ALSP Warwick, 2011 Abstracts: listed alphabetically by author's surname

Yann Allard-Tremblay, University of St Andrews/Stirling

The Authority of Epistemic Democracy

The task of explaining the authority of a decision-making procedure in the face of extensive reasonable disagreement is often achieved by relying on some moral feature of the said decision-making procedure. It is my contention that the approaches following this trend all fail to provide us with cogent reasons to regard any given decision procedure as appropriately authoritative. I argue that to be properly authoritative and to succeed in its function, a decision-procedure must meet (at least) two challenges of coordination; I further argue that epistemic democracy can meet these challenges. The first challenge is rational motivation; for a decision to achieve its aim of coordinating behaviour the said decision must be regarded as (somehow) a correct decision. I argue that epistemic rational motivation is the appropriate way to understand rational motivation inasmuch as it allows meeting the second challenge of coordination: that is the challenge of reasonable disagreement. If the decision-procedure is to achieve coordination, it must provide the agents with a decision that can bridge their disagreements over what ought to be done. This cannot be achieved if the justification for the authority of the decision procedure is founded on something over which the agents disagree in the first place such as equality of fairness. I argue following the pragmatist argument for democracy that epistemic democracy can rely on a justification to which agents are already committed: they are committed to the truth of their beliefs. The justification should thus meet the second challenge. Epistemic democracy would therefore appear to have a serious advantage over other accounts of the authority of decision-making procedures.

DAVID ALVAREZ, UNIVERSITY OF VIGO (SPAIN)

THE LEGITIMACY OF RINGFENCING COOPERATION:Global Justice, Democratic Legitimacy and the Instrumental Conception of International Law.

This paper explores the legitimacy of subtracting the national fair share of global development cooperation from democratic politics. "Ringfencing" could be interpreted as the constitutionalization of potentially unpopular transfers when democratic systems are designed to advance national interest. The debate over "ringfencing" the cooperation budget questions the implicit presumption that nations are entitled to the resources they control and that domestic interests take precedence over international duties.

(1) First, we examine the challenge that this domestic bias poses for two different conceptions of the legitimacy of the state: (1.1) For Raz, the authority of domestic law rests on the epistemic presumption that it promotes the citizen's best interests and so it works as a second order reason congruent with the agent's first order reasons for action. (1.2.) Under Christiano's conception of democratic authority, public equality in decision making is justified because each person has an interest in making his social world, to some extent, a home for herself, and public equality enables people to see that they are not being governed by the interests and cognitive biases of others. However, the procedure of democratic deliberation and law enactment is systematically biased towards national interests and promotes the avoidance of foreign commitments. (1.3.) If this is the case, then citizens with cosmopolitan or liberal internationalist ideals are being governed by the epistemic biases of others or by deficient reasons for action. (2) Second, we suggests that the institutional implementation of "ringfencing" could also be justified as a de-biasing mechanism in democratic deliberation. Parliaments can discuss how the cooperation budget is invested and track the performance of the different agencies but they can't withhold the national contribution.

Chris Armstrong, University of Southampton

Beyond national control over natural resources

How should we allocate rights over natural resources? Within international law, the powerful convention of 'permanent sovereignty' allocates ownership over resources to the nation-states in which they lie. But if we investigate the various possible justifications for this convention, they prove to be inadequate to the task of supporting nation-states' enjoyment of exclusive rights over all resources. National control over resources is therefore a politically and legally powerful convention, but a philosophically very vulnerable one. This paper begins by setting out a conceptual framework for theorising about resource rights, before examining four arguments in favour of national control over natural resources. While some of these do highlight criteria which ought to be relevant to the allocation of resource rights, none of them is sufficient to justify exclusive national control over all resources. Each of them could be satisfied by a 'dispersed-rights' regime where rights to use, access, manage and derive income from natural resources were devolved both upwards and downwards away from the nation-state. The final section of the paper argues directly that if we take justice, conservation, and any claims based on either attachment to or improvement of natural resources seriously, then a dispersed rights regime would be optimal. Indeed we have good reason to hope that the doctrine of permanent sovereignty will be seriously eroded in the future.

Gustavo A. Beade, University of Kiel

Criminalizing poverty

I assume here that the modern criminalization's debate -the *over*criminalization debate- is always surrounding the plausibility of the enforcement of this new legislation and the authority of the State to restrict *civil rights*. In this paper, I will suggest another view of the same problem: *the limitation of access to social rights through the criminal law*. My aim is to show how this could be possible by criminalizing conducts with the ambition of limiting the access to social rights through the use of criminal legislation addressed to disadvantaged groups. I briefly expose the situation in which disadvantaged groups, e.g. poor and immigrants, live in contexts of inequality and describe their relationship with the criminal law. I then examine how criminalization is used to limit the access to social assistance of disadvantaged groups and argue that in some special and extreme conditions of poverty, deprived people could disobey some legal rules, particularly criminal legislation

Jessica Begon, University of Sheffield

Capabilities Without Paternalism: A Dilemma for Nussbaum and a New Capability Approach

The capability approach (CA) aims to ground universally applicable political principles, which nonetheless enable individuals to lead lives they choose for themselves. The CA is thus motivated by a dual concern: to avoid cultural relativism (thus promoting universal norms); but also to promote individual autonomy, and so ensure these norms are instituted without paternalism.For a capability theorist, then, a state may legitimately interfere with individual lives only insofar as it continues to protect spaces in which people can pursue their own conception of the good. In the first half of this paper, however, I will argue that the CA, as it is currently construed by Nussbaum, fails to avoid paternalism in the attitudes and policies it advocates. These problems arise from the method by which Nussbaum identifies universally important, or 'central', capabilities: she derives them from an overlapping consensus regarding the functionings (things we can do or be) that are central to a dignified human life. Thus, it is from a particular conception of a flourishing life that we derive a list of important capabilities. This underlying attachment to the importance of certain functionings leads to Nussbaum disqualifying some individuals as human, applying paternalistic normative evaluations to the behaviour of others, and in some cases, even enforcing acceptable standards of behaviour. Such moves toward paternalism threaten the major benefit of the CA, as a liberal theory: that it enables people to live the life *they* choose. In the second half of the paper, I will sketch an alternative version of the CA which is not subject to these problems. Briefly, this is the idea that we should have the capability not for particular functionings, but to exercise control over certain parts of our life. This alternative approach provides a more promising way of devising un-paternalistic universal norms.

Keith Breen, Queen's University, Belfast

Law beyond Command? An Evaluation of Arendt's Understanding of Law

The chief objective of Arendt's thought is to counter the venerable assumption that politics equates with domination by effecting a fundamental revaluation of political life. At the heart of this lies the idea of law. Just as philosophers have misconceived the basis of political life, so too have they misunderstood law. Indeed, the traditional 'imperative' concept of law reinforces the prejudice that collective action is a matter of domination because it understands law in terms of commandment and sees law as requiring for its authority a sovereign absolute whose will is deemed unquestionable. Hence Arendt's turn to alternative conceptualizations of law, to the Greek notion of *nomos* and the Roman idea of *lex*. As she sees them, the Greek idea of law as setting boundaries and the Roman view of law as establishing relationships differ significantly from law understood as command. In returning to them, Arendt therefore hopes to sidestep the embrace of violence that has been axiomatic for Western thought.

This paper offers an assessment of Arendt's retrieval of *nomos* and *lex*. It begins by exploring the context of Arendt's reflections on law, focusing on her distinction power and violence, and also on her account of the traditional concept of law. This leads to a discussion of *nomos*, the originary act of delineating the contours of the polity, and of *lex*, the mutual establishment by citizens of appropriate modes of being-together. Of particular significance here is Arendt's account of the American Revolution and her claim that the 'founding fathers' succeeded by rejecting the assumptions underpinning the traditional understanding of law, in particular the idea of sovereignty. However, this claim should be treated with scepticism. While much can be said for Arendt's account of constitutional beginnings and law, there is good reason to question whether she has in fact freed law from the problems of sovereignty.

Audrey Cahill, National University of Ireland, Galway

Mind the Gap - Social Justice and Childhood.

This paper claims that a just society ought to encourage deeper responsibility with respect to childhood given that it is such a crucial stage of human development. The arguments for this are based on what we refer to as the circumstances of childhood: externalised responsibility creating unjust inequalities which are likely to propagate throughout the entire life. These inequalities can be coarsely categorised into three distinction groups: choice, resources and opportunities. What makes inequalities unjust is the child's limited capability to influence these spheres of life coupled with the idea of propagation. While childhood inequality may been seen as an unavoidable condition of life, having the bad luck to be born in the wrong place or time or to poor parent can hardly be termed as just. This paper will argue that in order for theories of justice based on egalitarian ideals to be operable some reasonable levelling of childhood inequalities must take place on a continual basis.

We claim that the leading liberal theories of justice fail to do just this. The resultant paradox is that while most theories of justice have an egalitarian leaning which requires equality among its adult participants they also include a counter intuitive inability to fully account for the inequalities of childhood.

The paper then explores whether Brian Barry's justice as impartiality can better account for the importance of childhood. Determining what represents a just inequality seems to be an impossible task. Having made the case for what justifies an unjust inequality it may be more useful to consider limiting unjust inequalities. In this way the gap between the haves and the have-nots becomes the comptroller of unjust inequalities thereby providing the levelling potential missing from leading theories of justice.

Gideon Calder, University of Wales, Newport

Non-Kantian Deliberative Democracy

Deliberative democracy, in its various forms, has come to dominate the landscape of recent democratic theory -- especially in its most innovative moments. In some respects, such work represents the culmination of nuanced thinking about what makes a decision *democratic*, as opposed to something else. Yet in other respects it can seem curiously one-sided, favouring idealised models and pure resolutions in ways arguably dislocated from the inevitable mess of 'real politics'. To this extent, there is a kind of sociological deficit in many notions of deliberation -- and a presumption that whatever the complications posed by the uneven dynamics of political decision-making as it actually takes place, these might be resolved, or compensated for, purely by the introduction of appropriate procedures for democratic decison-making. In this paper I question this presumption, and attribute it to the predominantly Kantian flavour of the major recent contributions to deliberative democracy, from Rawls and Habermas down. I argue that these accounts presume that democratic procedures themselves might guarantee a kind of equality of 'illocutionary force' among the speech-acts of differently situated citizens. This presumption is unwarranted, for reasons which are sociologically non-controversial and politically of great significance. I consider the scope for alternative models of deliberative democracy which stake less on processes of public reason, admit and accept that factors other than reason will inevitably contribute to decision-making, and accentuate the place of listening (alongside speaking) in the deliberative process itself. Such models, I suggest, are both more accurate as a depiction of decision-making, and more defensible in normative terms.

Amanda Cawston, University of Cambridge

Do we have a Right to Self-Defence?

It is generally assumed that we do have a right to self-defence, though there is considerable disagreement concerning the content of the right, and what can be justified in virtue of it. Much of the work concerning the right to self-defence can be divided into two fields of inquiry: 1) formulation and 2) application. Importantly, the formulation stage is thought to be prior to, and distinct from, the application stage. The thought is that if there is a right to self-defence, it will be universal, fundamentally tied to the nature of an individual as distinct from her circumstances and her relations. Debates over particular applications (for example, whether specific wartime acts can be justified in virtue of the right to self-defence) are questions of whether the conditions of the right have been met, not whether the right itself exists in that case. Andrea Sangiovanni challenges this traditional approach to rights, arguing that the conditions of implementation can serve as justification for our moral principles rather than simply constraints on their application.

Sangiovanni's approach however, is on its own, incomplete. I will first propose a modification of his method, arguing that one must analyse the possibility of justification with respect to a specific conception of the right rather than the general concept. Utilizing this modified Sangiovannian approach, I will argue that, rather than applying universally, a minimal conception of the right to self-defence is not justified at the international level. This is not the claim that the types of actions that are central to war are not relevantly similar to the individual cases discussed when formulating the right, but rather that individuals do not have the right to self-defence outside of the relevant institution, which I claim is limited to the modern state.

Emanuela Ceva, University of Pavia

Beyond legitimacy. Can proceduralism say anything relevant about justice?

This paper challenges the claim that proceduralism can say something relevant about the legitimacy, but not the justice of a polity. It is often argued that whilst legitimacy has to do with the mechanisms through which political coercive decisions are made (who exercises authority and how it is exercised), justice is more a substantial matter concerning the terms of social cooperation, against which the qualities of the decisions made by those who are entitled to make them are to be evaluated. Accordingly, the argument goes, an approach focusing on the qualities of procedures seems to be more appropriate for legitimacy than for justice. I contend that this characterization is inaccurate for it mixes three different issues which require, instead, separate

theorizing: (i) who is entitled to make politically binding decisions? (ii) How should political decision making processes be structured? And (iii) how should political decisions be evaluated?

I argue that considerations of legitimacy apply to level (i), whereas considerations of justice apply to levels (ii) and (iii). Although the appropriateness of a procedural approach to the justice-related question in (iii) is debatable, proceduralism seems well-equipped to provide a sound answer to the, equally justice-related, question in (ii). It does so by focusing on the way in which persons should be treated by the procedures through which they interact, once all issues of entitlement are set (i) and independently of the outcomes of the interaction (iii).

Nicolas Cornell, Harvard University

Wrongs without Rights

There has been a recent philosophical interest in the idea of wronging — that is, the idea that one may not simply act wrongly, but wrong another. Michael Thompson and Stephen Darwall, for example, have emphasized the way that this idea suggests that moral duties are owed to others. Philosophers of all stripes, I suggest, operate with a pervasive underlying assumption that having a right and being wronged correlate with each other, as flip sides of the same moral coin. To have a right is to be the person who would be wronged by an action, and to be wronged is to have a right that has been violated.

This paper presents an argument that this assumption is incorrect. The paper presents a series of examples to show that someone may be wronged even when he or she has not had any right violated. This is true because one may be wronged by the way someone acts with regard to someone else. Third parties often have a stake in the way that we treat another, and this stake means that third parties may be wronged even though it is implausible to maintain that they hold any right in the matter. For example, the mother of the victim of a negligent driver is wronged, I argue, although she does not have any right that is violated. The paper concludes by sketching the significance of the distinction between having a right and being wronged to two contexts. First, the distinction potentially sheds light on the academic debate between interest theories and will theories of rights. Second, the distinction has significance to practical arguments that invoke the language of rights.

Raymond Critch, University of Vienna

How Legitimation Works

Abstract: Recent work in political theory suggests that the uses of legitimation in this field are irreconcilable with its other uses. I disagree, and present a unitary account of legitimation that can explain its many uses in political philosophy and also its more general uses, along with two distinctions that I think explain why the different applications of legitimation look like different concepts. I argue that the core of legitimation should be understood as an extension of value from a legitimator to the object of legitimation because of conformity of the latter to the value of the former. In the opening section I explain how its three main features – relationality, affirmitivity and due to conformity with the value extended – function. The first of the two distinctions the distinction of valence, arises from the different ways in which something can stand in a relation of conformity with another. Some legitimators are negative in that all that is necessary for conformity is non-contravention. This is a passive form of legitimation, while other legitimators require some activity on the part of the legitimator and/or the object of legitimation before extending value. I call these negative and positive legitimation. The second distinction is that of finality. This distinction affects the extent to which a legitimation is an overall declaration of legitimacy. Legitimations can be prima facie, pro tanto or ultima facie. An object is prima facie legitimate if it receives value through conformity with any one legitimator. How prima facie legitimations interact determines whether they are pro tanto legitimate – where the balance of legitimacies and illegitimacies determines legitimacy – or ultima facie legitimate – where accord with all relevant legitimators is necessary. I show that this concept of legitimation can explain all the many uses of legitimation, thereby proving that there is a unity to the concept.

Yuval Eylon (co-author - Alon Harel), The Open University of Israel (The Hebrew University in Jerusalem)

Rights, Reasons, and Legitimacy

Rights are privileged reasons (e.g., exclusionary, trump consequences). Thus, if legitimate authority depends on respecting rights, which in turn requires that rights enjoy privileged status in deliberation, then legitimacy depends on rights enjoying privileged status in deliberation. In this paper we pursue an analogy between reasons and evidence (practical and theoretical reasoning) to the surprising conclusion that the privileged status of rights depends on social practices. How can rights function as exclusionary reasons (or trump consequences)? We claim that even recognizably *valid* claim rights can fail to exclude contrary reasons in public deliberation. Sometimes this stems from moral failure – the participants fail to care sufficiently about something they should. But we show that *even in ideal deliberation the exclusionary status of rights cannot be guaranteed*, because the fact that someone's right is unjustifiably infringed does not necessarily constitute the requisite (normative) privileged reason for any particular participant. This perhaps sounds paradoxical. But the idea of an excluded (as opposed to outweighed or undermined) reason is as vacuous as the idea of evidence that is neither outweighed nor undermined - but is somehow excluded for epistemic reasons. The analogy with evidence also suggests a solution: evidence can be rationally excluded by procedures or customs– as in the laws of evidence in criminal law. This suggests that similarly, exclusionary reasons such as rights often depend on procedures such as judicial review or social practices such as promises. Such procedures award the right-holder a privileged position in deliberation. The privilege manifests the special relation right-holders have regarding *their* right. When deliberation concerns everybody's business, all participants have equal standing. Not so when deliberation bears on a person's rights. Here, we should respect the fact that rights are the business of their holder in a sense in which they are not anyone else's.

Raf Geenens, Catholic University of Leuven, Belgium

The Co-originality of Human Rights and Global Democracy

According to the so-called "political conception of human rights" (Rawls, Raz, Jean Cohen), human rights have acquired a new function since 1989. Once a moral anchor at the service of emancipatory movements, human rights are now "locks" on the global sovereignty regime. They delineate the internal scope of government authority, that is, they place limits on how sovereign governments can act towards their own citizens. At the same time, they negatively describe the conditions under which the world community can intervene in a state's internal affairs: if governments systematically transgress human rights, they lose lose their external sovereignty. Given this new function of human rights, proponents of the "political conception" advocate a shortened list of rights. In a world of persistent religious and philosophical conflict, human rights should not express Western values or liberal aspirations, but should rather aim for neutrality. The picture that emerges, then, is rather straightforward. Human rights are evolving from purportedly natural rights into the positive, constitutional principles of a global polity. There is, however, a problematic ambiguity in this picture of global constitutionalization. Advocates of the "political conception" take it for granted that the actors in this world order are nation-states. It is sovereign states who, recognizing each other as equals, collectively set up global institutions and determine what rights are to be established and entrenched in this global order. The subjects of these rights, by contrast, are individual citizens. Taking my cue from Habermas's thesis about the co-originality of individual and political autonomy, I argue that the lack of congruence between the subjects of human rights (individuals) and the actors proclaiming these rights (sovereign states) is too large to be brushed aside. Instead, the rights-based constitutionalization of the world order needs to be complemented by a "republican" roadmap towards global democratization.

Mihaela Georgieva, Maastricht University

Self-respect as a justificatory value in liberal conceptions of justice

The concept of self-respect is central to many liberal conceptions of justice. In this paper I examine the implications and uses the concept of self-respect could have for the specific problem of legitimising liberal conceptions of justice in societies characterized by reasonable disagreements over values, in the spirit of Rawls's 'political liberalism'. More specifically, I want to challenge an account (McKinnon's, 2002) according

to which self-respect is not exclusively a liberal value and can therefore successfully appeal to a wide range of people, otherwise divided by disagreements over important moral, philosophical and religious questions. According to C. McKinnon having self-respect is a necessary condition for anyone who wants to deliberate about what justice requires. Furthermore, self-respecting people will necessarily endorse toleration and the use of public reasons in their discussions of constitutional essentials and political justice. Therefore, according to McKinnon, self-respect can be successfully used as a justificatory value by liberals committed to the idea of public justifications of political institutions and principles of political morality. I want to question the claim that a commitment to one's self-respect necessarily leads to toleration of other self-respecting people and to the use of public reasons in political interactions. Such a move assumes that self-respecting people already possess virtues such as respect for others. Such an assumption, however, suggests that McKinnon's definition of self-respect moves very closely towards a liberal reading of why self-respect is valuable. My aim in the paper is to examine the conceptual links between respect for others and self-respect in order to develop an alternative reading of why self-respect is valuable (and therefore why a self-respecting person can become committed to practice toleration), a reading that can be accepted not only by liberally minded people.

Kyron Huigens, Cardozo School of Law, New York City

Summary Punishment by Electrocution

A Taser is a "stun gun" that fires two needle-like probes that inject 50,000 volts of electricity into the body of the target. The weapon is used by many police agencies, and has caused approximately 500 deaths world-wide.

However, the Taser presents a more insidious threat. The typical circumstances and the legal environment in which it is used threaten the rule of law. First, tasers are used legitimately to protect the officer or to protect members of the public, but as legal standards go, these are broad and easily abused. Second, the public order offenses for which a person can be arrested include interfering with an investigation, failure to follow orders to disperse, or resisting arrest. These grounds for arrest give officers an aggrandized sense of their authority. It's clear that they are willing to use a taser when they feel they are being treated disrespectfully. Third, many public order offenses are petty, which means that one has no right to a jury or to a lawyer for these offenses, and some are classified as non-crimes. This suggests they are less subject to the rule of law than other offenses. Fourth, there is a doctrine developing in the courts that the Fourth Amendment's guarantee of privacy protects officers from being video recorded when they are on the job. Fifth, the open and purportedly justified use of torture against "terrorists" has eliminated the moral constraint on inflicting severe pain. Finally, law enforcement officers have personal immunity from civil damages where the fact that they are violating the civil rights of suspects is not crystal clear, so that the situational, moral, and legal uncertainty that creates the problem makes it impossible to deal with by means of law.

Malte Frøslee Ibsen, Goethe University Frankfurt

Why sovereign law does not limit the scope of justice

Thomas Nagel has recently argued that the scope of principles of justice is limited to the sovereign state: that the state is the only possible context of justice. According to Nagel, duties of justice arise only between citizens who stand in a special relation to one another within a shared framework of sovereign law. This paper situates Nagel's view in a broader philosophical context and argues that his Hobbesian argument begs the question. More specifically, I argue that the reasons Nagel advances for his central claim – that sovereign law is of constitutive significance for the applicability of justice – themselves reduce to considerations of justice, implying that Nagel's argument is premised on its own conclusion. Furthermore, I infer from this argument that the significance of existing frameworks of sovereign law is purely derivative and that their importance derives solely from the fact that they serve to realize justice. Principles of justice are therefore conceptually antecedent to their realization by means of sovereign law, and, consequently, reference to existing frameworks of sovereign law cannot limit the scope of principles of justice. Instead, I argue that we should let go of Nagel's Hobbesian perspective altogether and adopt a more critical perspective, which provides a more appropriate strategy for specifying contexts of justice in world characterised above else by the virulent social forces of globalisation.

Peter M. Jaworski, Bowling Green State University

Ownership, Guardianship, Stewardship

Here's a puzzle: Both Kant and Locke thought we could not commit suicide or sell ourselves into slavery, and that we had to improve our talents. Contemporary Lockeans think these duties are consistent with self-ownership, while Kant thought that self-ownership was impossible on account of these duties. In this paper, I try to make the case that contemporary Lockeans are wrong, and Kant was right, that ownership is duty-free for the owner. I first try to demonstrate that plausible duties are not really duties *of ownership*, but general background duties, and, second, introduce guardianship and stewardship as rival concepts that should be used in place of ownership to describe certain authority relations.

Devrim Kabasakal Badamchi, Department of International Relations, Izmir University/Turkey

Toleration as a Normative Response to the Question of Global Diversity: An Analysis on Habermas

After the event of 9/11, Habermas began to reflect on the public role of religion rather than considering religion predominantly within the boundaries of the private realm. Along with this interest in religion and its role in public political life, toleration comes to the fore as he explicitly raises the issue within the context of contemporary democratic societies. In this paper, first, I will demonstrate that toleration is a normative response to the questions raised by religion and cultural diversity not only at the domestic level but also at the global level in Habermas's political theory. Thus, I will argue that in his international theory too, in a parallel vein to his theory of toleration as an intra-state matter, he is concerned with how it is possible to live together in peace in a just world-society divided by various faiths and worldviews. Given this argument, secondly, it is the goal to examine the grounds and limits of international toleration in the theory of Jurgen Habermas. Particularly, I will concentrate on the relevance, context and demands of international toleration as well as the reasons for international toleration in Habermas's international theory. In doing this, the weak and strong aspects of a Habermasian theory of international toleration will be addressed as we consider the global pluralistic conditions of the post-secular age.

Matthias Katzer, University of Siegen, Germany

On the political role of human rights

It is often argued that human rights norms are defined by a specific role which they are supposed to play in international politics. This role distinguishes them from mere moral norms and from political norms concerning purely internal relations within a state. Yet there is no consensus on what the role of human rights is. Joseph Raz has argued that the crucial feature of human rights is that their violation is a (defeasible) reason for justifying intervention into another state in the legal sense of the term, i.e. for justifying action which would infringe state sovereignty under ordinary circumstances. In contrast, Charles Beitz takes human rights to be norms "whose satisfaction is a matter of international concern", where this "concern" can take different forms of action many of which do not infringe state sovereignty. The paper examines some reasons by which each of these roles might be defended. First, one might turn to the actual understanding of human rights as it can be found in current political practice and in international law. The paper argues that this approach confirms Beitz' position. Second, instead of relying on actual understandings, one might argue that human rights should play the role that Raz ascribes to them. But while there is a need for principles which justify intervention, there are no good reasons for identifying these principles with human rights. On the contrary, "right" in ordinary language expresses a claim which cannot easily be defeated by various different considerations, but any plausible view on intervention will have to admit a large range of defeating reasons.

Ian B. Lee, University of Toronto

Corporate Criminal Responsibility as Team-member Responsibility

This article puts forward a theory of corporate criminal responsibility as the shared responsibility of the members of a team for wrongdoing committed by one of their number in the pursuit of their common goals. The theory of team-member responsibility advanced in this article differs from theories — such as those of Peter French and Phillip Pettit — under which corporate or group responsibility is viewed as the responsibility of the corporation or group as an autonomous moral person. Instead, this article defends a conception of a collectivity as a kind of relationship among individuals; under this conception, a collectivity is something more than the sum of its members, but not something having an autonomous existence apart from its members. To develop this idea, the article employs the concept of a team. Where individuals participate in a team, doing their part towards a collective goal, they are entitled to share in the credit for the positive achievements resulting from their combined actions, and they also share in the discredit for negative achievements of the group. This is so for each member, regardless of whether the member's individual contribution was a but-for cause of the group's achievement. Further, in the specific case of corporate teams, team-member responsibility can help to explain why there should be liability of the corporate entity for crimes committed by members of the corporation (a group which typically includes its employees, officers, directors and, in some circumstances, its shareholders) in the pursuit of the corporation's goals.

The full text of the paper may be downloaded at
http://www.law.utoronto.ca/documents/lee/LeeCorpCrimResp.pdf

Harry Lesser, University of Manchester

The responsibility of military leaders for war crimes

In 1945 the Japanese general Yamashita was found guilty by a US military commission of failing to prevent crimes committed by his troops, even though there was evidence that he did not know of these crimes. On the ground that he ought to have known of them, he was executed in February, 1946. The defence argued that this was applying strict liability, and a major injustice.

Nearly 60 years later the Croatian general Blaskic was tried by the International Criminal Tribunal for the Former Yugoslavia because his troops had murdered civilians. *Mens rea* in a commander, as defined in the statute setting up the tribunal, involved, as a minimum, either giving orders which made crimes likely or failing to prevent crimes the commander had reason to know were being committed. He was found guilty on both grounds. On appeal, in 2004, he was acquitted of most charges, sentence being reduced from 45 years to 8. The Appeals Chamber held that the tribunal had misapplied both conditions: the first required serious likelihood of a crime, not merely distinct possibility, and the second actual knowledge of crimes being committed, not merely that the commander should have known of them.

So, how far should criminal responsibility go, when subordinates have comitted war crimes? Was Yamashita treated too harshly and Blaskic too leniently? In particular, 1) should one require evidence that the commander knew about the crime or that he should have known? and 2) where should onus of proof lie? Once it is established that crimes were committed by those under a person's command, should it be for him to show that he could not have prevented them, or for the prosecution to show that he could?

Dean Machin, University of Warwick

Democracy, political legitimacy and the problem of bureaucratic discretion

This paper outlines what I take to be the under-appreciated problem of bureaucratic discretion and its significance for argument's for democracy. I start by outlining an argument for the claim that democracy is a necessary condition of legitimate political power. This *weak case for democracy's necessity* is that democracy is required because only it can address the 'egalitarian challenge'. Only democracy can satisfactorily answer the question: 'if we are all equal, why should only some of us wield political power?'(Buchanan, 2002, 698) I also explain the chief virtues of this argument and show that it has much to recommend it. I then explain the problem

of 'non-trivial bureaucratic discretion'. This problem occurs where a law *x* can be interpreted in any of senses *a-n* and where there is a *non-trivial difference* between members of the set *a-n*. I show that non-trivial bureaucratic discretion lacks democratic authorization and has material effects on citizens' lives.

How should anyone who affirms the weak case for democracy's necessity respond to the problem of non-trivial bureaucratic discretion? I go through several possible responses and show that the most plausible responses actually undermine the weak case for democracy's necessity. The conclusion is twofold: [1] all things equal, we should prefer a weaker, i.e., non-democratic, solution to the egalitarian challenge and [2] any case for democracy must make more contingent and/or substantive claims than does the weak case for democracy's necessity.

Dean Machin, University of Warwick

The necessity of epistemic success for international institutions' legitimacy

In this paper I argue that epistemic success is a necessary condition of the legitimacy of (some) public international institutions. I argue that this implies that we should drop state consent as a presumptive necessary condition of the legitimacy of international institutions and outline an alternative way of legitimizing international institutions.

I proceed first by showing that there is an epistemic dimension to at least some global problems, i.e., there is some independent matter of fact about what constitutes a successful solution to these problems. Examples include the problem climate change, the protection of individuals' human rights and the regulation of international finance and trade. I then outline a rough account of how we should understand epistemic success in terms of comparative benefits. I also argue that any international institution that cannot tell a plausible story about its comparative epistemic benefits is *ipso facto* illegitimate. Finally, I explain why the consent of even well-ordered democracies is probably incompatible with the comparative epistemic benefits condition and I sketch an alternative account that seeks to justify international institutions on an institution-by-institution basis against the background of some global constitutional rules.

Luke Maring, Georgetown University

Making Do With Less: An Argument Against Instrumental Justifications of Political Authority

Political authority is a normative power: authorities are in the business of creating reasons and obligations. We should, therefore, look to normative space for evidence of its exercise. If we cannot find such evidence, we should become anarchists. Why do anarchists win if statists fail to make their case? We can summarize the reasons in two *prima facie* challenges to political authority. *Freedom & Autonomy*: That people are free and autonomous means, among other things, that there is a presumption against imposing upon their form of life. Yet political authority routinely imposes upon forms of life. *Moral Equality*: Moral equality does not imply that we are equally indebted to everyone—I owe my wife and my students considerably more than I owe to random strangers on the street. But the fact of moral equality means that such departures from equality call for explanation. Equality is morality's default setting. Yet the doctrine of political authority credits a select few the power to speak obligations into being for entire nations. We should, in light of these *prima facie* challenges, believe in political authority only if less controversial sources of normativity prove explanatorily inadequate. To put the same point differently, we should jettison political authority from our moral ontology, if we can do so without undue strain. This observation poses an acute challenge to instrumental defenses of authority—which hold that states earn authority by serving an important end. By identifying such an end, instrumentalist justifications undermine themselves: we should cite the relevant end, and not the government's authority, to explain our duty to obey. I will focus on David Estlund's normative consent theory, and then argue that the problem generalizes to the whole class of instrumentalist defenses.

Ben Martin, University College London

Law as Authority, and Raz's argument for Exclusive Positivism

Exclusive positivism is the thesis that the existence and content of the law in a society is a social fact, which can be established without the need to engage in moral arguments or considerations. To this extent exclusive positivism contradicts inclusive positivism, which maintains that there are conceptually possible legal systems in which legal validity depends upon moral considerations. One argument for the truth of exclusive positivism, by Joseph Raz, argues from the proposition that legal systems are necessarily de facto authorities, via the 'service conception' of authority, to the conclusion that legal rules, and their content, must be identifiable without recourse to moral considerations. Raz's argument relies upon inferring certain properties that legal systems must possess if they are to be de facto authorities (which Raz assumes all are). This talk concentrates on this inference, and shows it to be invalid, and thus shows Raz's argument for exclusive positivism (and arguments of similar form) to be unworkable.

Cillian McBride, Queen's University Belfast

Rethinking Democratic Participation

Why value political participation? Should we be concerned about falling rates of electoral participation in established liberal democracies? Are these indications that there is something deeply amiss with the culture of our democracies, or should we simply read the evidence of falling rates of participation in politics as evidence that citizens are fundamentally at ease with our social and political institutions? The first of these reactions assumes a model of democratic community which requires its members to be 'active' citizens, i.e. to be public spirited and willing to sacrifice their time and effort for the common good, while the second of these relies on an equally familiar model of the democratic state as one whose members regard the state primarily as an instrument for advancing their interests, and who are content to disengage from public life as long as these interests are served. The first of these values participation highly and regards it as a civic duty, while the second regards citizens as consumers, and places no special weight on participation at all. It will be argued, however, that this contrast between classical participatory democracy and minimalist 'liberal' democracy is by no means exhaustive. A third option, termed here 'liberal republican' offers us a distinct rationale for caring about participation, one that is centrally connected to the idea of the democratic community as one of free and equal citizens, concerned to enjoy both individual liberty and to participate in collective political agency. On this account, both participatory and minimalist are insensitive in a variety of ways to the problem of domination, whether through inadequate accounts of civic trust and reciprocity, or simple majoritarian understandings of democratic decision-making. The liberal republican model of democratic politics, refocuses our attention on the conditions of freedom as non-domination and provides a distinct rationale for participation, which is to be valued to the extent that it promotes reason-giving and accountability.

Arabella Millett Fisher, Affiliation: University of Edinburgh

The Compatibility of Libertarian Property Rights and Global Redistributive Taxation

In this paper I defend self-ownership, which I argue incorporates three property rights ? over the body, over the faculties and over whatever can be produced through exercising those faculties in conjunction with the body. This defence follows libertarian principles and supports the rejection of positive rights on the grounds that they would necessitate interference with these property rights. It is notably distinct from other libertarian views, however, in that I do not propose that ownership of external resources is a requisite of self-ownership. If self-ownership is to be effective that is, if everyone is to be able to exercise their self-ownership rights simultaneously then everyone must have access to sufficient resources to be able to exercise their self-ownership. But access alone (rather than permanent private ownership) is adequate in order to uphold self-ownership, and the necessity of such access for everyone demands that appropriation of worldly resources observes a proviso, ensuring that enough and as good is left for others.

I adopt the position that worldly resources are not unowned and up for grabs but rather are owned by all in some egalitarian manner. Some conceive of this egalitarian ownership as equal division (Steiner) or as equality of opportunity for welfare (Otsuka), but I propose Georgist common ownership of land, and joint ownership of

exhaustible resources such as oil and minerals. On this account each person may take private exclusive possession of land, provided they observe the proviso and pay rent on what they appropriate, and resources such as oil can only be put to use if a collective decision is reached and a dividend collected on its use. This rent, together with the dividend, comprises a social fund to which every person is entitled, and which can justly be redistributed globally without undermining the libertarian rights of self-ownership.

Leticia Morales, Pompeu Fabra University (Barcelona)

A Democratic Argument for the Constitutional Protection of Social Rights

Theories of distributive justice sustain that we have moral reasons for the recognition of social rights. In addition, these reasons are considered sufficiently important to justify embedding social rights in a constitution and protecting them through judicial review (legal constitutionalism). Constitutionally protected social rights enjoy priority over other legislation and often entail strong demands on the social and economic policy of a society. This is problematic for two reasons. First, citizens in a liberal society reasonably disagree about the different policies that are proposed, and may object to a state that puts priorities this way. Second, theories of distributive justice that defend the constitutional protection of social rights pay too little attention to the demands of democracy: judicial review, for instance, is said to be illegitimate because it violates the democratic equal right of participation of all citizens. Theories of democracy, by contrast, pay due attention to these legitimacy concerns, but mostly end up arguing against the constitutional protection of social rights in favour of legislative protection only (political constitutionalism). The aim of this presentation is to reconcile the competing positions of legal and political constitutionalism by developing a democratic argument that supports the constitutional protection of social rights. I propose to adopt a moderate procedural account of democracy, which justifies social rights as preconditions for democratic participation. The paper argues that reconciliation between the considerations of justice and legitimacy crucially depends on acknowledging that social rights operate at two levels: one level that is constitutionally protected as part of the preconditions for democracy; another that is protected by legislative measures guided by requirements of justice.

Alice Obrecht, London School of Economics and Political Science

Legitimacy and the justification of NGO activity

Non-governmental organisations (NGOs) have played an increasingly prominent role in the formation of international and domestic policy and in the shaping of international norms. In many parts of the world, NGOs involved in development activities are engaged in providing services traditionally thought to be the responsibility of the state. These types of activity are viewed as the basis for both demanding legitimacy from NGOs, and developing the criteria that an NGO must satisfy to meet such a demand.

This paper argues that the current discussion of NGO legitimacy is limited in two respects:First, talk of NGO legitimacy focuses primarily on a sociological, or descriptive, conception of legitimacy, wherein an organisation is legitimate if people perceive it as such. I discuss how this contributes to a number of problems, one being an irresolvable conflict between the conditions an NGO must meet for legitimation. Because they engage with a variety of stakeholders, in order to be legitimate under the descriptive conception, NGOs are directed to satisfy the conflicting expectations of donors, other third sector organisations, and those targeted by their projects, among others.

If we move to a normative conception of legitimacy, a second limitation arises, as there is no consensus regarding, or even a concerted effort to identify, the ‘authority’ of an NGO which a conception of legitimacy would be used to justify. I argue that a more fruitful approach to the moral evaluation and justification of NGO activity can be based on an account of an NGO’s capacities as a moral agent, rather than on an account of their legitimacy. I then sketch two examples of NGO capacity and how these may be used as the basis for developing sets of NGO obligations.

Avia Pasternak, Department of Government, Essex University

Human Rights and the Limits of States' Corporate Responsibility

A common view in international theory and practice is that a state should be held liable for its policies. In this paper I challenge this view. I argue that when a state is held liable by the international community, it is individual citizens who bear the costs. Since citizens do not usually choose their state membership, such burdens appear unjustified. I then examine the conditions under which states' corporate liability can be justified, despite the non-voluntary nature of citizenship. I reject attempts to tie states' corporate liability to democratic procedures. Instead, using recent accounts of collective action and intention, I argue that a state may be held liable if its citizens genuinely intend to take part in its activities. The test for such 'intentional citizenship' is whether the state respects its citizens' human rights, thus allowing them to form and express intentions about its collective activities.

Gianfranco Pellegrino, Bentham Project, UCL

Individual Responsibility for Climate Change Are we individually responsible of global anthropogenic climate change?

Do we have individual duties to act in order to mitigate the dangerous effects of climate change? Both in scientific and philosophical debates, conventional wisdom answers in the negative. The majority of authors writing on this topic seem to agree upon the idea that obligations to mitigate present and future climate changes concern governments and collective groups, not individuals, because there is no direct responsibility of individuals in intending and causing climate change. As individuals, we have the duty to prompt our governments to act against climate change, but we have no obligation to substitute governmental action with ours.1 The clearest recent statement of this view has been given by Walter Sinnott-Armstrong: 'Global warming and climate change occur on such a massive scale that my individual [action] makes no difference to the welfare of anyone.'2 A more moderate position is put forward by Dale Jamieson, who claims that we have various kinds of responsibility for future climate changes, but our responsibility is of a new kind, different from traditional sorts of moral and political responsibility. In this paper, I'll do two things. First, I'll provide a detailed analysis of the kind of causality involved in anthropogenic climate change and of the role this sort of causation has in views denying individual moral responsibility for future climate alterations (§ 3). Second, I'll challenge the standard story, by claiming that individuals have full responsibility for climate change, and that the common-sense conception of moral responsibility can be extended to increasing-temperatures conducts (§ 4). Basically, individual responsibility for climate change derives from a specific precautionary principle, dealing with strategic harms, i.e. harms issuing out of clusters of individual actions. A discussion of this principle is also provided.

Fabienne Peter, University of Warwick

The Epistemic Foundations of Political Liberalism

At the core of Rawls' political liberalism is a concept of public justification – political institutions and the decisions made within them must be publicly justified or justifiable. But what explains the need for public justification and how should it be understood? Many of Rawls' critics have objected that Rawls has not sufficiently explained the need for public justification and they have either reverted to a form of comprehensive liberalism or argued for moral foundations of political liberalism. I shall argue against this moral strategy and propose an alternative – epistemic – strategy for putting political liberalism on solid foundations. I shall argue that the significance of public justification can be explained through the possibility of reasonable disagreement. In a reasonable disagreement, the parties hold mutually incompatible beliefs, but each is justified to hold the belief they do. I will show that the epistemology of disagreement provides the appropriate underpinning for political liberalism in the sense that it both explains the possibility of an irreducible pluralism and why justification has to be public.

Roland Pierik, Legal Philosophy, University of Amsterdam

Offshored Medicine Tests and "The Standard of Care" as an Emerging Global Norm of Research Ethics

One of the more worrying trends in globalization is the emerging practice of offshoring medicine tests by western commercial enterprises to impoverished countries in Eastern Europe, Asia and Africa. A recent survey shows that at least one third of trials submitted to the FDA are being conducted solely outside of the US. Most of these tests concern medicines developed by western commercial enterprises and targeted at Western markets, since they are prohibitively expensive for the average citizen of impoverished countries. Pharmaceutical companies relocate such trials primarily for reasons of convenience: they can be carried out faster, at a lower cost, with a more abundant population of eligible test subjects and under less governmental scrutiny. This paper starts by a description of why a large share of medicine tests is offshored nowadays. The main argument in the paper analyses to what extent ethical regulations can be imposed upon such offshored tests through domestic and transnational law in order to curtail possible exploitative effects. I will focus primarily on the "standard of care" debate, concerning the discussion on which treatment should be provided to the control group in a randomized medicine test.

I will argue that offshored tests are acceptable when the internationally accepted human rights of participants are protected. However, since this term "internationally accepted human rights" is too underdetermined to provide practical guidance, the paper firstly analyses how this idea of respect for human rights can be translated into specific regulations for offshored medicine tests. Moreover, since many human rights are not legally binding under international law, it secondly analyses the question how such regulations can be enforced upon offshored medicine tests.

Diana Popescu, Leiden University

Is a robust right of self-ownership compatible with equality of opportunity for welfare?

A pervasive dispute in the field of theories of distributive justice has been that between libertarians, claiming that the right of self-ownership is of primary importance, and egalitarians, claiming that some form of equality among individuals is the most important value of justice. Quite recently a family of theories known as left-libertarianism, claiming that a right of self-ownership and a form of egalitarianism are, in fact compatible, started to gain momentum. I focus on one of the most prominent left-libertarian theories, namely M. Otsuka's. According to Otsuka, a robust right of self-ownership (including ownership over one's body and mind as well as ownership over a certain set of external resources) is compatible with a division of worldly resources according to equality of opportunity for welfare. This compatibility is only contingent as it does not obtain in all possible situations, but only in complex societies resembling our own. I will focus on Otsuka's case for this contingent compatibility revolving around his example of a world made up of Able and Unable.

Firstly, I argue that the range of cases in which robust self-ownership and equality of opportunity for welfare potentially conflict is even smaller than Otsuka believed. The argument relies on the notion of an ethos of egalitarian justice as put forward by G.A. Cohen. Secondly, I argue that Otsuka's proof only manages to show that granting some a robust right of self-ownership is contingently compatible with granting others the same right, but not, as Otsuka claims to have proven, that everybody's robust right of self-ownership *and* egalitarian world-ownership are contingently compatible. I link these two points to recent criticism raised against Otsuka's theory by J. Quong and R. Arneson.

Massimo Renzo, University of York

Fairness, Self-deception and Political Obligation

In this paper I explore the relationship between acceptance of benefits and establishment of political obligation under the principle of fairness. Discussions of political obligations based on the principle of fairness (or fair

play) currently revolve around two poles: that benefits must merely be received in order to generate obligations (Klosko); or that they must be "accepted," where this means that certain psychological conditions are met (Simmons). Because of problems with both of these alternatives, I try to develop a third way between these extremes. Since the benefits most relevant to political obligations -- public goods that are necessary for minimally acceptable lives -- are received by all inhabitants of a given territory, regardless of their attitudes towards them, I contend that non-acceptance of these benefits must be based on more than merely not wanting them.

Firstly, I will argue that non-acceptance of the particular benefits most relevant to political obligations frees benefit-recipients of obligations only when a counterfactual condition is met; i.e. when rejection of these goods would hold up if it would prevent their reception. Secondly, I will argue that because of common psychological mechanisms (most notably, self-deception), there will be recipients who reject these benefits but do not meet the counterfactual condition. For this reason I suggest that those who intend to rejects the benefit provided by the state have a duty to offer adequate reasons in support of their rejection. Failing that, they can be permissibly treated as if they had fair-play obligations (although I grant that, as a matter of fact, they might not have them). Thus I claim that there is a distinction, largely unappreciated so far, between the question of whether an agent has a duty of fairness and the question of whether she can be permissibly treated as if she had one.

Johan Rochel, Swiss National Science Foundation

Migration ethics : shifting the focus towards inclusiveness

I want to develop two claims related to the issues of migration ethics. As an overall goal, I try to lay the methodological and normative foundations of a comprehensive framework able to deal with the policy issue of access to a sovereign territory (“first entry”). First, I argue that, besides important moral arguments forming what we could call a “substantive- moral normative framework”, an ethical perspective on migration has to consider the “political-procedural” aspect of the issue. By focusing on the effects and modus of borders control policies, it appears possible to highlight in a new way why the sovereign act of a state to close its borders is morally problematic. Against the background of this analysis, I secondly claim that the political-procedural challenge is met in an innovative way by mobilizing normative resources from a broadly republican perspective. This shall enable me to conceptualize *inclusiveness* as a normative requirement for the decision-making scheme related to migration policies. This concept entails the moral requirement to give due weight to the interests of people living outside the state’s borders. In this respect, a shift towards more inclusiveness could be seen as the emanation of the liberal-republican approach put forward here. The issue of migration should then be addressed through a political process where risks of domination could be prevented at best.The twofold originality of this approach lies in the requirement to consider both axes in order to develop a comprehensive normative framework and in making the most of the normative potentiality of a liberal-republican approach regarding the ethics of migration.

Laura C. Roth, Universitat Pompeu Fabra / University of Stirling

Legitimacy, coercion, and reasons for obeying criminal laws

Substantive criminal law is usually only a catalogue of punishments and not a list of prescriptions or prohibitions. It has been argued that those are legal dispositions directed to the courts. Even if we deny this, and we actually think that people have reasons for refraining from crime, what those reasons are is not completely clear. This is especially problematic because the commission of crime usually leads to state coercion and it would be awkward to say that coercion is justified when people had no reason for doing otherwise. Then, could we say that people have reasons for obeying substantive criminal laws?

In order to respond to this question, I will be basing my arguments on a non-consequentialist version of the republican conception of freedom as non-domination, and on a deliberative account of democracy that has both an intrinsic and an epistemic value. I will argue that state coercion is justified when laws are legitimate, and that legitimacy depends on a particular characterization of three requirements that are interrelated: authority, procedure and substance. But when there is conflict between these elements, procedure and authority should prevail. I will defend the claim that people have reasons to obey certain laws, and I will call them “qualified relational reasons”. These are moral reasons, that are particular (related to a certain community, and therefore

"relational"), but they also depend on the legitimacy of the law (therefore "qualified). Finally, I will argue that people have qualified relational reasons for obeying substantive criminal laws. This allows us to explain why people who disagree with the content of the law have reasons for obeying them. But these reasons also apply to those people who refrain from crime for other moral reasons, because the relational reasons are the ones connected to the justification of coercion.

Veronica Rodriguez-Blanco, University of Birmingham

Legal Authority and the Paradox of Intention in Action

Raz advocates the idea that when we follow legal rules, we follow them unintentionally; the action is a voluntary one, however the will of the agent as pursuing reasons as good-making characteristics is not engaged. Consequently, says Raz, the 'guise of the good' model does not apply to authoritative legal directives and rules. From these considerations, a paradox arises which I shall call 'the legal paradox of intention in action'. If it is truly the case that we follow legal rules unintentionally then, for example, when I sign a mortgage contract, stop at the traffic lights, follow the fire and safety regulations of my office building, pay my taxes and so on, all these actions are done unintentionally. Are these voluntary but unintended actions? Since they are unintended, are they also irrational or arational actions? Raz tell us that they are not irrational or arational because, in the normal case, if we follow legal rules, then we can conform to the reasons that apply to us and we have a better chance of succeeding in conforming to the reasons that apply to us than if we try to follow independently such reasons. Consequently, legal directives as exclusionary reasons help us to comply with the reasons that apply to us. Contra Raz, I will defend the view that the guise of the good model is compatible with the authoritative character of the law. I will adumbrate the view that we can act according to a presumption of the goodness of the rules and therefore a presumption of the authortative force of legal rules.

Andre Santos Campos, Lusiad University of Lisbon

The Correlativity Thesis as a Criterion for Constitutional Validity

Theses that try to explain the nature of rights by referring to the concept of correlativity usually have different conceptions of what correlativity actually means in that context – either a relation of (1) $X \rightarrow Y \vee Y \rightarrow X$, or of (2) $X \rightarrow Y \wedge Y \rightarrow X$. The distinction is quite relevant since, in the first case, it justifies simply the search for a concept that is prior and explanative of a right. In the second case, it entails an Aristotelian relation of correlativity, in which case there is no room for conceptual or causal priorities.

In regard to constitutional norms (in Robert Alexy's terminology), they are valid insofar as they have a reinforced normativity when compared to other norms in the system. Usually, the criteria used for evaluating this reinforced normativity are external to actual normative statements: they are moral, formally juridical, or sociological. I will try to show that the mere normative statement of a norm whose correlative is a right is sufficient to consider it reinforced in its normative power. This has several consequences in the realm of legal validity: (a) it guarantees the observance of a norm even before any sociological analysis of its acceptance is required; (b) it guarantees the norm's democratic origin; (c) it increases the chances of moral values being reflected in the norm; (d) it guarantees the norm's superior deontic power when compared to other norms of the legal system. The correlativity thesis in this extreme formulation operates as a criterion for constitutional validity insofar as it reinforces a constitution's normativity without requiring external criteria of validity.

Ben Saunders, University of Stirling

Democracy, Rights, and Immigration

According to Arash Abizadeh ('Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders', Political Theory 2008), political communities have no right to close their borders unilaterally. Since democracy requires enfranchising at least those subject to coercion, would-be immigrants must be enfranchised on any decision over borders. This paper disputes this conclusion, arguing that democratic theory has no determinate implications for immigration and that we need to focus on rights. The first section summarizes a debate between Abizadeh ('Democratic Legitimacy and State Coercion: A Reply to David Miller', Political Theory 2010) and David Miller ('Why Immigration Controls Are Not Coercive: A Reply to

Arash Abizadeh', Political Theory 2010), who resists Abizadeh's conclusion by arguing that border controls are not coercive, but merely prevent would-be immigrants from taking one particular course of action. I think Abizadeh is right to reject this, but seek to apply pressure elsewhere in Abizadeh's argument. Section two criticizes Abizadeh's assumption that being subject to the coercion by the law entitles one to a say in it. This would require not only the enfranchisement of foreigners in decisions about border controls, but possibly the enfranchisement of criminals, children, and foreigners over a wide range of decisions, which seems counter-intuitive. The third section presents a dilemma. Either democracy is understood 'thinly' (in purely descriptive terms or as merely one value among many others), in which case it may well be over-ridden by other substantive rights, such as that to close borders, or it is understood as a thick, substantive value, in which case what democracy requires cannot be settled independently of an investigation of what rights people ought to have. In either case, we need to address questions of rights before questions of democracy in order to resolve disputes about immigration.

Esha Senchaudhuri, Affiliation: London School of Economics

A Critique of Procedural Legitimacy

Advocates of liberal procedural legitimacy claim that an exercise of political power is legitimate as long as it is chosen by procedures of collective decision-making which all reasonable members of a liberal polity find reasonably justifiable. The idea of using procedures of collective decision-making to resolve disagreement on the content of collective decisions is familiar. It is common, for example, to flip a fair coin or take a majority vote, in order to resolve conflicts between two or more parties who disagree on a course of action. Similarly, procedural liberals claim that given the fact of reasonable pluralism, politically reasonable citizens must adopt a set of reasonably justifiable constitutional procedures by which to guide legislative and judicial decision-making.

Defenders of procedural legitimacy claim that it satisfies the justificatory criterion embedded in John Rawls' Liberal Principle of Legitimacy. This principle states: "*our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution, the essentials of which all reasonable citizens may be expected to endorse in light of principles and ideals acceptable to them as reasonable and rational"* (Rawls, Political Liberalism: 217). Since public procedures are legitimate by virtue of the fact that reasonable citizens find them justifiable, advocates of procedural legitimacy claim that these citizens are bound by reason and considerations of fairness to find procedural outcomes justifiable.

This paper argues that the above claim is erroneous. Given how reasons are weighed and tabulated into belief systems and judgment formations, the assumption that the justifiability of procedures will lead to the justifiability of procedural outcomes is optimistic. Using Rawls' decision-theoretic account of justice as fairness, I show that procedural legitimacy actually uses the justifiability of a procedure to impose an unjustified prima facie political obligation upon citizens.

Jonathan Seglow, Royal Holloway, University of London

Associates' Duties

Investigations of the special duties which particular groups of people owe one another deal almost exclusively with families, friends and compatriots. They thereby ignore the intermediate level of special duties that we owe to colleagues, associates, members of the same club, church or union and so on. One reason for that neglect is that we have in voluntarism a ready explanation of the grounds of such duties. Another reason is that these associational duties are not morally problematic in the way that familial or compatriot duties are: we are not born into them, and the priority they involve does not set back outsiders' interests in the way that for example compatriot duties do. Still, associations are pervasive and significant and the rich texture of associational life is a source of meaning and fulfilment for their members. My aim in the paper is to explore the nature and grounds of associates' duties to one another. A. John Simmons has argued that associates' duties can be traced back to their voluntary consent. Distinguishing between descriptive and normative voluntarism, I argue to the contrary. that associates typically have fair play duties to one another to realise the aims of the association if and only if they have (descriptively) consented to join the association. Fair play duties may be of a more mutualist or individualist kind, depending on the type of association. In the case of more mutualist groups whose members

share certain commitments, I discuss to what extent those duties may be justified by the others' willingness to help one realise one's commitments.

Michael Sevel, European University Institute

Authority and the Nature of Obedience

A familiar distinction in the theory of reasons is between complying with a reason, and merely conforming to it. To comply with a practical reason is to act for that reason; to conform to it is simply to do the action for which the reason is a reason, without acting for that reason. My question is, as a conceptual matter, does obedience to authority require compliance or merely conformity with its directives? The prevailing view is that authority requires a subject to *comply*; theorists like Wolff and Raz assume that in order to count as obeying, a subject must do as an authority requires, for the reason that the authority requires it. This view has recently come in for criticism, by Scott Hershovitz and others, as not reflecting how the authority of law is practiced. The law usually demands only conformity, and not compliance, with its directives, and it's not clear why we should want more from an account of our concept of authority.

I think both views are wrong, because the compliance/conformity distinction as it relates to obedience to authority has been misunderstood. I defend a different understanding of this distinction, roughly: to comply with a directive to Φ is for a subject to act with an intention to Φ, regardless of the subject's reasons for Φing; to conform to a directive to Φ is to act with any intention whatsoever, but such that the content of one's intention bears some important, perhaps necessary, relation to Φing. (I defend an account of authority which presupposes this distinction more fully in other work.) I argue that obedience to authority requires compliance in *this* sense, even in a deliberative democracy, and for that reason is problematic in a way not countenanced by traditional forms of philosophical anarchism.

Saul Smilansky, University of Haifa, Israel

Why moral paradoxes matter: 'Teflon immorality' and the perversity of life

"Teflon immorality" (or TI) is immorality that goes on unchecked, where the wrongdoing is not stopped and the perpetrators remain beyond the reach of sanction, and often may continue in their immoral ways. The idea that the immoral often flourish and that this is morally (and legally) disturbing has been recognized since ancient times, presumably as long as humanity has been reflective. The term Teflon immorality seeks to capture the "Teflon" effect involved, the idea that, in various ways, the immorality does not "stick", so that it has triumphed or can even continue and flourish.

Much immorality goes on for practically important but philosophically uninteresting reasons: the criminals have greater resources than the authorities, or an unjust aggressor-nation has a stronger army than its neighbor whom it invades, or an individual cares more about doing bad things than those around him care about stopping him. We are all familiar with such matters. Sometimes, however, philosophically much more interesting things are going on, and Teflon immorality results from moral oddities and curiosities, such as moral paradoxes and perversions. This has remained largely unnoticed. While the peculiarity of this or that example has occasionally been noted, the more general phenomenon, the idea that immorality systematically triumphs because of moral paradoxes and perversions, has to the best of my knowledge not been seriously discussed. I will attempt a general and tentative survey of this topic. This should help us to deal better with the ever-present threat of TI, and show the importance of moral paradoxes and related phenomena. Only by paying attention to moral paradoxes, only by philosophically exploring this perverse side of life, can we understand what is really going on, and try to deal with it.

Victor Tadros, University of Warwick

Aggregation and Justification

One apparent attraction of contractualism over consequentialism in both moral and political philosophy is that it can explain why some actions that do more good than harm on aggregate are nevertheless wrong. This article demonstrates that this appearance is deceiving. Restrictions on aggregation are warranted for both humans and

non-human animals. This suggests that their source is not in the respect that we owe to each other in virtue of our capacity for judgement. This fact provides a powerful reason to reject contractualism in favour of alternative views that do not place justification to each other at the heart of an account of moral wrongness.

The argument is developed by considering two different approaches that have been suggested by T M Scanlon to the problem of non-human animals. Scanlon's preferred approach is to include animals within what he calls 'wide morality', a separate domain of morality from that which grounds obligations that we owe to other humans. The difficulty with this approach is that it cannot explain restrictions on aggregation that apply to non-human animals. Furthermore, it creates artificial dilemmas when we face conflicts of interest between humans and non-human animals. An alternative is to include non-human animals within narrow morality by providing them with trustees. This approach threatens to undermine the central motivation that Scanlon gives us to endorse contractualism: that it can explain the stringency of morality by drawing on our ambition to ensure that we can justify ourselves to each other.

François Tanguay-Renaud, Department of Philosophy, York University, Toronto.

Basic Challenges for Governance in Emergencies

What are emergencies and why do they matter? In this paper, I attempt to answer both questions in a way that elucidates basic challenges posed by such predicaments. Emergencies, I argue, are situations in which there is a serious risk of harm to which one must respond urgently if the harm is to be averted or minimized. One basic challenge for emergency responders consists in identifying these salient features correctly and crafting responses that give them their due moral importance, in light of all relevant circumstances, and without going overboard and abusing the 'emergency' label. Since the realisation and contours of the said features will sometimes be significantly contestable, authoritative determinations may be required. Thus, a second basic challenge for emergency responders who must make such determinations consists in ensuring that their exercises of authority are themselves morally justified. Of course, while all emergency-related determinations have to be justified, not all of them will have to be justified qua exercises of authority. However, my overall focus on governmental responses to emergencies—characteristically intended to involve authoritative determinations—will lead me to emphasise this possible additional layer of complexity.

In the second part of the paper, I focus on second-order challenges arising from the (un)foreseeability dimension of emergencies. I argue that the importance of emergency prevention, in light of this dimension, generally depends on multivariable case-by-case evaluation of: (1) the risk of emergency, i.e. the probability that serious harm will urgently need to be avoided or minimised, and its discoverability; (2) the gravity of the harm; (3) the value of the course of action that would expose agents to the emergency; and (4) the burdens and costs associated with emergency prevention or avoidance. In conclusion, I discuss various moral implications of the 'public' designation of some emergencies.

Makoto Usami, Tokyo Institute of Technology, Japan

Global Justice, Human Rights, and State Duties

For the past three decades, a growing number of authors have discussed the idea of human rights in the context of global justice. In his recent book, Charles Beitz offers what he calls a practical conception of human rights, which relies on the doctrine and practice of international human rights. This conception implies a two-level model, which maintains that each state bears the primary responsibilities to respect human rights of its citizens and that, when it fails to do so, states and non-state agents outside the state act to guarantee these rights. Claims of the two-level model seem sound; however, the practical conception does not provide firm moral grounds for one state's secondary responsibilities towards citizens of the other states. To remedy this problem, the present paper tries to explain why the state has such responsibilities.

To begin with, I identify the virtues and drawbacks of Beitz's general argument on human rights and of its application to the issue of anti-poverty rights. Next, I note that the concept of a right requires a set of correlative duties, by employing the Hohfeldian scheme of legal relationships and Henry Shue's analysis of subsistence duties. It is also argued that, when one person in a society holds a human right, all others inside and outside the society potentially have correlative duties. Then I explain how this universally obligating power of human rights can be modified so that each state bears the secondary and complementary responsibility to secure human rights

of those living in other countries. The paper concludes by suggesting that a theory of human rights is required not merely to endorse the current practice of international human rights but also to provide a moral justification for it.

Milla Emilia Vaha, European University Institute, Florence

States, Personality, and Punishment: A Reply to Skeptics.

In his recent paper on states and their potential criminal responsibility, Harry D. Gould contributes to an increasing body of literature asking if the state can be considered as a responsible agent and even criminally liable to be punished. The core of Gould's scepticism against personality and hence criminal responsibility of the state is his conviction that state personality is nothing more than a mere fiction based on a metaphor with corporate personhood. According to Gould, contemporary International Relations (IR) theory has put too much emphasis on Hobbesian metaphorical personhood of the state and hence misleadingly ended up holding states not only as rational but also as intentional agents. Intentions, accordingly, are something that cannot be attributed to the state and talking about criminal responsibility or punishment of states is therefore an obscurity for Gould – and for many others. Yet, as I will argue in this paper, this kind of rejection of state personality and responsibility is based on a very limited understanding of both personhood and corporeality of the state in contemporary IR theory. Position like Gould's, I maintain, cannot be sustained if one approaches personality (and hence intentionality), agency, and responsibility from recognitional and holistic rather than from metaphorical and cognitive perspective and considers the state as a truly self-standing entity in its own right. For their proper moral personality, delinquent states can, I will argue, under certain conditions be punished for their misdeeds qua states.

Federico Zuolo, Institute for Advanced Study of Pavia (IUSS)

Toleration and Informal Groups. How Does the Formal Dimension Affect Groups' Capacity to Tolerate?

The 'agents' of toleration can be divided into three categories: public institutions, groups and individuals. If it is mostly accepted that both public institutions and individuals are capable of toleration, it is not clear whether such a capacity can be attributed to groups, although in daily discourse we seem ready to say that a certain social group is (in)tolerant. This paper aims to address this issue by investigating the relationship between collective agency and social groups. Formal groups (e.g. corporations) have internal rules and collectively recognised decision-making procedures that constitute a collective behaviour. However, it is not clear if and in what sense such a capacity is also upheld by informal groups. This article discusses some competing criteria to define informal groups and finally proposes the shared convictions criterion. In conclusion, this criterion is applied to toleration related issues, so as to reconcile our ordinary understanding of groups' toleration with a more technical analysis.