical commitments which have structured modern thought, and have led to dualisms which have marred the thought of some of the tradition's best and brightest, such as Kant (Benhabib 2004, 131). But can we get away from metaphysics so easily? I don't think so. We may well be able to highlight problems within certain metaphysical traditions, and move away from them. But we cannot eschew metaphysics altogether.

Benhabib's inability to escape metaphysics can be examined with the following paragraph.

Basic rights or human rights are conditions that enable the exercise of personal autonomy; first and foremost as a moral being you have a fundamental right to *justification*. Your freedom can be restricted only through reciprocally and generally justifiable norms which apply equally to all. In the sphere of morality, generality means universality; universality refers to what would be valid for all human beings considered as beings equally entitled to

respect and concern — what I have named in *Situating the Self* (1992) *egalitarian reciprocity*. [Benhabib 2004, 133.]

This paragraph follows on immediately from the series that I was discussing above. What is clear is that the paragraph affirms a very concrete set of understandings of what a human person is, or of what it is good for a human person to come to be. It is my claim that any such set of claims is deeply metaphysical; it depends deeply on descriptively normative accounts of the nature of the human condition. And it is precisely when we start making claims about the nature of the human condition that we enter into the realm of metaphysics.

Conclusion

Benhabib's metaphysics — despite claims to the contrary — are those of liberalism. It is a metaphysics of rights, autonomy, freedom, rational justification, universalism, reciprocity, equality, respect and concern. Much of the impetus towards a post-metaphysical claim in Benhabib's work ironically enough stems from the attempt to put this particular metaphysics into practice. By focusing on aspects such as reciprocity, equality, dialogue, etc, Benhabib has set out to defend an ethical account of humanity that is so taken with the importance of the other, that the will, preferences and power of the 'I' are to be downplayed in favour of mutuality (although, as I argued above, this strategy does not in fact work because of its reliance on the intellectual framework of the 'I' to the exclusion of others). There is a fundamental commitment to radical personal autonomy at the heart of Benhabib's account, and it is this that is the centrepiece of her theory of ethical possibilities in the human condition, and thus of her metaphysics.

Benhabib should not shirk from her metaphysical commitments. Her tendency to do so has two consequences. First, it leads to a situation where while strenuously claiming to avoid engaging in metaphysics, she nonetheless does so at length because the nature of her politics (as with any) needs those particular metaphysical underpinnings. Second, it potentially has the consequence of alienating parts of her audience — who will quite correctly perceive that the metaphysics she disavows at the outset have been smuggled in all the way through in order to make sense of the ethical practices for which she is arguing. As I have already suggested, these ethical practices are only to be encouraged; my concern is that the political project of encouraging such a liberal ethics will be better served by being more explicit about an underlying liberal vision of the good than by trying to convince others that there are neutral procedural or methodological processes which, if pursued, will inevitably bring them to share that vision too. Our dialogue partners are not generally so gullible as not to realise that these procedures have the desired values built in from the outset.

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