



Philosophical culture and Socratic criticism

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The article takes issue with a dominant characterisation of Western philosophy as a culturally neutral procedural practice of rational arbitration, with reference to the position of Steven Lukes. The relationship between this meta-philosophical position and a culture-neutral normative conception of human rights is also put into question. The author not only presents a criticism of Lukes' position, drawing on the work of the post-Marxian critical theorist Raymond Geuss, but also takes issue with the alternative philosophical tradition of Socratic criticism, which Geuss holds up as an alternative to the pure normative standpoint of applied philosophical ethics (the basis for Lukes' account of human rights). To mediate between these rival views on the role and culture of philosophy, the final section of the article revisits Edmund Burke's conservative criticism of natural rights, arguing for the necessary precedence and authority of recognised social customs for right rule, balanced by sceptical critique.

If the tasks of philosophy are universal, then, aside from some stylistic quirks, there should be hardly any difference between African philosophy, Eastern philosophy, European philosophy and analytical philosophy.¹ It is of the nature of philosophy, expressly, to cut through the distracted variation of cultural contingencies so as to identify essential causes and necessary principles underlying otherwise seemingly disconnected phenomena. Therefore, does the

1 I am fortunately indebted to the comments and suggestions of colleagues on various versions and aspects of this article, including Tom Angier, Camilla Boisen, Carl Knight, John Lamola, Thad Metz, Andrew Nash and two anonymous referees.

unusual degree of philosophical prowess displayed by members of a particular demographic group reveal its intrinsic capacity for philosophy or does the prevalence of White male departments and publication authors reflect extrinsic structural conditions, as recent work suggests, for instance, on Fricker's notion of "epistemic injustice"?

Just as one wonders about the unique prowess of Black East African long-distance runners, one may ask what it is about White Anglophone men that suits them so well to rigorous philosophical analysis and conceptual abstraction? Does it lie in favour of the genetic fallacy that the most prolific African philosopher in South Africa is a White American? Do the problems of sexism and sexual misconduct in philosophy, brought to light at the University of Colorado Boulder and Yale, for example, reflect ingrained gender prejudice in the discipline of Western philosophy? Are members of White male Anglophonic cultural groups better equipped rationally than women and non-White men to transcend their cultural context using the abstract concepts and logic of Western philosophy?

Drawing on my seemingly inherited powers of reasoning, I consider whether philosophy ought to seek to avoid cultural particularity. To this end, I present and assess critically the rival views on this matter of three influential trans-Atlantic English-speaking White men, namely Steven Lukes, Raymond Geuss and Edmund Burke. Their relative assessments of rights each raise the question of the rightful bearing of culture on philosophy. Human rights are norms that are thought to apply to everyone, whether or not they conflict with cultural norms. Since they are not particular to any specific culture, but apply to all, one may appeal to human rights to avoid cultural prejudice in negotiating normative conflicts across cultures. Human rights may be formulations of universal features of human need, which hold across all cultures. The views I present on the role of philosophy in such formulation cover a wide political philosophical spectrum, including a procedural liberal, a post-Marxian radical and an eighteenth century conservative Whig. The procedural liberal, Lukes, perceives human rights as a culturally neutral set of rational commitments justified from pure normative philosophical principles of applied ethics. I draw on the radical, Geuss, to criticise Lukes' position and to present an alternative Socratic approach to philosophy, which does not predicate norms and values from an initial rational standpoint, but rather elicits existing operative norms and values from subjects in dialogue and then subjects them to rational disputation, principally, by testing their coherence and intuitive plausibility. I then appeal to the criticism of natural rights of the conservative monarchist, Burke, to remedy a weakness I identify in Geuss's account. First, the account of Socratic criticism as mere negation or internal criticism fails to appreciate the productive contribution of Socrates to the argument. The false understanding of Socratic criticism as strict negation remains faithful to the myth

of philosophical cultural neutrality, of which Geuss is ostensibly critical. Secondly, Geuss rejects human rights, since he opines that the pure normative standpoint on which they are grounded is philosophically and politically suspicious. But, as “social rights” are justified by Burke, so human rights may be normatively grounded in custom, that is, in historical reason, as they, in fact, are grounded, in practice, in international jurisprudence.

1. Lukes: procedural liberalism and human rights

In *Liberals and cannibals* (2003), Lukes cites the philosophical figure of the Persian King Darius, who, according to Herodotus, asked the Greeks if they would eat their forebears, like a certain tribe of Indians. They were horrified by the thought. He also asked these Indians if they would burn their ancestors, as the Greeks did. The Indians were as horrified as the Greeks. Lukes takes from the story the lesson that Darius was known as the ‘king of all’ because he refrained from imposing his own particular cultural norms on his subjects and was wisely tolerant of cultural diversity. Lukes (2003: 12) likewise denies the claim that ethical universalism is “intrinsically” ethnocentric. But, if Darius was known as the king of all, the attribute ‘all’ does not subtract from the operative term, ‘king’. The king was in charge. It was Persia’s ability to commensurate and subsume conflicting particularities that earned it regional hegemony. By contrast with Lukes, Geuss follows Nietzsche in the view that a flexible capacity to incorporate rival wills to power is not a mark of thin cultural neutrality, but of rich cultural vitality.

Lukes’ culturally minimalist procedural liberalism is an austere account of liberalism. This tradition has, at various times, included a range of culturally and historically peculiar practices, maxims and institutions, including constitutionalism, separation of powers, meritocracy, free speech, cultural tolerance, free assembly and association, due process, private property, and so on. True to the notion of freedom, from which it takes its name, historically, liberalism has tended to resist neat definition, remaining open to substantial revision. However, it is usually connected with *laissez-faire* economic doctrine and tolerance of diverse moral customs (Lukes 2003: 31–2). With the criticism that liberal respect for diversity overemphasises individual over communal rights, Parekh makes the paradoxical claim that, “a truly liberal state cherishes and gives public recognition to diverse ways of life, both liberal and non-liberal” (Lukes 2003: 33). The paradox drives the question: to be all things to all men, ought liberalism to cherish what it is not? There is something suspiciously self-effacing about all this.

Lukes (2003: 34) argues, reasonably enough, that culture and identity are “never coherent, never closed to the outside, never merely local, and never uncontested, from within and without”. There is room for universal consensus.

To understand different cultures, “our attempts to get them right must respect their attempts to get the world right” (Lukes 2003: 81). Reason is attributable to all human beings, regardless of their culture. Lukes (2003: 37) argues that

[l]iberal declarations of human rights, for instance, are robust and sharp-edged declarations, intended to lay anyone who breaches them open to moral condemnation. Their neutrality, if they can have it, is to do with their being so undeniably well-founded that they can be assumed in all further discussion of how a just society should be organised.

Human rights follow naturally from human nature, belonging to all human beings. Barry agrees:

There is nothing straightforwardly absurd about the idea that there is a single best way for human beings to live [...] The human situation is sufficiently uniform to make it possible to say that there is quite a number of things that every society ought to achieve (Lukes 2003: 38).

Can we defend human rights on strictly procedural and culturally neutral philosophical grounds, as a trans-cultural set of universal rational principles for human beings’ right living?

Lukes goes on to argue that, if liberals are to defend human rights against the charge of ethnocentricity, their account of its constraints must be as few and as abstract as possible, committing only to basic civil and political rights, the rule of law, freedom of expression and association, equality of opportunity, and a certain standard of material well-being. This may, at least, have a prospect of securing agreement, to establish “an egalitarian plateau of human rights around which debates may rage on” (Lukes 2003: 168). Where is the harm in such humanitarian ideals?

2. Geuss: classical, sceptical liberalism and Socratic philosophy

2.1 Criticism of the ‘pure normative standpoint’ of procedural liberalism

The familiar Marxist refrain is that formulations of human rights reflect underlying economic conditions, which, in capitalist society, entail the opposed interests of social classes. The problem with this procedural liberalism, underlying human rights, lies with the decontextualised normative idealism it presumes for

philosophy. Geuss challenges the idealism of the distinction, on which liberalism depends, between its rational, transcultural procedures, on the one hand, and particular, subjective, cultural preferences, on the other. The world, he points out, is full of things that are neither formal rules, nor subjective preferences, such as music, poetry, religion, history, fashion, power and politics (Geuss 2005: 6). Procedural liberalism tends to obscure the very context it is supposed to illuminate, by appealing to an ideal distinction between rules and preferences. It is a mistake, Geuss maintains, to moralise politics, as applied philosophical ethics, by presuming a fixed universal standard of validity, supposed to obtain independently from its socio-economic origins and application (Geuss 2005: 8).

Classical liberalism, by contrast, is a 'nineteenth-century invention' that arose not as a substantive set of rules of political engagement, but as a negative reaction against aristocratic and theocratic absolutism and intellectual dogmatism and against the exaggerated moralism of absolutist ethics, for instance, in Rousseau's conception of unlimited secular democratic authority (Geuss 2005: 13-4). Geuss (2005: 25) argues that "[t]he ideal of liberalism is a practically engaged political philosophy that is both epistemically and morally highly abstemious". This older, morally agnostic liberalism clashes with the substantive universal principles of Kantian liberalism, moralised as applied philosophical ethics, evident in Rawls's *Theory of justice*, for instance. Classical liberalism placed a strong emphasis on toleration, freedom, individual well-being, and limitation of concentrated or arbitrary power. Earlier liberals would regard the notion of justice, which Rawls puts at the forefront of liberal political philosophy, as deeply divisive, for threatening tolerance and fettering progress with its fixed, unitary view of shifting economic conditions and substantive moral categories. Earlier liberals eschewed Kant's limitation of freedom to the pure normative standpoint of essential precepts of reason (Geuss 2005: 15-6).

Geuss insists that analysis or interpretation of political decisions concerns both intentions and results. In abstracting an underlying principle from contingent circumstances, one should always remember its contextual relevance and purpose. Political judgements do not involve the application of a fixed standard or criterion to some pre-existing human purpose; they are not given in advance and are not simply descriptive; political judgements are also prescriptive and predictive. In real politics, criteria of evaluation and judgement are constantly shifting and are always up for re-negotiation (Geuss 2009: 10-3). By maintaining a descriptive disguise, procedural liberalism fails to take seriously its prescriptive and predictive functions.

Against this rule-centred approach to politics, driven by preconceived formal procedures, drawn on an ahistorical model of society, as a rule-governed system,

Geuss argues for an agent-centred approach to politics, to focus on the relative power of individuals or of groups in any given situation. This is precisely what was lacking in the establishment of South Sudan, for instance, where relations of power among rival groups were downplayed in the focus of international administrators on infrastructural development and service delivery. Liberal egalitarian economic doctrine, which presumes “that steadily increasing economic well-being is assured by the maintenance of a relatively unfettered capitalist system and by an international system of ‘free trade’”, proved good policy for the US to pursue between 1940 and 1970, when it dominated world trade, but it is now destroying its industry. Similarly, liberal Gladstonian finance suited Britain’s economic situation in the mid-nineteenth century, but such austerity now proves counter-productive. Geuss (2010: 112) remarks that “[a] free market is obviously a highly artificial social construct that requires continuous political intervention to survive, is not in any sense natural, and is clearly as much a realm of systematic coercion as of freedom and individual choice”.

Historically, global human rights culture, including principles of self-determination, common humanity and freedom of dissent, is a manifestation of Western-driven processes of globalisation, wherein law, rights, and democracy have been consciously imposed on prospective allies (Boucher 2009: 2). Universal human rights are potentially emancipatory, but they can also subjugate rather than protect and empower those most in need of them. Appeals to human rights are justified with reference to contextually relevant practical factors, material conditions and political considerations. Although British Imperialism currently has a bad name for violently imposing alien sovereignty over large swathes of humanity, it was far more subtle in historical practice. Its dominance, when the basic character of liberal political economic doctrine was forged, in the nineteenth century, extended beyond formal colonial boundaries, to the US, China and Latin America, through a finely woven web of free trade, financial investment and humanitarianism. The British sought to profit from well-governed, local, individual initiative and to minimise the cost of overt military coercion, with a carefully managed network of independent nation states allied to the Crown. Britain’s powerful shipping industry, navy and financial infrastructure allowed a small colony no larger than Singapore or Hong Kong to maintain regional hegemony under the auspices of open commercial competition. I do not presume that the historical and practical context of norms decides their justification. But, the way in which human rights and liberal concepts such as equality and self-determination are interpreted and enforced determines their normative significance and relevance.

The international system of liberal free trade and human rights that emerged in the twentieth century was practically imposed on the world, first, by Britain

and, then, by her heir, the US, emerging, first, from the anti-slavery tradition and, secondly, from 'open door' policies of equal commercial opportunity used to undermine rival imperial powers, usually the French, for example in Morocco, in the Congo, or in Egypt. Where Spain, France and Portugal preferred direct colonial sovereignty, Britain's preferred liberal methods of indirect rule contributed far more profitably, economically and politically to advance her position as global financier. Her objective of deeper economic integration of West-African markets motivated Britain's forceful eradication of the slave trade and promotion of 'legitimate commerce', with free trade forced on North-West Europe in the 1830s, on China in 1840, on Turkey in 1838, and on Egypt and Persia in 1841. With financial control, debt dependency could be used to push countries toward financial strategies that fitted British economic and financial service infrastructure, with formal colonial military occupation used only where informal control fell short (Cain and Hopkins 1980: 486).

2.2. Alternative traditions: classical liberalism and Socratic criticism

In summary, so far, Lukes claims that the philosophical formulation of procedural liberalism need not be ethnocentric, that is, it can be expressed without privileging any ethnically peculiar prejudices. His strictly procedural account of universal liberties, he claims, is not culturally unique, or, at least, is minimally so. Human rights apply to everyone, regardless of cultural background, and they can be justified by a culturally neutral argument. Geuss, on the other hand, claims that such contextual blindness to the origin and application of political judgements is not a merit, but a weakness in real politics. One should bear in mind the contextual relevance and purpose of liberal philosophical norms and practices. Political judgements are not simply applications of fixed criteria to any given situation; they are not simply descriptive, but also prescriptive and predictive. Against such a rule-centred approach to politics, Geuss argues for an agent-centred approach to politics, which procedural liberalism finds difficult to accommodate, with its emphasis on a universal framework of 'natural' human rights obtaining for everyone, regardless of politics. Whereas a rule-centred approach to political theory is focused on providing justified norms that can be applied in politics, Geuss (2009: 25) advances an approach in political theory that starts with agents, in their political context, to focus on who does what to whom for whose purpose/benefit.

Against the pure normative standpoint of applied philosophical ethics, Geuss (1999: 72) directs us to a long-established alternative tradition in political philosophy, namely Socratic criticism, which he describes as follows:

As a 'Socratic' critic I take over 'for the sake of argument' the normative conceptions of the person (or society) in question, without necessarily affirming them or being committed to them myself. The criticism consists in pointing out internal inconsistencies and contradictions in these normative conceptions [...] The Hegelian demand that criticism must be 'internal' is a development of this Socratic procedure, and the Critical Theory is yet a further development of the same general approach. The proponents of a Critical Theory explicitly claim that what they are trying to do is criticise contemporary society by confronting it with its own contradictions.

It is worth noting that this Socratic practice of *elenchus*, often described as a form of 'internal criticism', is also associated with the practice of dialectical philosophical argument developed by Georg Wilhelm Friedrich Hegel and adapted as a mode of 'immanent critique' by Karl Marx, in conscious eschewal of the ideological tendencies of bourgeois German idealism. Marx aimed to criticise the bourgeois order on its own terms, criticising liberal capitalist political economy, not by imposing or 'preaching' external, independent, 'moralising' ideals rejected by capitalists, but by demonstrating how it tended towards practical self-contradiction by its own dynamic. For instance, the incentive to cut labour costs and to boost profits undercuts the consumer market in the long run. This self-contradiction was evaded in the West, in the twentieth century, by outsourcing labour offshore, but it appears that the inevitable crisis was merely delayed. However, Marx claimed not to impose ideals, but to describe inconsistency and self-contradiction. His method of criticism is thus described as 'internal' criticism.

3. On the affinity of rationalist proceduralism and Socratic enquiry

My response is that, in a certain crucial respect, procedural liberalism and Socratic criticism share a strong affinity: in their moderation of proceedings, the moderator neglects to count him-/herself. Procedural liberalism and universal human rights are associated with the pure normative standpoint of applied philosophical ethics, of which Geuss is critical, since it presumes *a priori* criteria and, therefore, fails adequately to consider historically and politically significant factors relevant for evaluating their interpretation and application. He opposes this approach to the internal standpoint of Socratic criticism, described earlier. However, claiming ignorance and innocently proceeding with premises elicited from his interlocutor, Socrates directs the argument. The Socratic critic does not

put forward his/her own premises in argument, but does use his/her discretion in framing and selecting for consideration the premises the interlocutor affirms. Geuss's representation of Socratic criticism as internal criticism does not do justice to the substantive contribution of the critic in this respect, nor to the more engaged contribution of Socrates in the dialectic of Plato's later dialogues.

Likewise, Hegel systematically arranges the dialectical narrative of the *Phenomenology of spirit*, even though the premise promises that it will be shown to evolve of its own rational accord, and the history of Frankfurt School Critical Theory is one of disillusionment with the utopian promise of Marxian immanent critique and a later acknowledgement of the emancipatory function of certain considerations of transcendence. No conflict is reconciled without a governing sense of direction. Geuss is critical of the appeal to a pure normative standpoint in political theory, since this fails to appreciate contextually relevant historical factors that determine its significance. However, the Socratic criticism Geuss advances also appeals to the status of subjective neutrality. The Socratic critic exposes inconsistency in the view of the interlocutor to avoid being seen to press a subjective viewpoint, like the exponent of a pure normative standpoint. Geuss's account of Socratic criticism thus shares the same problem he identifies critically in philosophical ethics: it factors out the unique historical, political and cultural context of the critic's standpoint in the argument.

My point is that the Socratic tradition of internal criticism, which Geuss pitches against procedural liberalism, fails to declare its interests in the same way and for the same purpose as procedural liberalism, to avoid imposing its own unique subjective norms and values. The virtues of liberal democracy are closely associated with philosophical values of objective truth and rational autonomy. Liberal rationalists seek not to impose their own partial opinions on others, but to respect the right to the opinion of everyone, and to appeal only to premises of governance to which everyone could agree in principle. Despite their typically idealised status, human rights are prescriptive and defeasible. They gain universal status, because their recognition can be taken for granted. The question is raised as to who applies them, how and when, and in what circumstances. The procedural liberal influence of Socrates, the great ironist-moralist, is that his arguments are not moralistic. His enemies defeat themselves where his own contribution to the argument seems quietly to vanish. His power lies in the understatement of his views. He convinces by appealing to existing convictions, to underplay the imposition of his own point of view, for persuasive effect. However, his point of view never fails to affect the outcome.

Though Geuss is correct in criticising the decontextualised abstractions associated with procedural liberalism, the distinction he draws between

philosophical ethics and internal criticism, though heuristically useful, is as distinctively ideal as the line he detects between the intuitive content and norms of philosophical ethics, which I identified with Lukes' procedural liberalism. Geuss argues that the idealism of a pure normative standpoint obscures the unique situation and relative strengths of agents to whom such a system of rights applies. Since the pure normative standpoint of procedural liberalism functions ideologically, he argues, instead, for an agent-centred, Socratic method of criticism, for 'real politics'. However, his account of Socratic criticism is similarly misleading regarding the moderator's position.

The main difference between philosophical ethics and Socratic criticism is that the former starts with premises deemed to have universal validity, whereas the latter draws premises from the opinions of the interlocutor at hand. In both instances, however, the critic or theorist fails to reflect on the contextual significance of his/her own standpoint. Where procedural liberals appeal to fixed universal criteria, which brush over the unique characteristics of the given situation, Socrates brushes over the criteria that he selects among the assumptions of his interlocutor. Both Socratic criticism and procedural liberalism pass off culpability for their own political judgements, the former, with reference to the standpoint of the interlocutor, the latter, with reference to a pure normative standpoint that supposedly any interlocutor could reach if s/he thought about it.

Geuss recognises the problem with a pure normative standpoint: various historically determined, politically operative factors in divided societies often lead dominant norms of legitimation to function ideologically for purposes of exploitation and oppression. Such factors may well be overlooked if norms are put forward as valid and justified without scrutiny into such possible functions. However, Socratic criticism, which Geuss advances as an alternative method of argument, suffers from the same weakness. The Socratic critic's role is irreducible to strict negation, exposing inconsistencies; but, the Socratic fails to admit this, disguising his/her role and input and thereby distracting from contextually significant factors that may affect the rationale for such a standpoint.

4. Burke: social rights of custom, not natural rights of reason²

In this final section, I present an alternative to Lukes' procedural grounding of a culturally minimal set of universal human rights, and to Geuss's austere account of 'internal' Socratic criticism and his rejection of human rights discourse.

2 I am indebted to my colleague, Camilla Boisen, for drawing my attention to this understanding of Burke.

Geuss rejects human rights in political theory on the assumption that they are intrinsically grounded in the pure normative standpoint of philosophical ethics, which he rejects. I hope to present an account that retains the practical value of positively sanctioned human rights, while avoiding the blindness to historical context of which Geuss is critical. The account put forward appreciates the value of the contextually situated sceptical disposition of Socratic criticism, but avoids the wholesale sceptical rejection of human rights. To this end, I draw on a criticism of natural rights put forward by the conservative British philosopher, Edmund Burke, in the late eighteenth century, interpreting human rights as explicitly political social rights, grounded in the historical reason of culturally particular, but, in some instances, overlapping customs.

Burke is famous for his defence of the American Revolution and later criticism of the French Revolution, consistently, he believed, with the principle that where the former was fought for the established social rights of Englishmen, the latter was fought for the overthrow of custom, for the sake of abstract, speculative, rational principles of natural right, the basis of which he deemed metaphysically absurd. Burke also famously defended the social rights of Indian subjects against colonial abuses, for the sake of British Imperialism and its greater security. It was because they were British subjects that Indians deserved protection of their civil social rights – this was the basis of British dominion. Furthermore, he reasoned that, if the social rights of British subjects were undermined abroad, this would undermine their domestic security, just as labour practices in the developing world currently undermine labour conditions in the developed world. His notion of trusteeship came to form the basis for administration of the Congo and of annexed German colonies by Britain's allies after the First World War.

The origin of the notion of trusteeship is usually attributed to Burke in his writings on India in the 1780s, best summed up in his famous speech on Fox's East Indian Bill:

All political power which is set over men, and all privilege claimed or exercised in exclusion of them, being wholly artificial [...] ought to be some way or other exercised ultimately for their benefit. If this is true with regard to every species of political dominion and every description of commercial privilege, none of which can be original, self-derived rights, or grants for the mere private benefit of the holders, then such rights, or privileges [...] are all in the strictest sense a *trust*: and it is of the very essence of every trust to be rendered accountable [...] (Burke 1783: 439).

Burke's involvement in Indian politics and his crusade against Hastings has seen him placed as a critic of empire and a defender of cultural pluralism (see

Kohn & O'Neill 2006). But his notion of trusteeship forms part of a broader political criticism of rationalism and abstract natural law. As a critic of the natural rights tradition, Burke opposes the idea of natural universal human rights (see Bain 2003, Whelan 1996, Dreyer 1979). Trusteeship, for Burke, was used to emphasise the accountability of rulers over subjects. For Burke, as for his contemporary Hume, obligations and norms of justice arise from the local, or conventional, not from abstract principles individuals "contractually" carry over from the state of nature (Mehta 2012: 171).

When Burke proclaimed that India was a trust, he was emphasising a familiar Whiggish notion of accountability, arising from concrete rights and duties of rule, not natural rights. Unlike Locke's notion of governmental accountability, which prescribes a right of revolution as the ultimate recourse of the people, in Burke the basis of legitimate rule lies in accountable government, not in any prior right of the governed. Social rights follow only as a consequence of government (Whelan 1996: 23-5). Burke's idea of 'trust' conformed to a notion of necessary constraints on the way in which all power is to be exercised (Dreyer 1979: 45). Unchecked power over Indians abroad jeopardised British social rights at home (Mehta 2012: 167). Likewise, poor Chinese or Mexican labour conditions ultimately undermine current labour in the North.

For Burke (1775: 168), mankind did not follow a necessary "speculative principle, either of government or of freedom". Instead, he insisted, all government and human benefit is founded, artificially, in human history, on tradition and custom, on the mutual sympathy and trust of citizens, in conflict and in compromise. Burke neglects to reflect sufficiently critically on the historical function of dominant customs for systematic domination, exploitation and oppression. However, governments are commonly bound, by and large, to laws whose legitimacy is grounded, along with rational consistency, in common acceptance and precedence of judgement. Customs reflect the experience of a history of social interaction. Burke argues that it is better in government to gradually reform this wealth of experience rather than to follow some speculative doctrine on the demands of nature or reason.

The social rights enjoyed by Indians depended neither on essential features of personhood nor on natural rights, but on their actual subjection by Britain, the legitimacy of which depended on accountable British protection of these rights. The Burke scholar, Russell Kirk (1951: 442), emphasises that, in Burke, "one notes a certain reluctance to embrace abstract and undefined rights and a contrasting affection for prerogatives definitely guaranteed by prescription and charter". Burke argues that natural rights are naturally secure. Social rights, on the other hand, are expressly political. It is absurd to suspend our natural condition, only to secure it by political contrivance. In this respect, Burke writes,

Everybody is satisfied, that a conservation and secure enjoyment of our natural rights is the great and ultimate purpose of civil society; and that therefore all forms what so ever of government are only good as they are subservient to that purpose to which they are entirely subordinate. Now, to aim at the establishment of any form of government by sacrificing what is the substance of it; to take away, or at least to suspend, the rights of nature, in order to an approved system for the protection of them [...] is a procedure as preposterous and absurd in argument as it is oppressive and cruel in its effect (Kirk 1951: 444).

Burke argues in favour of a conception of social rights which are secured by some extant political authority. He dismisses the idea, in this instance, that political authority should be used to secure natural rights, which are naturally secure. Burke's views on trusteeship conformed to his wider conception of rights as inherent in society's life and practices. Rejecting natural rights as metaphysical nonsense, Burke carved out a unique conception of social rights, whose justification depends, first, on established custom; secondly, on the contribution made to the common good and, thirdly, on the civility of the community in which they emerged. In Burke's view, deducing practical political policies from abstract 'natural' principles was a precarious affair. Burke (1790: 310) writes: "Government is not made in virtue of natural rights. Their abstract perfection [is in fact] their practical defect". While, abstractly speaking, such principles might be good, they are nowhere to be found (Burke 1775: 120). Burke (1790: 313) famously stated in *Reflections* that "[p]retended rights are all extremes: and in proportion as they are metaphysically true, they are morally and politically false". He does profess certain usefulness to the idea of rights, but such rights are intelligible only in relation to civil society.

Burke's emphasis on the idea of the civil social man is crucial. He expounded a common nature in man, which was substantially adapted by history, religion, manners, habits, institutions and customs. 'The civil social man' is both a product of our own making and of circumstances. The question of the respect in, and extent to which we all share a universal nature is, for Burke, determined by this view of the civil social man and manners we share. Society's moral constraints are not underwritten by divine sanction or by a founding social contract. They are grounded in common sympathies that furnish us with the socially constructed rights that belong to civil society (Boucher 2009: 317-8).

Human rights may be grounded in overlapping social rights and customs on this basis, but not on any account of natural rights. Human rights may be construed, on this Burkean understanding of the normative basis of social rights, as those rights which are recognised in the customary law of all, or at least the majority

of human societies. Human rights may be artificially contrived precautions reflecting a common experience of habitual social interaction that leads most people over time to agree to certain reasonable behavioural regulations. The advantage of construing human rights as historically determined and politically contrived is that this avoids Geuss's criticism of human rights derived from a pure normative standpoint.

5. Conclusion

The aim of this account of Burke's eighteenth-century philosophical critique of rationalism and natural law was to identify an account of civil social rights that may do the work Lukes wants for universal human rights, but without the weakness of a transcultural, or culturally minimal pure normative standpoint. Instead, international human rights may be interpreted as global overlapping social rights, established by custom and politically secured, drawing on Burke's insight into the dependence of political legitimacy upon established customs. However, although it is a necessary criterion for political legitimacy, custom is not sufficient, since some customs, which arise in a divided society, may function for the abuse of power. Thus, I would argue for a complementary role for Socratic criticism, to continually question and test for consistency all commonly accepted human rights, which also satisfy some of Geuss's concerns. This reflects Aristotle's understanding of dialectic as a good form of argument to test conventional opinion for contradictions, appealing to the widest views on the matter; this is distinct from demonstrative argument which is used to provide incontrovertible, self-evident proof (Vlastos 1982: 712).

I disagree with Lukes that political rights ought to be grounded in a culturally minimal account of human nature, or in constitutive procedural conditions, appealing instead to Burke's view that political legitimacy depends on its ability to secure commonly accepted customs within its jurisdiction, customs established through a history of precedence and tradition, including ongoing struggles for legitimation over contested significances. Human rights are better understood as social rights determined by custom, secured by political authority and continually reformed through ongoing political struggles and critical legal contestation.

I draw on Geuss's criticism of the use of a pure normative standpoint in political theory to argue that Lukes' procedural liberal justification of universal human rights blinds us to historical political processes whereby such norms achieve practical significance. However, I disagree with Geuss to the extent that I am of the opinion that Socratic criticism suffers from similar problems. Unlike Geuss, I also believe that human rights hold practical value and credibility in real politics, and that their normative grounds may be better construed in a way that

avoids the weaknesses he identifies with a pure normative standpoint. Human rights are better understood according to Burke's notion of social rights, which are civil, not natural, but which still offer valuable criteria for legitimate social constraints, especially in situations of conflict.

I agree with Geuss that Socratic criticism offers a valuable alternative philosophical tradition to the pure normative ethical standpoint of philosophical ethics grounding Lukes' procedural liberalism, since it draws its norms for criticism from the situation at hand, avoiding the imposition of an ideal ethical universe of rational maxims on ill-suited practical contexts. But, Socratic criticism is parasitic; it needs a prior set of norms to work on. Custom provides this, and ensures that the outcome is not merely doctrinal, but reflects historical experience. Socratic criticism is a useful method for testing conventional opinion for inconsistency, but a dangerous method for the demonstration of revolutionary doctrine. Burke's notion of social rights avoids the historical blindness of a pure normative standpoint, since its premises are drawn from customary precedent, subject to ongoing reform. It also avoids blindness in Geuss's account of Socratic criticism to the role of the critic, whose active critical judgement in the selection of premises and framing of the argument exceeds mere identification of negation.

Austere Socratic criticism proves nothing but inconsistency in value sets and is unable positively to ground the value of any particular ethical principle or moral norm. I argue that the sceptical philosophical procedure of Socratic criticism depends upon prior established customs, not grounded by universal principles of reason, but by common precedent, balanced by critical reason. Socratic criticism is parasitic upon customs that would die a natural death without its reformative activity. It regenerates norms through ongoing antagonism and questioning, testing the vitality and coherence of social conventions and common intuitions, but it does not establish or secure norms in and of itself, nor their rightful application. Social rights are established through social engagement and practical historical experience. Social rights are not grounded in reason, nature, or the ontology of personhood, but in historical reason, common sympathy, common custom and the political and legal authority that secures them. Construing human rights as social rights satisfies the aims of both Lukes and Geuss, while avoiding the weakness identified with their positions. As Boucher (2011: 753) observes, "[i]t is widely acknowledged, sometimes approvingly, that international law and human rights law are fundamentally based upon and are codifications of customary international law". This interpretation of human rights, therefore, also enjoys the advantage that it is not simply an account of what ought to happen, but that it is based in the reality of what actually happens.

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