

## On Positive Rights and Duties: What Can “Thin” Universalizability Tell Us About the Moral Content of Educational Policies?

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### EDUCATION GROUNDED IN MORAL AGREEMENT

In a well-ordered society, goods (such as educational goods) ought to be distributed in a manner consistent with justifiable principles of justice. However, if our principles of justice do not tell us something meaningful about the moral features of such goods, it could be reasonably said that there is in fact no justifiable distribution at hand. If persons establish a principle of justice as worthy of recognition by all, this recognition must be grounded in jointly understood, convincing reasons. We can understand *why* the distribution is done only in terms relating to our understanding of what those goods represent. Otherwise, I may agree with you that we should abide by a certain distributive principle, but I may not share your reasons for adopting the principle itself.

The distinction between this kind of *moral agreement* and other types of agreement, or consensuality, is important to keep in mind when we consider questions about distributive justice and its relationship to educational policy. The kind of distributive principles that are set out in works by John Rawls are important because they attempt to express the moral character of the distribution of primary goods.<sup>1</sup> To read Rawls is to gain an understanding of the relationship between equality and freedom and the role that each plays in allowing every person to pursue one's chosen life-projects. The veil of ignorance is not a mere test for checking biases and identifying contradictions; in working through Rawls's procedure, one begins to develop an understanding of the wrong-making characteristics of distributive principles that are inequitable. Rawls attempts the tricky balance of justifying distributive principles of justice in a manner that tells us something about the moral nature of distribution itself, *without* relying on moral precepts that would exclude individuals who may have varying (but reasonable) conceptions of justice and morality.<sup>2</sup>

The same principle applies to actual institutions — the basic structures of society. Goods ought to be distributed through the schooling system in a manner consistent with principles of justice. Once this is done, we can say that that the distribution was a fair one, and schooling can then contribute to a just and well-ordered society. Schooling, along with health care, the judicial system, and so on, (ideally) plays a role in ensuring that persons in a pluralist liberal democracy can grow up to be autonomous persons who are free to rationally pursue their chosen conceptions of the good. Furthermore, controversial issues regarding the organization of schooling can be resolved through policies and norms that are either derived from or consonant with these antecedent principles of justice.

At least, this is one way of telling the story of justice and education. However, in this essay, I would like to make a case for why this approach does not account for the full picture of normative issues in schooling.<sup>3</sup>

## COMPLEX EQUALITY AND THE MORAL MEANING OF GOODS

Schools are institutions that are (ideally) formed through and guided by our most deeply held convictions about education. We might have a moral agreement on general political principles for institutions such as schools, but without some kind of understanding of the moral character of education itself, we might have difficulty in *applying* principles of justice in ways that make sense from the perspective of education as a moral practice. Michael Walzer comes to mind here, when he speaks of goods as representing a *social relation*:

Goods with their meanings — because of their meanings — are the crucial medium of social relations; they come into people’s minds before they come into their hands; distributions are patterned in accordance with shared conceptions of what the goods are and what they are for. Distributive agents are constrained by the goods they hold; one might almost say that goods distribute themselves among people.<sup>4</sup>

So, if there is in fact something like “educational goods,” the application of principles of justice would have to address what these goods are, as well as their relationship to the persons that will benefit from them. Recognition, socialization, human development — what do these things mean from an *educational* standpoint? Consider the distribution of access to computers by students — unless we understand the role that they should play in a child’s education, it would be difficult to make judgments about how that access should be distributed. Is the ability to use a computer fundamental for human agency in a modern context? Or is computer access of value because it promotes innovation? I think Walzer’s response is unsatisfactory, because the answer involves an endorsement of particularism: social meanings are historical in nature, and so the answer to questions about computers lies entirely in the value we place in such things at a particular time and place.

However, my objection is not with particularism as such, but with the fact that Walzer’s solution returns us to a familiar problem. On the one hand, we might agree on certain distributive principles. But these principles may be so “abstract” that they leave us with little deliberative direction. On the other hand, one can claim that issues of justice rest upon an unavoidable moment of judgment that demands a robust account of the particulars. However, this claim opens us also to equally familiar objections to particularism and relativism.

## “TWO-LEVEL” THEORIES OF MORAL JUSTIFICATION AND APPLICATION

This is sometimes characterized as a “two-level” problem for metaethics.<sup>5</sup> Namely, one could adopt a moral framework that provides general principles that support judgments at the “local” level. There are a number of potential objections to this kind of approach, and understanding many of the issues involved would require a discussion of complex questions of moral justification and application that cannot be addressed here.<sup>6</sup>

So I would like to put such questions aside (for the moment). By setting the issue as primarily a problem of abstraction versus contextualism, or universalism versus particularism, we miss out on important questions that need to be addressed about the moral nature of education itself. Specifically, it remains possible that the issue is not one of abstraction at all, but a failure to understand education as a moral

practice. To put it roughly, I would propose that the “object domain” of public education needs to be more fully understood in moral terms and, until this is recognized, principles of distribution will come across as crude or “insensitive.”

Earlier, I claimed that any application of principles of justice would presuppose some account of both the nature of an educational good and its relationship to the persons affected by that good. We can now restate this point: principles of justice address what goods for *schooling* entail, which is an institutional question. This *by itself* is a moral question, insofar as we are asking how we ought to distribute goods. But the relationship between these goods (and schooling practices, organization, aims, and so on) and the persons receiving them is informed by prior moral considerations, such as our obligations to those involved. I argue that these obligations are identifiable *regardless* of the character, time, place, or nature of the particular institutions involved, schooling or otherwise. This involves questions about what is moral about education, in the sense that there are certain ways that we ought and ought not to treat any person in a position of dependence and developmental vulnerability.

#### EDUCATION AND MORAL UNIVERSALISM

To ask such questions opens us up to strong objections concerning moral universalism. But unless we recognize the possibility of prior moral duties to those we presume to be educating, answers to questions about distribution may unwittingly trump other, equally important moral considerations. In other words, *if* there is a universalistic moral core to education (and here I am only positing it as a possibility), then this moral dimension will at least require significant modifications to whatever distribution we might typically recommend. For example, limiting the amount of additional resources that we devote to certain disadvantaged persons might accord with justice as fairness, but it may not accord with what we know about education as a distinct moral practice. Is it not possible that, faced with such a situation, we may recognize that a less “fair” distributive scheme is warranted, given our convictions about what education morally entails?<sup>7</sup>

Universalism is a contentious issue. But rather than engage in polemics about its cogency and value, what I propose to do is assume the possibility of a universalist position that aims to recognize the important issues raised by particularism. I then ask that we accept this account for the sake of the argument, and move on to see what this universalistic moral dimension of education should look like.

#### “THIN” UNIVERSALIZATION

I intend to provide a consideration of what I term “thin” universalization, which is represented by a number of contemporary Kantian moral theories. On this view, policies or principles are morally right if they can be universalized. Universalization intends to uncover features of practices that are uncompromisingly moral, and therefore obligatory. I select what I take to be the “thinnest” account of universalization and, with some critical modifications, show how educational policy and practice can be informed by a more robust moral framework. This moral framework may demand that we at least reconsider some features of distributive judgments.

I understand a “thin” universalist theory to be any moral theory of justification that aims to establish a procedure for testing the validity of a proposed policy or judgment, while reducing or, if possible, eliminating altogether the metaphysical, naturalist, or intuitionist presuppositions upon which universalization tests have typically been claimed to rest. I would include among such theories work by Jürgen Habermas on discourse ethics, Richard S. Peters’s procedural ethics, and Thomas M. Scanlon’s “moral contractualism.” Common across these projects is the attempt to modify Immanuel Kant’s Categorical Imperative in order to make universalization more plausible, that is, rendering it more in accord with our common intuitions about moral deliberation *without* investing any final moral authority in those intuitions. These projects differ most importantly on what they take to be the character of generalizable maxims or interests. Some theories hold that there are in fact certain maxims that identify moral duties that all can recognize as worthy (that is, moral duties that all can will, accept, or follow). Others, however, claim that Kant’s test is ultimately *prohibitive*, in that it can only identify impermissible maxims. These theories hold that all we are told by Kant is what we ought *not* to do, and only through the negation or inversion of this nongeneralizable policy do we establish our duties.

The latter criticism has important implications for the plausibility of universalization. Scanlon, for example, can claim that his account of moral deliberation does not appeal to implausible “conditions of rational agency,” but only to the authority of justifiability to others.<sup>8</sup> This is because the right- or wrong-making force of moral reasons rests upon those reasons not being reasonably *rejectable* by others (for Scanlon, the concept of a reason is the most fundamental normative category). Scanlon’s theory supposedly works because it does not require us to “accept” anything, in the sense that it does not force us to endorse a principle that we have to devote our life to fulfilling. We simply realize instead that there are some things that we ought not to do, and the impermissibility of these things sets out a framework within which we can act.

However, one can object that Scanlon’s framework relies on an unrealistic idealization of persons, where being moral ideally demands that one be able to *act* in a way that others cannot reasonably reject.<sup>9</sup> As Onora O’Neill puts it, “vindication of ethical claims cannot be based on the ‘demands’ of some supposed idealized or transcendent reality, or on the characteristics of particular agents, or on the features of certain social practices or institutions.”<sup>10</sup> Her alternative is to ground morality in the most inclusive and basic feature of action *itself*: human activity as a pragmatically unavoidable demand in the world that connects all agents.<sup>11</sup> Since morality is included within the scope of human activity, it can serve as the commonly shared basis against which our actions can be assessed. Rather than determine the scope of what counts as ethical based on potentially arbitrary presuppositions about moral agents, O’Neill claims that we can construct the moral domain through critical reflection upon the assumptions that we make about human activity. Human activity as a normative category is not arbitrary, but rather a real and unavoidable feature of the social world (*TJV*, 99–100). O’Neill makes the claim that moral authority is grounded on presuppositions that we must necessarily make when we act — when

I present a paper, for example, I must rely on others to be there to hear me give it. While this is in itself not moral *per se*, the assumptions I make when engaged in the activity cannot be dropped when ethical questions arise. I rely on others in order to present my paper, and I cannot deny this fact if and when a moral question is raised, such as the question of to what extent I ought to provide others with an equal opportunity to respond to my arguments. Accordingly, a moral principle is one that can be a principle for all. It *fails* if it cannot be acceptable to all, for its universal adoption would leave some unable to *act* (*TJV*, 163). This might open doors to the moral dimension of education because there may be certain aspects of education that are universalizable matters of moral obligation.

O'Neill claims that such moral principles can only *reject* maxims.<sup>12</sup> Here, moral universalism can ensure that individuals can conduct their lives *without* having to submit to an overly demanding conception of morality.<sup>13</sup> Furthermore, it allows moral considerations to enter the picture *other* than in the form of positional goods (such as educational goods?) whose viability rests on at least some persons *not* having access to those goods:

Some suggest...universalizability fails...only for principles that, for example, mandate unique successes or attainment of positional goods... However, universalizability fails for significant ranges of inclusive principles which have nothing to do with the unique successes.... Consequently rejection of non-universalizable principles can set demanding constraints. (*TJV*, 163)

These “demanding constraints” can be used to tell us important things about the nurturing of persons and educational endeavors without being uncomfortably prescriptive. As O'Neill says elsewhere:

Those who make indifference or neglect an *inclusive* principle<sup>14</sup> are committed not to help or to care for any others within the domain of ethical consideration to which they are committed. They could think of their principles of indifference and neglect as universalizable, only if indifference and neglect could be inclusive principles for all. Yet no vulnerable agent can coherently accept that indifference and neglect should be universalized, for if they were nobody would rely on others' help; joint projects would tend to fail; vulnerable characters would be undermined...education and cultural life would decline. (*TJV*, 194, emphasis in original)

Universalization thus understood provides a justification for educationally relevant moral obligations. Valid educational policies must always be informed by the following moral commitment: no policy can be proposed that, if adopted universally, would necessarily leave some with an inability to adopt that same policy or principle. For example, in our contemporary social circumstances, literacy is essential for providing opportunities for agency, and its denial would be a denial of a need that is necessary for such agency.<sup>15</sup>

Literacy is characterized here not as a good, but as an obligation to which persons have a right. While literacy itself is not universalizable *per se*, maxims that provide for development in ways that allow persons to act *are* universalizable. Consequently, educationally relevant rights and duties are established as morally obligatory in ways that coexisting principles of distribution would have to acknowledge. One could not justifiably say that sacrifices to the literate development of some

are justified only insofar as that policy works to the *general* benefit of the “least” advantaged. Literacy, in a modern educational context, is a policy that requires the recognition and treatment of all persons as ends-in-themselves.<sup>16</sup> As such, it is a policy that is nonnegotiable, and cannot be sacrificed to achieve particular (nonuniversalizable) ends.<sup>17</sup>

#### LIMITS OF NEGATIVE DUTIES

The case is not as tidy as this. A further objection arises, and its source resides in O’Neill’s construal of universalization in the prohibitive direction. Specifically, obligations of the kind that would be of interest to education cannot exhaustively be determined through the form of a justice-centered, principled morality. Because O’Neill’s principles of justice are grounded in a *rejection* of non-generalizable policies, justice cannot determine precisely what we ought to *do* in this respect. What about the right to receive care? The freedom gained by taking a prohibitive construal of the universalization test is earned at the cost of significant deliberative uncertainty when we think of morality in a positive sense. We ought not to deny others access to literacy, but having established this stricture, what is “best” to do, granted this fact?

The consequence is that obligations regarding human welfare do not result in corresponding rights. Individuals have no valid claim on others to provide them with basic needs:

Universal rights to goods and services, such as welfare rights, are in fact unlike liberty rights. It is true that rights of both sorts need institutional structures for their *enforcement*, but liberty rights do not need institutional structures to be claimable and waivable. (*TJV*, 131)

The concern I think O’Neill has in mind here is that we could have a situation in which an individual could make a claim on some other specific person that this person has a moral duty to provide basic literacy skills, regardless of the latter’s own projects, expertise, and life-plan. The claim of a right to literacy would be morally equivalent to claiming that you ought to help me if I am in mortal danger. Yet, we cannot reasonably expect everyone to drop what they are doing to meet the welfare claims of *all* others. Accordingly, O’Neill suggests that institutions such as schools need to be “carried,” so to speak, by fostering in the public culture certain social virtues that would encourage role-specific persons, such as teachers, to follow through on these nonclaimable obligations (see *TJV*, 184–209).

The result in some ways brings us back to where we began: the two-level theory. A generalizable principle that prohibited, for example, causing injury might inform certain educational policies. But, in reality, the level of abstraction entailed by the principle creates indeterminacies that makes the principle useless — the level of abstraction in the principle would tell us little that is meaningful about education as a practice, morally speaking. How, when, and why do I act on my social virtues? How do these virtues relate to justice, and how does this framework link up with the moral relevance of education? Schools might have a duty to provide literacy, but the reasons underlying that duty (the freedom to act, perhaps?) do not really tell us much about what is morally required by the policy from an educational standpoint.

Without this understanding, it becomes difficult to justify modifications to the distribution of goods in ways that do not come across as attempts to make schooling an exception to the general institutional rule.

However, I question the claim that the violation of a welfare right can only be an *actual* violation if it can be attributed to a specific institution. *Communities* can fail morally when they do not *establish* such institutions, for example. The wrong and right-making characteristics of policies, individually undertaken or institutionally formulated, lie in the *reasons* used to justify them. The intelligibility of a maxim rests on such reasons. I can observe you acting, but I cannot morally evaluate your action unless I understand your intention, your means, and your end. I see you refuse to help a child with her reading. There is a world of difference between refusing to help because you think that as a *general* policy the effort is best spent on more talented readers and for the greater good, on the one hand, and, on the other hand, refusing to help because you believe that the child has reached the stage where he or she needs to try to read on her own, at least for a while. While the latter maxim may be universalizable, the former may not. What remain unclear are the *reasons* why the former policy is nonuniversalizable. The rejection of a maxim or policy must be based upon reasons that are intelligible and explain what is morally wrong about the proposal.<sup>18</sup> O'Neill's approach, while perhaps an effective heuristic for the testing of maxims, does not meet this criterion when we look to gain a moral understanding of educational practice.

Some headway could be made if we overturned the very premise that limits universalization as rendered: morality is primarily *prohibitive*. Adopting moral principles *only* in the form of what one ought *not* to do is appealing because of its determinateness. Accordingly, this kind of principle is easier to apply to concrete situations, and avoids many of the confusions often attributed to positive duties. As Jürgen Habermas puts it:

Their *relative* freedom from the burden of problems of application establishes at most that negative duties enjoy a heuristic advantage, not that positive duties should be completely excluded from the sphere of what is morally justifiable, for problems of application can never be entirely ignored in the case of negative duties, either.<sup>19</sup>

According to Habermas, the appeal of negative duties is reinforced through an overly individualistic conception of the person that connects morality to freedom of action and rational choice. That people could coordinate their actions and come to an agreement on what they *ought* to do in a positive sense is, on this view, too burdensome and unrealistic, given the many competing self-interests between atomistic selves. Clearly, such a conception would make the construction of a universalistic moral framework for education a difficult one, because education is inseparably connected to processes of socialization and development, and nurturing and care, that go beyond prohibitions. But we do not have to adopt this conception:

The integrity of the individual person, which calls for equal respect for all, cannot be safeguarded without simultaneously safeguarding the social fabric of relations of reciprocal recognition. Just as justice and solidarity are simply two sides of the same coin, so too negative and positive duties spring from the *same* source. If right and duties are to foster the

integrity of individuals who are by their very nature socialized, then the constitutive social context of interaction is not something secondary for those whose lives and identity are made possible and sustained by it. *Omissions* are no less a potential threat to person integrity than injuries actually inflicted.<sup>20</sup>

“Thin” universalization can do more than reject principles. Universalization tests can identify positive duties not only with respect to goods such as health care and food, but also to enable certain practices of socialization that are necessary for individuals in the course of their becoming persons. While this does not obviate the value of “social virtues,” it does suggest that there *are* positive duties (and, thus, corresponding, claimable rights) for reasons connected to the kind of active care and protection to which all vulnerable persons in the human community have a right. These questions are indeed more taxing in a deliberative sense — once justified, who is to carry out these positive duties? When is it appropriate for them to be exercised? How much effort meets our obligation? These are difficult questions of application that cannot be resolved with the same determinacy as a general prohibition such as “One ought not to hit children.” However, the fact that positive duties are deliberatively complex does not mean that such duties are neither justifiable nor inapplicable.

Educational policies, like individual maxims, are justified on the basis of reasons. Sometimes these policies will be in place in order to help get the daily business of institutions done. Other policies will work toward the equitable distribution of increasingly scarce resources. However, still other policies will be informed by moral agreement, where we recognize that there are rights and duties that should protect all persons in an educational process — both as developing individuals *and* as equal members of the community. The character of these policies will involve a great amount of public deliberative work and a strong commitment in the public culture to a just education. Regardless, any morally valid approach to the development of vulnerable persons can only proceed if we continuously emphasize that the moral dimension of education is a field of practices and relationships, as indeterminate as that moral dimension may yet seem at present.

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1. See John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005).

2. *Ibid.*

3. Few accounts actually pursue such a comprehensive project. However, I think that putting such a strong emphasis on political principles may in fact overshadow or oversimplify complex moral issues pertaining to justice in education.

4. Michael Walzer, *Spheres of Justice* (New York: Basic, 1984), 7.

5. Thomas Hill, *Respect, Pluralism, and Justice* (Oxford: Oxford University Press, 2000).

6. But see Klaus Gunter, *The Sense of Appropriateness* (Albany, N.Y.: SUNY Press, 1993) and Jürgen Habermas, *Justification and Application* (Cambridge, Mass.: MIT Press, 1993).

7. Obviously, there may be practical limitations involved. But is it not better to acknowledge the obligation first, *then* acknowledge the practical limitations, and, finally, given these limitations, ask what our duty now is in light of *that* situation.

8. Thomas M. Scanlon, *What We Owe to Each Other* (Cambridge, Mass.: Harvard University Press, 2000), 6.



9. *Ibid.*, 168–169.

10. Onora O’Neill, *Towards Justice and Virtue* (Cambridge: Cambridge University Press, 1996), 125. This work will be cited as *TJV* in the text for all subsequent references.

11. “What is assumed for purposes of activity must also be assumed in fixing the scope of ethical consideration” (*TJV*, 106).

12. The key principle here being rejection of injury. See *TJV*, 164–166.

13. Her concerns are laid out as follows: “Commitment to non-injury calls for living in ways that always favour non-injury over injury...Committing to rejecting injury demands less: it is not a matter of making a *principle of injury* fundamental to lives, institutions or practices” (*TJV*, 166, emphasis in original).

14. By “inclusive principle,” O’Neill means that a principle has the scope (or cosmopolitan character) to apply to all persons. See *TJV*, 28.

15. Barbara Herman, *The Practice of Moral Judgment* (Cambridge, Mass.: Harvard University Press, 1996), 204.

16. Let this not be taken as an attempt to universalize literacy itself as a policy. The maxim being universalized is one of the provision of capacities to be able to act within one’s social context, *not* literacy *itself*.

17. The obvious objection is that principles of distribution that are just *are* universalizable and therein lies their validity. This is true, but the scope of these principles is limited to obligations regarding *questions of distribution*. Educationally relevant obligations are not about distribution in the first instance; distribution questions do not come into play until we *recognize* the moral obligation to literacy, but have limited resources with which to practically meet this obligation. (There is no conflict-of-duty problem here.)

18. Herman, *The Practice of Moral Judgment*, 140.

19. Habermas, *Justification and Application*, 65 (emphasis in original).

20. *Ibid.*, 67–68 (emphasis in original).