

RESPONSES TO TRACK FOUR

Paul Bernal is right to call what we have been covering in this track a 'very very difficult subject'. Where is the truth in human rights? Once you give up the short cut of religion, the ladder in the game of foundations that takes you from one to one hundred in one go, how can you avoid sliding down various snakes into irretrievable confusion and uncertainty? Should you avoid this? I'll be returning to religion soon when I'll certainly be thinking hard about what Paul, Ronan McCrea and others of you have said.

But without religion I know that some of you doubt the whole point of what this track has been about.

- to Paul it 'goes against the grain of what I have been taught'.
- For Zoe Fiander 'its extremely tenuous'.
- To Alex human rights are 'just the result of our social reality and necessity' – what matters is the 'socialisation of the animal' and if we have equality it's not on account of some pre-wired truth but rather because it is 'vital to the continued stability of our society.'
- Along similar lines Holly Bontoft thinks that our 'basic ethical impulse' makes good rational sense, allowing all to participate and so 'enrich society', and so reason can continue (I guess Holly is saying) in the driving seat.
- Joe Hoover alerts us to 'the danger of the appeal to science as an appeal to a determinate human nature.'

I am acutely conscious that all this talk of foundations seems at times to be rather, well, as Joe puts it rather 'naively' done. Your responses have convinced me not to expect too much from nature – more on this later. And even if it all worked, I am concerned, reading what you have said, that it might be pushing us in a very mechanistic direction, towards the human as a kind of slot machine spilling out the actions that DNA has slotted into the Gene Machine, an unattractive – and inaccurate – model of humanity.

Maybe we should just stop there and work with what we have got, the humans we happen to be without probing into inaccessible (and maybe even non-existent) inner truths.

The trouble is I just don't think we can afford to.

If human rights are 'manifestly there' as Renjini puts it, we need to probe into this, asking what they are and where they come from. Others will step into the space we have chosen to leave, blowing what is the by now anchorless ship of human rights in directions of their own choosing. The term just doesn't have enough ethical ballast within itself to resist this, to keep things on an even keel: it needs navigatory aids that are outside itself, that drive it in the direction that Craig Valters says is what makes the whole project of human rights worthwhile for him, the making of the world into a better place. Otherwise those 'darker instincts' mentioned by Craig might seize control.

In my essay I hedged my bets a bit, both declaring my belief in the moral authority of my benign version of the natural and also saying that even if it isn't true we should believe it anyway.

As I have hinted just now, I think your responses have pushed me towards the second of these with the first being maybe not necessary and also very difficult.

But the first is necessary to a successful deployment of the second, I am sure of that.

Let me take each point in turn.

DEPENDING ON DARWIN

It's my argument about nature that worries most of you. There are three aspects to your anxiety as I read the responses:

- this dependence on nature is ill-judged and over-done, altogether too simplistic in its fandom of science it doesn't understand (I am being harsher on my self than any of you were).
- even if nature is to be allowed to set the pace, there is plenty of horrible nature out there ready to step in and take over from our benign but weaker bits, Damien's 'other unpleasant ideas' that 'must necessarily be also admitted'. As Paul puts it there is something 'almost genetic about selfishness, about greed, about seeking to blame others rather than help them'. Sebastian calls them these 'nasty competing instincts' that force their way in with the nice bits of nature we want to admit. Joe notes many 'nasty human behaviours with a "natural" basis.'
- To say something is natural is not to say it is good. You can't deduce an 'ought' from an 'is' like this – it is the famous [naturalistic fallacy](#).

Let's take each of these in turn

NURTURING NATURE

So far as depending on nature is concerned, I am with Louise Thomson that here is an area that cries out for proper discussion. Yes the work of sociology is important and we must not lose it. And yes nature has done some bad work in the past. No we don't know everything and never will, especially if that 'we' is people like me, ie not schooled in science. But we must not run away. Louise bravely talks of Einstein and Newton and gives us a series of fascinating leads, while also calling for the study of altruism the way we presently study atrocities. Joe gives us a glimpse, I think, of how it could be done. It may be best achieved collaboratively and via inter-disciplinary partnerships that have learned to share a common language (and I'd say, values as well).

Let's not turn away from the better side of our nature!

And if this takes us beyond reason (as I suggest in a way in my essay) let's not be afraid of that either. Maybe we end up with Sebastian 'listening to our hearts'. Or maybe we find with Louise that 'love and the ethic of mutual respect might be clues to the meaning of the universe' – okay ambitious I know –

But the key thing here, it strikes me, is to have our ears opening to the possibility of more than conventional reasoning supplying the answer to that enduring question about the space between thoughts and action in which 'mindless' (?) generosity and hospitality thrives.

COMPETING NATURES

Sure, nature comes in many shapes and sizes, not all marked good. In Sebastian's neat phrase 'we are fundamentally fragmented beings' with different natures jostling within as well as around each of us.

The question is which is to succeed, to gain traction, to become the norm. Here we must not ignore the power of culture and of law. This is why I talked in my essay about the need for commitment checks to keep our preferred version of natural good at the forefront of all our minds, even when nature drifted in other more malevolent directions.

When Charles Darwin's ideas first became well-known, the rich and powerful seized upon aspects of it and aided by intellectuals like [Herbert Spencer](#) contrived a movement, [social darwinism](#), which effectively transformed the 'survival of the fittest' into a moral goal: I remember being struck when reading Ron Cherow's biography of [John D Rockefeller](#) by quite how much of a fan of Darwin this first of the great financial oligarchs actually was.

Progressives need to be just as ambitious in their story-telling, albeit in a diametrically opposed way, drawing out of Darwin's observations as they have been developed and supported over time a solid grounding for that 'ethical impulse' which Holly has noticed and which many of us feel to be part of the way we are. Does it need to be 'true'? (More on this in a moment.)

'BEING' IS NOT 'BEING RIGHT'

All this talk of nature being good or 'malevolent', bits that are right, bits wrong and so on – naive poppycock, I hear some of you say!

One of the most convincing criticisms of social Darwinism is the naturalistic fallacy – you cannot simply say something is, and because it is, say it is therefore a right and good thing to do.

Progressives used this argument to show that even if there was something true about 'survival of the fittest' it didn't follow that such a brutal approach to the world was therefore good and right.

Can the same criticism be made of our commitment to the ethical impulse? Just because we have such an impulse (to help, to feel the suffering of others, to empathise) does not mean that it is ethical in the sense of right or good.

It strikes me that Anthony has had many really important things to say on an issue which has been neatly summarised by Paul as the 'relationship between what we naturally "are" and what we "should" be.'

We are a jumble of predispositions, individually and collectively. None of these is right or wrong as such: they simply are, for now – Joe reminds us that these can change over time. Anthony has persuaded me that we do need what he calls a "vision of humanity" to say which is which. With Favio Farinella we must be able to describe this vision, our project of human flourishing, as 'superior

to any other form of relationship to our fellow human beings'. Once we are sure we think this, we can hone a theory of justice which allows us to *enforce* our view of what is right (equality; universal dignity) on those who disagree: Anthony again. This is why Carol is right to say that we cannot 'escape from class interest and vested interests' and why minority rights need sometimes to be rejected as spurious despite their claim to be rights.

The bits of us we favour – the compassionate, the caring, the empathetic – are the parts we *ought* to favour because they promote the vision of humanity we have which we believe better than any other and for which we argue and towards which we strive. This is in Anthony's words 'the compelling moral vision that sits within those reasons which is what keeps us going.'

There you are: a theory of justice dividing the various 'is' and 'oughts' into good and bad bits. No naturalistic fallacy there, simply a 'reason why we should remain empathetic and caring, rather than make ourselves cruel and viscous' (as Joe puts it).

OR IS IT?

Paul asks a pertinent question: 'who sets the standards and what are they based upon?'

I could go further:

- What causes some of us to embrace this moral theory and others of us to reject it?
- In what is rooted this vision of humanity?
- Is our sense of which of the multiple facts about ourselves 'ought' to be followed and which should not itself informed by some facts about us – about our genetic make-up, our social circumstance – facts which we do not choose but which are simply part of us?

Maybe there are these macro-facts about us, rooted in culture and nature and yes (a subset of nature) free will, which determine/affect/influence where we get our ethical structure form, the moral code dividing the world of facts into good and bad.

Though I am strongly with Anthony on the need for a vision for humanity I cannot see how this can come from anywhere else apart from what we are. We promote this 'is' as an 'ought' because of who and what we are – a bundle of natural elements caught up in a certain socialised context that informs but does not predetermine how we think: free will occupies that mysterious space of which some of us seem capable, nature defying nurture.

Here we are at what Carol calls the 'limits of current knowledge'. We are back with Sebastian's idea to start 'listening to our hearts', with Louise's ambitions for universal meaning, we are with Jose-Manuel Barreto in suggesting that we should replace knowledge, truth and objectivity with sympathetic feelings for others rooted in hope and freedom.

AND MAKING THINGS UP EVEN IF WE DO NOT BELIEVE THEM?

Damien Shortt takes me to task for thinking about not carrying on with the Enlightenment project of perpetual unmasking – the alternative is, he thinks, a 'moral quagmire'. Quite possibly. Maybe

though it's a choice (as so often) not between clarity and confusion but which confusion you would prefer to be in.

Joe's use of the great [John Dewey](#) is really helpful here. To Dewey, ethics was 'a process of self-conscious social learning aimed at realizing our best visions of ourselves.' Dewey took this 'to require giving up what he called the quest for certainty in the realm of values, either in terms of universal and final principles, a universal end toward which all humanity does/should tend or even universal accounts of human nature, whether they led to utopianism or immoralism.'

Richard Rorty was a great enthusiast for Dewey – it's through reading Rorty I first found Dewey. I wonder whether Dewey would have embraced the story-telling power of human rights even though its strength lay precisely in its universalism – would Dewey have pragmatically chosen apparent universalism on account of its demonstrated capacity to make life better? (I know Rorty's answer was no because towards the end of his life commenting on a piece I had written along these lines he told me so: *Can Human Rights Survive?* was a book I wrote with him in mind – I asked him to chair one of the lectures which was to form the basis of that book but by then I think he was travelling only rarely and wasn't able to say yes...)

But here's a lawyer's thought –

I argued it once in relation to the existence of God but it works here as well, I think. Law never talks about truth, only about burdens of proof.....

Here goes:

What matters is not what is true but who has the burden of proving truth/disproving untruth. We believe there is a mysterious core of sympathy, compassion, solidarity and empathy within us, some bit of us unattainable to reason (though music and poetry reach it and fabulous actions manifest it from time to time) which has fuelled those facts about us that we call good and kind and right, and that therefore we also call true (factually and morally). The benefits of believing this are so obvious from a rational and societal point of view that we have created structures to preserve it (those commitment checks again).

One such structure should be now simply to say that those who would deny all this need to discharge a burden of proof which is at least on the balance of probabilities.

Before they do their damaging, truth-find destructive work, they must show us we are wrong, and persuade us on the facts!

In other words our starting point is yes to this moral truth, the onus not being on us to prove this but on others to disprove.

AND FINALLY THE LARGE GAP THAT NEEDS TO BE FILLED

Joe says that he finds 'the most promising aspects of [the] project thus far ... are those that emphasize that human rights are an active political project.' Favio reminds us of what is missing in all this discussion about fundamental are 'real, effective rights [being] claimed by poor peoples'. Too much of a preoccupation with kindness and empathy might suggest that our story is really charity-in-action and not much more. That would be a disastrously narrow reading. Also as Joe says it would never happen.

Struggle, solidarity and action are also part of the story. We saw this in [Track Two](#) and we return to it in [Track Five](#). A quick preview:

Human rights is not only (or even mainly) about giving; it's about taking too, for oneself, one's people and at times one's race, gender and ethnicity as well.