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On Respect, Authority and Neutrality: A Response

Joseph Raz

I owe a great debt to Professors Wall, Darwall and Green for their willingness to challenge, develop and question some of my publications, which forced me to confront a few of the shortcomings in my views and hopefully to clarify and improve some of them. Given the diversity of the topics I respond to each separately. I aimed to avoid minor points and to write only on matters which affect the cogency of my views or theirs on important issues.¹ For that reason, as well as for reasons of space, not all the issues they raise are dealt with.

Prof. Green explains and criticises one of the most basic aspects of my view: the way in which values provide reasons. They do so in two ways: we have reasons to engage with value, but we also have to respect value, meaning respect what has value for the value it has. He subjects my account of respect to close scrutiny and my response will start there, before moving to examine Prof. Wall's suggestion that considerations not unrelated to respect argue for the adoption of a moderate principle of political neutrality. Prof. Darwall's critic of my account of authority appears to relate to one albeit central application of the foregoing theory of value and reason, but is in fact much more far reaching, challenging my view about the way values provide reasons, and my reaction to it will conclude this reply.

I. Respecting People: The modesty of theory

Prof. Green sensitively delineates the contours not only of my views on respect, but of the way they fit in the general approach to practical thought that I endorsed. He also points to various problems to which the approach gives rise, or as I would prefer to put it, which this approach leaves unresolved. As I would plead guilty to most of the charges it is useful to start with a few words about the general outlook that informed my writings on respect. They will explain why I doubt the possibility of meeting, at the high level of generality found in general accounts of respect, the charges Green raises.

¹ In particular I avoided any questions of minor misrepresentations of my views.

It is common for writers on topics in practical philosophy to seize on terms which figure prominently in ethical, political or legal discourse outside the academy, assign them explanations, and give them key roles in the theoretical accounts or practical principles that those writers develop. My writings on respect are a case in point. In doing so we signal an intention both to relate to a theoretical debate about respect, as it developed over the years, and to explain something of importance in practical thought in the culture in which the use of the term is prominent. One difficulty we invariably encounter is that both the philosophical tradition and the culture at large contain diverse, and partially inconsistent, strands of thought. In using 'respect' to name a special type of practical reasons I was suggesting that invocations of respect for persons in moral thought (outside the academy), or many of them, can be explained as appealing to reasons of that type. I was also implicitly endorsing some, and rejecting other, parts of the philosophical writings on the subject. All that would have been plain enough had not the use of the term in and out of philosophy been so diverse and complex that it would be absurd for me to claim that other explications of it are necessarily misguided or wrong. I make no such claim, no claim beyond saying that the account I offered can shed light both on practical reasons and on ideas about respect for persons current in our culture.

In writing on respect I had some specific aims, most importantly to separate the case for the value of people from questions about the value of their life.² More broadly, as Green explains, I argued that the reason to respect people which derives from the value of persons is but one of the reasons to respect people³, and that all of them arise out of the value of what is to be respected. That conclusion too had – apart from its theoretical significance in clarifying the ways in which values provide reasons – practical implications. It was meant to suggest a way of avoiding the halo sometimes attached to duties of respect to persons, and open a way of integrating those reasons with other reasons people have, which includes, among other implications, that reasons of respect

² Hence the contrast between chapters 3 (the value of staying alive) and 4 (respecting people) of *VALUE, RESPECT AND ATTACHMENT* (CAMBRIDGE UP 2001).

³ There usually are additional reasons to respect people deriving from other valuable qualities they or their life possess. Needless to say, (it is likely that) only the reasons to respect persons as persons apply equally to all persons.

do not trump all others. This does not mean that there is no duty to respect persons. It means that respect spills over, in the way that Green explains, and that not every manifestation of respect is supported by a particularly powerful reason. There is in some quarters a tendency to take any invocation of reasons of respect as a winner in any argument, and often as an occasion for banging the table. Green's example of the BBC program about British Muslim views on sexuality is an excellent example. I agree with his analysis. There may even be reasons to respect Muslims which conflict with other reasons for respecting Muslims. Since respect can be manifested in different ways, with different practical significance, the reasons for the different manifestations of respect may well conflict. Even single values often display internal complexity generating conflicting reasons.

It is worth underlining another point on which Green and I agree, namely that the fact that people can recognise and cherish respect shown to them, and resent its absence, adds to the complexity of the issues, in no small measure because it introduces symbolic manifestations of respect, which are necessarily conventional at least in part, and therefore contingent on current practices, and those may and do differ across communities, including those inhabiting the same country.

While agreeing with Green's substantive comments on the difficulties of determining what to do on specific occasions, I do not share his worries about the shortcomings of my or other theoretical writings in this regard. Green says that such cases 'reflect the ways in which theories of value, pitched at their most abstract, are insufficiently specified to tell us much about what is required in the situations that provoke us to wonder about respect in the first place' (20). Of course, but we should reject any theory which provides principles specific enough so that regarding any practical issue one can derive from them plus a description of the facts what to do. In many cases there is no single right action. Moreover, and most importantly, what is to be done is often determined not by reasons of respect alone, but by a range of considerations, among which reasons of respect are but one. Judgement has to be exercised in light of the complexities of the case. Such judgements can be explained and justified by general considerations. But that does not imply that it is possible to know of correct principles that would justify those

judgements ahead of time, i.e. in ignorance of particular cases to which they will apply. It does not even imply that there are such principles.

Perhaps my reply to Green's worry about respect inflation is that it is a theoretical worry only if one believes that philosophy can solve practical problems, and only if one takes reasons of respect to be necessarily of very great importance. I believe in neither view. Modesty about the power of theory leaves one with unresolved hard practical decisions. But that is life, as they say. So, when Green asks: 'Why should I contribute money to preserve baroque religious art that does not interest me, or that is even wasted on me, instead of donating an identical sum to preserve a wilderness tract to which I am passionately committed?' I feel that it may be an easy case, and that he should give the money to preserve the wilderness. What I do not agree is that there is a theoretical issue here. The thought that my writings on the subject encounter a difficulty here is probably based either on a desire for theoretically provided decision procedures, or possibly on the thought that reasons of respect must trump others, and leave no room for the influence of personal attachments which I discuss earlier in that book. A word about duties will help to clarify the picture. Green correctly states my explanation of the concept. It was, however, always meant in the spirit of my observations above about explanations of respect and other practical concepts in common use. 'Duties' is a particularly elusive concept in practical discourse today. Perhaps because of the tendency to rights-inflation, typical of a complaint culture, it often appears as if people take all moral reasons to constitute duties. It is doubtful that the term can be given an interesting theoretical explanation that will be even approximately faithful to its role in current moral discourse. In any case, and this is my fault, in *VALUE, RESPECT AND ATTACHMENT* the term is used loosely (the book consists of lectures addressed to a non-specialist audience). One thought I had, though probably failed to express adequately, is that not all reasons of respect constitute duties. Most importantly, there are reasons of respect that are not associated with anyone's right to be respected, and this includes some reasons to respect people. For example, as I explained in the book, we have reasons to have appropriate attitudes towards people, attitudes that acknowledge their value, and are appropriate given their value. But people do not generally have a right that we should have such attitudes. And there are other

cases of reasons of respect which are neither duties nor associated with anyone's rights.⁴

2. Respect: a non-instrumental understanding

The most serious challenge Green poses for my account of reasons of respect reveals a serious shortcoming in my argument. He quotes me writing: 'if engaging with value is the way to realise value, respecting value is the way to protect the possibility of that realisation.' (167) And rightly points out that this makes reasons of respect appear to be instrumental to the goal of engaging with value. One source of confusion is that naturally behaving with respect has causal consequences, including a tendency to increase the likelihood that the respected object will be engaged with in ways appropriate to its value. I do not wish to deny the importance of this consideration, nor its relevance to assessing the stringency of the reasons.

Reasons of respect having instrumental value means that the causal consequences of compliance with them are, or are likely to be, of some value. It does not mean that they are reasons which only people who desire, or are committed to, the end which compliance will serve have. They are what I call facilitative reasons, reasons which are valid in light of the principle that: '*When we have an undefeated reason to take an action, we have reason to perform any one (but only one) of the possible (for us) alternative plans that facilitate its performance.*'⁵ We have reason to make it more likely that people will engage with value, and that provides us with facilitative reasons to preserve objects of value. But clearly these reasons are often not very stringent. Green is quite right to point that out, and to point out that we tend to think that reasons of respect are more important, and have greater stringency than these considerations would suggest.

⁴ I should also mention that while Green distinguishes '(1) If one ϕ -s in regard to A, then one has a duty to ϕ respectfully' from '(2) One has a duty to ϕ in regard to A, because ϕ -ing is a way of respecting A', I regard (1) as a special case of (2). My view that one need not think of certain objects of value at all, but should have attitudes appropriate to their value if one is aware of them, does not conflict with the fact that in order to meet our obligations (still using the term loosely) to others we have to make ourselves aware of relevant conditions. Turning a blind eye, etc. can be morally inappropriate. I do not believe that either I or my book disagree with Green on this point.

⁵ 'The Myth of Instrumental RATIONALITY' JOURNAL FOR ETHICS AND SOCIAL PHILOSOPHY, 1 (2005) 1 (<http://www.jesp.org/articles/>)

Not that the facilitative importance of reasons of respect is negligible. Even when the impact of individual action in isolation is small, or non-existent, it has value as contributing, again causally, to maintaining or establishing a public culture of respect for value. The importance of a public culture of appreciation of and concern for values, of all kinds, is very great. One is tempted to say that regarding many kinds of value a culture in which they are appreciated and respected is a necessary condition for people developing a taste and an attachment to them. Even when not a necessary condition the existence of a supportive culture is of great importance. What is as always hard to gauge is the effect on the culture of individual defection from it.

Whatever the instrumental or facilitative importance of reasons of respect, the case I was making for their value was not instrumental. Their dependence on engagement with value was meant to be normative rather than causal. They are secondary to reasons to engage with value. If there were no reasons to engage with value the existence of objects with values, of opportunities for valuable activities and the like would be pointless, and there would be no reason to respect them. So reasons of respect depend in that way on reasons to engage. But they depend on them in the additional way that respecting value both constitutes, and expresses, openness to it. As one would expect the boundary between openness to engagement and actual engagement with value can be thin. Regarding cultural goods and natural beauty, appreciation of their value and respect for it is the beginning of and a part of engagement with them. Though when the appreciation and respect do not lead to deeper engagement we would take them to have constituted mere openness to the value. Respect for objects and opportunities of value also expresses respect towards other people. Even if I do not care for Baroque art, in respecting it I express respect for, and openness towards people who may. Respect for values is, in other words, non-instrumentally, or intrinsically good. It is good in constituting and expressing a stance that I called openness towards value. The openness can be greater or lesser depending on other aspects of people's normative and affective attitudes. But it is natural to understand even its basic form as constituting

a degree of openness, just as it is natural to understand disrespect as turning one's back on what is disrespected.⁶

The expression of attitudes is generally partially conventional, and therefore contingent. Respect is no exception. But some ways of expressing respect appear to be pretty universal. So far as I know it is pretty universal that care and respect are expressed in protecting and preserving, while disrespect is expressed in indifference to preservation, or even a desire to destroy. The fact that these are natural expressions of respect, and that they are universally understood so, is at least part of the case for regarding such behaviour as constituting openness. And similar considerations show that recognition of value, and the attitudes that are apt towards objects of value, also constitute openness. These thoughts and attitudes will be expressed with the sentence 'that object has value' only by people whose affective and intellectual lives are abstract and impoverished. Normally they will be any of the myriad of thoughts suitable to the occasion and the object, which can be described as recognition of value, but are had by people who may not even have the concept of value.

A final word about another of Green's incisive questions: do all people have the same value and deserve the same respect? My answer is No. People have much that is good and much that is bad about them, and we have reason to respect them for whatever is good, and lack respect for them for whatever is bad. But there is one reason for respect that they all share: they are all persons (for I am using 'people' as a convenient plural of 'persons'). And as persons they all deserve the same respect, that which is due to persons.⁷ Of course, there may be beings, perhaps animals of some other species, which are close to being persons but are not quite persons, and perhaps some humans are in that state too. The vast majority of humanity are persons, a state not affected by IQ, nor

⁶ A fact which should be understood in a ways which allow for the complexities of human psychology, in which reversals or normal meaning, as when one does something that normally expresses rejection of another in order to express hurt, betraying one's attachment to that other. The normal always opens the possibilities of variations and reversals.

⁷ Some people believe that 'deserve' (in 'deserve respect') is used 'loosely' or in a different sense than 'deserve' in 'deserve to be rewarded for their efforts' or in some such context. Also, some may feel that the respect due to people qua people is different respect than that due to, say, great composers qua great composers. I share neither of these views. The grounds of, respectively, desert and respect in these examples differ, and the respect may well have to be manifested (partly) in different ways. But the words are used in the same sense in all these contexts, and express the same concepts.

by the degree to which other faculties are developed. The respect due to them is among the foundations of morality.

3. From Respect to (Limited) Neutrality?

I share the approach that informs Prof. Wall's article as well as most of his conclusions. Perhaps there is no practical question on which his views bear, regarding which we would differ. But there is nevertheless a certain difference that I would like to record. But first I need to set the scene, and indicate our agreement.

Prof. Wall agrees that the various doctrines of state neutrality advanced so far are open to serious criticism and should be rejected. He articulates one such principle, closely modelled on Rawls's view:

'(LSN): It is impermissible for the state to intend to favor or promote any permissible ideal of a good human life over any other permissible ideal of a good human life, or to give greater assistance to those who pursue it.

A permissible ideal of a good human life, for the purposes of this principle, is an ideal of a good human life that is consistent with the requirements of justice for a modern democratic society, where the requirements of justice are not themselves founded on or tied to any particular ideal of a good human life.' (9)

He does however recommend a restricted neutrality principle:

'(RNP): If two or more ideals of a good human life are eligible for those who live in a particular political society, and if these ideals have adherents in that political society, and if these ideals cannot be ranked by reason as better or worse than one another, then the state, to the extent that it aims to promote the good in this political society, should be neutral between these ideals in its support of them.' (8)

It is not clear how restrictive is the qualification 'to the extent that it aims to promote the good in this political society'. Possibly the qualification does not restrict a perfectionist government at all, for by definition the ideals of which it speaks are neither better nor worse than each other, and therefore promoting one at the expense of the other will not promote the good in that society.⁸ Some people may think that the good is promoted if more people come to pursue one of these ideals, and are diverted away from ineligible or unworthy ones. We may suppose that they could be attracted to one

⁸ (RNP) does apply to cases in which the state proposes action in order to promote the good because it mistakes the situation, not realising that the case is of a choice between options none of which is superior to any of the others. But we do not need principles to direct states not to act on mistakes. Besides, to know that (PRN) applies one must realise that the case is of a choice among options not none of which are better than any of the others, and therefore it can be applied correctly only if one is not mistaken.

worthwhile and eligible ideal but not to others. So according to those people by preferring that ideal over others the state would be promoting the good. If this is the case then RNP has this practical implication: it excludes promoting the good for this reason or in this way. It excludes consideration of the number of people who follow or are likely to come to follow one or another ideal principle. Other people would deny that the good is advanced if more people pursue good and eligible ideals – their good is advanced but not the good in some general sense. But then, I hope that in writing about ‘promoting the good’ Prof. Wall meant nothing more than making it more likely that people will have a good life, or as I would prefer to put it: enabling people to have a good life.⁹ Practically speaking it does not matter which view Prof. Wall takes on this point as he makes clear (p. 18) that he recognises that numbers count, and concludes that RNP does not apply in cases similar to the one I mentioned, or in some others where the number of followers of different good and eligible ideals is not equal. But then we are back with the possibility that RNP is not really a principle because it makes no difference. In the circumstances to which it applies there is no possibility of acting ‘to promote the good’. Prof. Wall’s aim in putting forward the principle seems to be to stop ‘arbitrary’ action which favours some worthwhile and eligible ideal over others. But such favouring by being arbitrary is declared not ‘to promote the good’. Hence the principle does not actually forbid such actions. This seems to be a technical point calling for a technical modification of the principle. But I will not offer such a modification, not being sure how Prof. Wall would want to proceed at this point. I will rather assume that an appropriate modification has been put in place. I hope it is not unfair to summarise Prof. Wall’s view as saying that the guide to political action is sound aggregation. When all other considerations have been given their due significance, and the only issue remaining is the allocation of support among eligible ideals which will affect only goods with which people’s self-worth is associated, then numbers will not count, for favouring one such ideal over others will adversely affect people’s sense of their own merited self-worth. RNP kicks in and governs the allocation in such cases.

⁹ See my ‘The Role of Well-Being’, *PHILOSOPHICAL PERSPECTIVES* 18 Ethics 2004, and also ‘Liberating Duties’, *ETHICS IN THE PUBLIC DOMAIN*, (Oxford: OUP, 1994).

Prof. Wall explains the point:

‘According to Rawls, a secure sense of self-worth comprises two elements. First, it includes a person’s conviction that his projects and ideals are worth pursuing. Second, it includes a person’s sense of confidence in his ability to successfully pursue or realize his projects and ideals.’ (21)

As Prof Wall mentions there is a good deal more to a sense of self-worth than that. For example, central to it is confidence in one’s own ability to judge what is worth pursuing in the first place. He rightly draws attention to the fact ‘that a person’s sense of self-worth also is a function of his membership in various groups to which he belongs and identifies with. A person’s sense of self-worth can be damaged if he becomes ashamed of who he is, as opposed to what he has done or is doing in pursuit of his projects and ideals.’ (22) He says that ‘self-respect is valuable, but only conditionally. It is valuable on the condition that it is merited; and to merit self-respect a person must pursue a way of life that is worthy of pursuit.’ (22) Sometimes a person should not respect himself, and is not entitled to expect others to respect him. I am not sure that the conditions for these self-regarding and other-regarding conclusions are the same.¹⁰ But we need not dwell on this here. Prof. Wall’s point is that there are occasions where ‘in order for the state to do its part in enabling its members to have a fitting sense of self-worth ... it needs to avoid taking sides, and be seen to be taking sides, between worthwhile ideals of the good that have adherents in the political society over which it exercises authority.’ (31) I agree, and I think that Prof. Wall’s sensitive discussion helps to indicate which occasions these are. So why did I express some discontent with his position? It strikes me as slightly odd that one would have a principle, RNP or any other, to guide one in deciding the cases to which RNP applies. As I said, I am inclined to agree with Prof. Wall as to what the state should do in these cases. So why not acknowledge that the agreement is due to our agreement on the principle which governs these cases? I doubt, however, that it makes much sense to say that the cases are governed by a principle. We come to the conclusion that this is what is to be done by considering which reasons apply to those situations, finding that one reason, call it a reason of self-respect, dominates all others and should determine our conduct, and that that reason

¹⁰ And I probably go further than Prof. Wall is willing to go in demanding such respect from the state. See my "Freedom of Expression and Personal Identification", Oxford J.L.St., 11 (1991) 303.

dictates that the state should not treat the eligible and worthwhile ideal of any person in a way which undermines the self-respect of its inhabitants. That does not seem to be the normal circumstance in which talk of principles is at home. Some principles are not much more than statements that there is a reason to do something. That the state should support social conditions that are conducive towards people being able to feel (merited) self-respect is a principle in that sense.¹¹ At other times they are statements of conclusive, or nearly conclusive reasons. RNP belongs with the second kind of principles (as is evident from the careful way Prof. Wall demarcates the conditions for its application to make sure that it applies only where it prevails). But such principles are usually marked by having relatively straightforward conditions of application, conditions whose realisation can be ascertained without considering all the reasons for or against acting one way or the other. LSN is a good example. It says that it is impermissible for the state to intend to favour or promote any permissible ideal of a good human life Since it applies to all state actions all we need, to know that it applies, is that the action under consideration be a state action. RNP is not like that. To know that it applies we need to examine all the reasons which apply to the action under consideration, and if we conclude that in the circumstances (a) reasons of self-respect dominate, and (b) that favouring one ideal over others would undermine it, then we know that it applies, though – of course – by that time we no longer need to apply it. We have already established what to do.

The preceding statement exaggerates the case to make it more dramatic, and to save us from the caveats that an accurate statement would require. But the point is sound. It is not that the principle is false, but that it is not the sort of thing that normally we identify as a principle. Two additional points are important in explaining this reaction. First, reasons of self-respect do apply in other contexts as well, i.e. they apply in contexts in which they do not dominate, and where the right action is either one that ignores them, or one that is a compromise between them and other considerations. Second, even when they dominate it is not always the case that favouring one eligible and worthwhile ideal over others undermines the self-respect of those whose ideal is disfavoured. As

¹¹ Statements about what we ought or should do are stronger than statements about what reasons apply to us – see my ‘Reasons – Explanatory and Normative’ *NEW ESSAYS ON THE EXPLANATION OF ACTION*, ed. C. Sandis Palgrave/McMillan 2009.

Prof. Wall makes clear we are dealing here with symbolic actions, and their meanings depend on the common views of people in that country, especially the views of those who follow the relevant ideal. Those people may, they often do, discriminate between various ways of favouring ideals, and do not regard all of them as offensive to followers of the non-favoured ones. I suppose that my conclusion is that I agree with Prof. Wall's views, and find them a valuable addition to the writings on these topics. But I think that in wrapping up his views in the form of a principle of neutrality he expresses not so much a sound moral outlook as a desire to find common ground with the misguided advocates of neutrality principles, a desire which I do not share.

4. Darwall on Rights and Duties

The reasons Professors Green, Wall and I discussed would normally be classified as moral reasons. None of us drew attention to this fact as we were concerned not with the classification of reasons but with the way they bear on what we ought to do. I was assuming that moral reasons are just reasons, and that all reasons bear on what one ought to do. We tend to notice that reasons are moral only if we think that they are important reasons, but important general reasons have unimportant implications in some contexts (there are trivial violations of any reason however important) and therefore their being moral reasons does not tell us much about their bearing on what one ought to do.¹²

In previous work as well as in his contribution to this symposium Prof. Darwall takes a different view. At least some moral reasons, he thinks, have a special character that has considerable bearing on what one ought to do. He calls these reasons second-personal reasons. All rights and duties, he thinks, are second-personal reasons. He explains:

‘I call these reasons second-personal to highlight this relation to address, which is necessarily always *to* someone (an addressee) and so in that sense second-personal, even when the addressee is oneself, the public at large, or anyone at all, real or imagined.’ (1)

Since the addressee can be oneself, the public at large or some imagined person, I think that the term ‘second-personal’ is misleading, suggesting that there is a real person who is second to the person addressing him, that is who is not identical with him. I will

¹² I have argued in more detail for the theoretical unimportance of the classification of reasons into moral and others in chapters eleven and twelve of *ENGAGING REASONS* (OUP 1999)

therefore avoid the term when I can conveniently do so, referring instead to duties and rights, etc. Of course, the choice of terminology does not affect the argument.

Darwall has some interesting criticism of my own explanation of practical authority. As he explains he was motivated to advance it because he took it to be inconsistent with what he wrote about authority in his book. He claimed that people have authority only regarding what he calls their second-personal reasons. I did not include any similar condition in my account. Hence, he thought, my account could be presented as a rival to his. Referring to my normal justification thesis (NJT, for short) he explains:

‘The objection to my irreducible claim would then proceed as follows. If the reasons with which an agent would better comply were not themselves second-personal reasons, it would then follow that someone could acquire practical authority over her owing entirely to non-second-personal considerations. So there might be good arguments to second-personal claims (e.g., A’s authority over B and consequently A’s authoritative demands of B) that do not depend on premises in which second-personal concepts and reasons figure in any way.’
(2)

My explanation of authority is an attempt to explain authority over people of the kind that governments claim to have over their subjects, parents over their children, etc. It does not purport to be part an account of rights and duties in general as Darwall’s own writings on authority are. It is therefore no more in competition with his views on authority than any explanation of rights and duties that does not include anything like his second-personal reasons. The sins of all these accounts, mine included, could be sins of omission. That is they may be right in what they say, but require supplementation. They have to include the claim that only second-personal reasons can be duties, or rules made by authorities, etc. Later in his contribution Darwall recognises this possibility. He does, however, find faults in my account that even that addition would not repair. I will address his criticism below. But first let me explain why I do not think that whatever its faults, my account of authority will be improved by the kind of augmentation I mentioned.

The reason has to do with the failure of Darwall to explain duties and rights. In the following remarks I will raise what I regard as some unanswered questions regarding Darwall’s explanation and use of what he calls second-personal reasons. He uses his ideas about those reasons to explain more than rights and duties. I will address their application to the explanation of rights and duties only. It will be evident, however, that

there is reason to think that if they fail in that task they fail altogether. To simplify I will, as Darwall does, use 'duties' and 'obligations' interchangeably, and will not consider duties which are not meant to protect rights. The questions to be raised apply to them too, but it simplifies the exposition to ignore them.

It is common ground to both of us, as well as to most others who have written about rights, that when there are rights that have corresponding duties (and I think that like me, Darwall thinks that all rights have corresponding duties) then those duties are duties that are in some sense owed to the right-holder. The targets of explanation are primarily these notions, that is what is the difference between a duty and practical reasons which are not duties, and what is it for a duty to be owed to a particular person. As I mentioned (in section one above) I tend to think that in contemporary usage 'duty' does not signify a normatively distinctive category, other than the fact that only categorical reasons, i.e. ones whose application is not conditional on the agent's inclinations or preferences etc., can give rise to duties. In institutional contexts, where talk of duty is particularly at home, they indicate categorical protected reasons, and outside such contexts the term is used when the reasons are of some importance. I have a more definite view of when duties are owed to a person, which is when their justification turns on the fact that they protect or promote an interest of the person to whom they are owed, and this also means that that person has a right, a right which is protected by these duties.¹³ The fact that duties that protect rights are justified by reference to the interest of the right-holder has a variety of important implications, mostly ones which depend on further circumstances, and therefore do not necessarily apply to all rights. For example, many rights can be transferred by the right-holder, thus changing the person to whom the duties attached to the right are owed. That is a result of the fact that often the interest of the right-holder is precisely in having the power to transfer a right, by way of gift, or sale, or to transfer some subsidiary rights, as when people lend or lease property. Even when this is not the main interest of the right-holder in the right, it may be an implication of the justifying interest which the right and its attendant duties protect that an aspect of the right is the power of the right-holder to forego respect for it on occasion, or just waive it permanently. A right that is not in

¹³ See THE MORALITY OF FREEDOM (Oxford: OUP 1986) Ch. 7.

that way subject to his will may not be justified, i.e. it would not be justified to hold others subject to duties even when the right-holder forgives violations or waives the right. These remarks require of course much more careful delineation, and I discussed some of them on various occasions. I mention them here to indicate that the difference between Darwall and myself is not about what is to be explained but about the nature of the explanation. For Darwall offers a very different one.

He acknowledges that, for example, the fact that it is bad to cause gratuitous pain is a reason not to do so. But he quite rightly points out that the proposition 'people have a right that others should not cause them gratuitous pain' is not entailed by the mere fact that others have a reason not to do so. It means more than that. Darwall's explanation is:

'Suppose, however, that you take yourself to have a *right* (specifically, a "claim right") not to be caused gratuitous pain. Were you to think that, I take it, you would have also to think that you have as a right holder some standing or authority to claim or demand that people not step on your feet without your consent and, specifically, that the person currently stepping on your foot not have done so, that he get off, and so on ... Moreover, ...you must also think that you have some standing, again as the right holder, to hold the person accountable for having stepped on your feet, for example, to object, to ask him his reasons, to demand an apology, to forgive him if he apologizes, and so on. Since the idea of a right is connected in this way to the (right holder's) authority to claim or demand and hold accountable, it is a second-personal reason.' (6)

What kind of authority does he have in mind here? 'Authority' is a word rich in subtle and nuanced meanings¹⁴, not all relevant here. But two are. One is the concept used when saying that one has authority to enter a restricted area, or to read one's employer's appointment book. Here 'having authority to Φ ' means being permitted to Φ . Note that being permitted to Φ is not the same as it being OK to Φ . I may scratch my nose, but I do not need permission to scratch my nose, nor is there anyone who can, who has the authority, to permit me to scratch my nose. Permission implies an exception to a general prohibition, and normally, though not always, someone who has authority in the second sense, to prohibit and to exempt from the prohibition. This second sense is authority as the power to impose duties on others simply by expressing an intention to do so.

My account of authority that Darwall criticises is of that second concept of authority.

¹⁴ For a somewhat more detailed discussion see THE AUTHORITY OF LAW (Oxford: OUP 1979, 2nd ed. 2009) chapter one.

There is no indication that Darwall thinks that the authority he refers to here is the authority that I explain, namely the authority to impose new duties on another. Nor would it be reasonable to think that rights always involve such a power. And since they do not, that power is not part of what rights as such consist in. He seems to use 'authority' interchangeably with 'standing'. It is reasonable to assume that the correct account of standing will identify the kind of authority Darwall thinks is part of what duties and rights consist in, or presuppose.

The difficulty is that 'standing' is mostly at home in legal contexts. When a stranger I sit next to on the bus asks me 'have you made arrangements for your retirement' I am unlikely to say: 'you have no standing in this matter'. If I am annoyed I may say: 'mind your own business'. Or simply ask in return: 'have you?' I find it difficult to imagine situations in which 'standing' would be used conversationally. That does not show that it should not be used in a theoretical account of rights or duties. But it means that we do not have an unproblematic grasp of the phenomena referred to. Nor is it entirely clear what the term refers to in its legal use. Does legal standing normally refer to procedural normative power, i.e. the normative power to start a certain kind of legal process, such as an action in court? This may not be the right account. If the issue of standing is not raised early in a process it may be too late to raise it later. In particular, a court's decision given in an action that the plaintiff had no standing to initiate is unlikely to be void, and often not even voidable, on that ground. So perhaps legal standing is a permission to initiate a legal process, which is not invalidated if it is initiated without it. Whatever we think of legal standing, and possibly there are different kinds of legal standing, outside the law it is hard to apply the term to any normative power since there are no formalised processes which one initiates relying on the standing. One is simply engaging in an act of communication. Such an act can be improper, meriting the response: 'this is none of your business' or 'mind your own business', and that suggests that when it is proper it is a permission, a permission to intrude into the affairs of another. Normally we should not do so, but sometimes we have standing, i.e. a permission to do so.

It is possible that I am relying on too narrow a range of concepts, thus missing some of the richness of the idea of standing. But there is also a theoretical advantage in

explaining the rich range of normative phenomena as variations on some basic types. It makes it easier to understand the inter-relations of the phenomena. And absent a more concrete objection or alternative I will proceed on the assumption that 'standing' refers to a permission, and consequently that the authority Darwall's account repeatedly refers to is a permission.

According to Darwall when someone, call her Abigail, is under an obligation to Φ others are permitted to act towards her in ways they are not permitted to behave towards people generally, not even towards people who have reason to Φ which is not a duty to Φ . People are permitted to demand or to claim performance of the duty, and if Abigail is in breach of her duty they are permitted to require that she should compensate, or apologise, etc. Clearly, however, there is more to a duty to Φ than a reason to Φ coupled with others being permitted to demand compliance or compensation or apology for breach. Presumably there is some connection between the reason and the permission and that connection is crucial to the existence of the duty. Darwall marks the connection by saying that the person under the duty, Abigail in our example, is responsible or accountable to others.

Given the many senses in which 'responsibility' is used, it may help avoid confusion if we focus on the idea of accountability, which is more specific. Who is Abigail accountable to regarding her duty to Φ ? It turns out that according to Darwall she is doubly accountable. She is accountable to all members of the moral community, and she is accountable in an additional way to the person whose right her duty is a duty to respect, whose right will be violated if she will not Φ . Let me give him too a name for ease of reference: Let him be Abe. In explaining the two aspects of accountability Darwall suddenly turns to an observation about moral emotions:

'Although the victim of wrongdoing has the distinctive standing to resent or forgive an injury, he has no special standing others do not have to *blame* the wrongdoer or to hold him responsible through ... reactive attitudes such as indignation.¹⁵ This is an authority that anyone has as a representative of the moral community, indeed, that the wrongdoer has himself and that he exercises when, in blaming himself, he feels guilt.' (7)

¹⁵ Though it is not distinctively up to the victim whether to have the *attitude* of blame, the victim may have a distinctive standing to blame the wrongdoer overtly. I am indebted to an anonymous referee for prompting me to clarify this point.

It is clear, however, that he does not think that the special accountability Abigail owes Abe consists of which emotions would be appropriate for her to feel. He says that 'Both involve an authority to make claims and demands and to hold accountable, although in different ways.' (7)¹⁶ I will return to the special standing of Abe, the right-holder, below. But first we can dismiss, I think, the thought that duties are marked by special accountability to people as representatives of a moral community, and that because of the accumulated force of several considerations.

First, everyone who is subject to practical reasons at all, every rational agent, is a member of the moral community. There is no indication to the contrary in Darwall, and none would be morally acceptable.

Second, while Darwall sometimes refers to people as taking up a second-person standpoint, that seems to consist in nothing more than saying that the speaker or someone else has a right or a duty. There is no separate action, or thought, which constitutes the taking up of that alleged standpoint. As a result the very idea that there is a separate standpoint involved is not given any meaning.

Third, and similarly, since whenever we talk to people about their rights and obligations we act as 'representatives' of the moral community, there is no specific meaning to the idea of being such a representative. We need not feel, believe, or express in any way the thought that we act as such representatives, nor can we stop being such representatives simply by denying that we are, as I am here doing. So, it is not clear that the idea has any distinct content, and since there is nothing to being a member of the community other than being a rational agent, a condition quite distinct from membership of any community we may think of, there does not seem to be much meaning to the idea of a moral community in the first place.

Fourth and finally, it is neither true that we are permitted to address others, even complete strangers, about their conduct only when duties are involved, nor that we are always permitted to address others, even strangers, about their conduct when duties are involved. No special standing or authority is required by one to form beliefs about

¹⁶ The context of the observation is very obscure, referring as it does to a reason a right-holder has. Typically having a right involves a reason or duty others have towards the right-holder. Right-holders do not have reasons just in virtue of being right-holders. However, I believe that I do not distort Darwall when using the quotation as I do.

another's conduct, nor to have feelings or emotions in reaction to other people's conduct. Nor is it the case that people must suppress the natural expression of their emotions, which betray themselves in their facial expressions, tone of voice, etc. Finally, people do not require permission to express their opinions or feelings, including expressing them forcefully. It does not follow that it is always a good idea to do so. Expressing opinions, offering advice, reproaching others (or oneself) and the like are acts which should be done for sufficient reasons only. But we may have such good reasons regarding people's conduct when no rights or duties are involved and may lack it when rights and duties are involved. It all depends on the circumstances, to coin a phrase. Similarly, what one says in exhortation or reproach and so on, should be modulated to the seriousness of the matter. But sometimes behaviour that does not involve breach of duty is more seriously reprehensible than one which does. It is true that some expressions of reproach, notably using words like 'it is my right', are specific to conduct affecting rights and duties. But that just goes to show that we should express ourselves truly and sensibly, given the subject matter we address. It does not show that there is a special permission unique to rights and duties.

We can illustrate this point with two examples. Darwall gives the example of someone who fails to prepare for his retirement as a case in which no duty is involved. What, however is inappropriate in people expressing strong disapproval of such behaviour, urging that person to change his ways and start saving for retirement and so on? Of course, normally only friends should do so. But there is no hard and fast rule about that. If a few strangers fall into conversation while drinking in a bar, and the conversation turns to preparation for retirement, they may well reproach the one who did nothing to protect his future. Now turn to breach of obligations. A person who is rude to his young child is in breach of obligation, but 'mind your own business' would be an appropriate rebuke to reproaches from busybodies. This, you may rightly point out, is just my moral view. It is, but there is no reason to think that the disagreement about who may draw the attention of those who are subject to certain reasons for action to the existence of those reasons, and reproach them for non-compliance, is a dispute about whether those reasons are duties.

So far I have ignored the special position that a right-holder has regarding the duties that protect his rights. As I explained above, in my view these are primarily that the duties are justified by their service to the right-holder's interests, and secondarily by some of the consequences of this fact, such that in many cases the right-holder can waive the right, or some aspects of it. Darwall's explanation of the special standing of the right-holder in terms of a permission to demand performance of the duty, or compensation or apologies for its breach, fails. Even on his own account the permission extends to others as well. This applies to compensation and apology too. I can demand of Abigail that she compensate Abe and apologise to him, when she violates his rights. That she owes an apology to him, or to him in particular (sometimes people can and do appropriately apologise to people other than the victim of their violations) is an acknowledgement that the duty derived from his interests, and therefore it was he who was let down by its violation. The duty to compensate is part of the "logic" of practical reasons generally: if you fail to completely or perfectly comply with reasons which apply to you (be they duties or otherwise) you should do the next best thing to come as close to complete compliance as possible. Compensation is one way of doing so. That at any rate is my explanation of these phenomena.¹⁷ I am not sure what Darwall's is, for he focuses not on the apology and the duty to compensate, but on the permission to claim them. We are permitted to claim them because those people owe them. And it is that fact which needs explaining, not the permission to claim. But here I am merely repeating, or applying to this case, the considerations I explained above.

Perhaps surprisingly, when discussing the right-holder's special standing Darwall shifts attention to the fact that the wronged right-holder has standing to feel resentment and indignation. The reason is, presumably, that he thinks that he has an argument against views like mine here, namely that my explanation of rights in terms of the interests of the right-holder cannot explain why resentment is appropriate. It is a victim of the 'wrong kind of reason' fallacy. Whether or not one agrees with Darwall's views

¹⁷ See "Numbers, With and Without Contractualism", *Ratio* 16 (2003) 346-367; 'Responsibility and the Negligence Standard' *OXFORD J. OF LEGAL STUDIES* (forthcoming)

about these emotions,¹⁸ they do not support his explanation of rights and duties. They come too late in the order of explanation: resentment is appropriate (among other cases) when one is hurt by an unjustified violation of one's rights. So one needs to establish that such a violation occurred first, and independently of anything about resentment. I have argued above that Darwall fails to do so.

It is possible, however, that considerations about the appropriateness of resentment and other emotions could expose the flaw in my explanation of rights: It must be such as to make sense of the fact that unjustified violation of rights can make resentment appropriate. And I believe that my account meets this test. I should add that I do not think that resentment is appropriate only when one's rights are unjustifiably violated. Causing one significant hurt or harm by knowing and wanton disregard of one's interests would make resentment appropriate even when the conduct does not violate one's rights. In any case, my account, which admits of rights only when one's interests are of a nature to impose on others a duty to protect them, amply explains why unjustified rights violation may make resentment apt. Darwall does not challenge that. He simply endorses Strawson's view that social desirability cannot justify resentment, etc. Adding that the desirability of holding someone responsible does not justify holding them responsible. None of this bears on my account of rights. It may be desirable, may be even socially desirable that I should be poorer than I am, or richer than I am. By my account of the matter nothing of the kind establishes anything regarding my rights, because it does not establish that others have a duty to make me either richer or poorer.

5. Darwall on The Normal Justification Thesis

The failure of Darwall's account of rights and obligations does not in the least vindicate my account of authority. Nor does it show that his criticism of it is with without merit. He draws attention to some features of my account which others found problematic as well. It is, however, not easy to isolate the challenging points from others which seem to me less worthwhile. This is due in part to the fact that that my account of authority is

¹⁸ I disagree with much of what he says, though his identification of what he calls the right kind of reason is very similar to my analysis of standard reasons. See 'Reasons: practical & adaptive', in REASONS FOR ACTION eds. D. Sobel & S. Wall (CUP 2009)

complex, and developed over the years. At its core are three theses: The Normal Justification Thesis, The Pre-emption Thesis, and the Dependence Thesis. But they do not exhaust the account. Most importantly it contains some points of conceptual clarification that I advanced early in my reflections on the subject,¹⁹ as well as examples of some contexts in which an authority is legitimate even if it does not meet the conditions of the Normal Justification Thesis, and some contexts in which it is not legitimate even if it does meet them. There were of course writings aimed primarily at explaining the application of the account in the theory of law, and elsewhere, and some defences and modifications of it. While I tried to be explicit about such modifications, I never presented the account in all its parts in any single publication (nor unfortunately was I as clear as could be wished in its presentation). Partly this is a matter of personal temperament, and partly a result of a feeling that the account is in any case an incomplete account of the core of the idea of practical authority, that it should be supplemented in various ways to make it sensitive to various circumstances, and that in the nature of the subject there is no possibility of a comprehensive statement of the nature of practical authority which will not require further refinement when applied to (the ever evolving and changing) types of situations and institutions. This approach manifested itself in the fact that the Normal Justification Thesis was presented as no more than an explanation of normal justifications, and by the fact that in *THE MORALITY OF FREEDOM*, in which it has its most complete discussion, I did not invoke my earlier writing on exclusionary and protected reasons (protected reasons are facts which constitute a – first order – reason to Φ and an exclusionary reason not to fail to Φ for a certain range of excluded reasons²⁰). My thought was that the arguments there presented yield a conclusion, expressed in the Pre-emption Thesis, which stands on its own. It assigned to authoritative directives a feature that I believed may well be best explained by saying that they constitute protected reasons. But possibly there are other, better explanations of it, and there is no need to saddle the account of authority with a commitment to that way of explaining the pre-emptiveness of authoritative directives. That having been said let us turn to Darwall's objections.

¹⁹ THE AUTHORITY OF LAW, Op. Cit.

²⁰ Ibid. p. 18, 21.

As I understand him Darwall argues that no pre-emptive reasons are created by the fact that the conditions set in the NJT are met. As I have just indicated, it is not my claim that whenever these conditions are met the authority is legitimate. Whether or not it is depends on further normative, often moral, considerations. But Darwall's objections are not undermined by these aspects of my account of authority. In fact so far as I can see, his objection is not specifically to the claim that the NJT may give rise to pre-emptive reasons.²¹ Rather it is that in itself meeting the conditions of the NJT does not give rise to reasons of any kind.

His most general objection is expressed as a denial that III can be derived from II in the following passage:

II. There is reason for B to treat A's directives as giving him pre-emptive reasons.

III. A's directives actually do give B pre-emptive reasons. (14)

He admits for the sake of the argument that when the conditions of the NJT apply II is true, but denies that III follows from it. He treats it as a question of whether we have reason to believe that III. His objection is:

For III to be true whenever II is true, the reasons that speak in favor of B's believing that A's directives create exclusionary reasons, or B's regarding or treating A's directives as creating them, would also have somehow to make B's belief or way of seeing or treating things true or correct. (14)

I would agree with that. The argument is not that one has those derivative reasons stated in III because it would be good to believe in them. It is that it is good to believe in

²¹ This is fortunate as it means that the criticism is not undermined by the fact that he misrepresents the pre-emption thesis. He never states its content. The closest he comes is when he writes: 'The idea underlying Raz's preemption thesis is that in deciding what directives to issue, an authority will take account of first-order reasons, at least within some range, for and against actions that would be prescribed by directives the authority is considering and that an authoritative directive preempts the reasons for acting that the authority has already taken into account, specifically, it preempts or excludes the reasons for performing any action that would violate the directive'. (13) In fact the underlying idea is that a legitimate authority *ought* to consider certain reasons and that its directives pre-empt the reasons that it *ought* to have considered (though if the fact that it ignored some of them or got them so wrong deprives it of legitimacy then the thesis does not apply). Similarly the fact that at times he misrepresents the nature of exclusionary reasons is – for the same reason – irrelevant to his argument. As he rightly points out exclusionary reasons are reasons not to act for certain reasons: 'as Raz usually defines the general category of "exclusionary reason," namely, as a second-order reason not to be moved by or to act for certain first-order reasons.' (17) It is therefore unfortunate that much of his discussion on pp.17-8 turns on the case for or against considering certain matters, which is irrelevant to the issue.

them because they are there. They are there by reasoning analogous (some would say identical) to that which establishes the existence of instrumental reasons: You have reason to do A, doing B (walking to the station, obeying the authority) will facilitate doing A, therefore you have reason to do B. It is more complicated to establish that the authoritative reasons are pre-emptive, and that was all I argued for in presenting my account of authority. But that point is not challenged by Darwall.²²

Towards the end of his paper Darwall raises another objection, namely that my account cannot explain the accountability of those subject to the authority towards the authority. Needless to say, my doubts about Darwall's own understanding of accountability make me doubt the validity of his criticism (I am more used to the idea that those in authority are accountable to their subjects than to the thought that their subjects are accountable to them), and impede my ability to understand it. But perhaps a clue is offered in Darwall's use of the notion of 'being answerable' at this juncture.

Perhaps what he has in mind is the familiar fact that legal authorities can impose sanctions for breach of duties imposed by them, or that they can provide remedies for (what they consider) harmful and unjustified invasions of individual rights. If that is what he has in mind then up to a point we agree. That an authority is entitled to impose a duty to Φ does not entail that it is entitled to impose a sanction for failing to Φ , or a remedy should any right be violated thereby. One needs a separate argument for that, and the argument – on my account – would be provided if NJT would apply to those additional measures. It may not, even when it applies to the demand to Φ . In the case of the law we assume that the two go together, but when we think of the authority of voluntary associations we readily perceive the possibility of a gap between their authority to impose demands on their members and their authority to impose sanctions for violations of those demands, or remedies for their breach. The example of voluntary associations may provide an answer to the question: does it not follow that there is no authority without the double power – the power to demand an action, and the power to impose a sanction or demand a compensation for breach of the first demand? This

²² Later on, referring to the wrong kind of reason argument, he writes: 'the fact that one has reason to adopt an attitude does not in general make it the case that the attitude is true, correct, or "fitting".' (15) That is of course true but, as explained in the text, irrelevant.

double power theory of authority, a variant on my own account, is appealing, but in this radical form there seem to be persuasive counter examples. I am not, of course, suggesting that the double power view would quell Darwall's doubts. But some variants of it, yet to be formulated and explored, may appeal to those who do not share his own theory, and yet are inclined to question my account on this point.

6. Theoretical and practical authority

One of the failings of my explanation of the service conception was a failure to explore the way it relates to epistemic authority. Darwall's retirement example helps to bring the issue into focus. I agree with Darwall that his imagined expert has no practical authority over him. It is not entirely clear how this is meant to be a counter-example to my account. Perhaps this way: She tells him – 'If you decide to invest in a pension fund invest in this and that fund'. I make the directive conditional in order to avoid the question whether she can be known to be an expert on whether Darwall should invest in a pension fund at all. To be an expert on that she needs much more than financial expertise. She needs extensive knowledge of Darwall's health, family, their health and finances, the type of life-style which would be good for him when old etc. Darwall, in setting out the example, assumes that her directives would be the directives one would give if one knew all of that, and made no mistakes. However, that is not enough to endow her with authority over me. Darwall needs to be able to know that that is the case, and if she does not have good knowledge and understanding of all these matters he has no reason to think that her directives will be sound ones. So let us assume that her directive is conditional, limiting her authority to what she knows about: financial matters.

Why then does she not have authority to tell Darwall what to do? For Darwall the answer is: No, because he is not answerable to her. For me it is, if anything, the other way round. I am not answerable to her because she has no authority. But why does she not have authority? She has epistemic authority. He should believe that if he is to invest in a pension fund he should invest in the fund she designated, and he should believe that because that is her opinion and she is an expert. Suppose that Darwall believes that. In

that case she no longer meets the condition of the NJT. She does not know what he should do better than he does.

This leads me to think that the explanation of Darwall's example is that the NJT is not met when the **only** reason to think that an authoritative instruction is correct is that it represents an expert view about what is good to do, a view which is not based on the fact that the expert will so instruct, or has so instructed. At least this is the case regarding people who can follow theoretical authorities. Small children and some mentally handicapped people may not have that ability, while being able to follow practical authorities. It does not follow that expertise is not relevant to practical authorities. It is, but only when it is mixed with other considerations, such as need for co-ordination, for concretising indeterminate boundaries, and the like.