

THE LIMIT OF REASON:

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(OR ON WHY DIGNITY IS NOT NEGOTIABLE)

Most of us are fairly acquainted with the failed Melos negotiations, as reported to us by the Athenian historian Thucydides. The Athenians, doing their round of the surrounding islands, were trying to bring all of them into alliance against Sparta. The Melians, truly believing themselves to be an island lying outside the orbit of the unfolding Pelopponesian War, argued fervently in favor of being left alone. The Melian argument based itself on universal human principles and on the notion of right. The Athenians, on the other hand, tried to instill some realism into the debate in as much as they turned that argument upside down. In real life, it is might that determines right, they argued. Later, and to prove their point physically after they failed to do so logically, they forcefully invaded Melos, putting their previous interlocutors to death and subjecting their island to their dominion.

It is hard to tell whether the Melians believed they would be left alone, that is, whether they believed, in fact, the Athenians would be persuaded by their logic. On the other hand it is easy to surmise how they viewed the Athenian logic, namely, as a typical case of the fallacy of **ad bellum**. At all events it would be interesting to answer the question of whether, had they known in

advance how things would end up after the debate was through, they would still have held to their principle of sovereignty, or the principle of being free to choose.

Tactical alliances or convenience agreements to avert worse evils are commonplace rational (i.e. justifiable) acts. Even if advance knowledge is not available, the realistic calculation that a worse evil might befall one can still be claimed to *justify* such alliances or agreements. But is there a line to be drawn? Had the Melians, cognizant of the inevitable massacre to follow, succumbed to the Athenians' argument, could it be argued that by so doing they would have clearly crossed that line? Or would they simply have been undertaking a justifiable exchange between one condition (holding on to their principle but suffering deaths) and another (taking time-out on that principle and saving lives)?

Generally, we can distinguish between two kinds of answer to this question. From a utilitarian point of view, it could be argued that nothing is not replaceable, and therefore negotiable. Saving life, even if that life, or life in general, did not have a moral worth, nonetheless has more utilitarian value than holding on to a debatable, even a flimsy metaphysical principle, as the

right to choose. In this sense, and cognizant of the probable consequences, the Melians did not but have one justifiable course of action to choose from. Kant on the other hand might have viewed the matter differently. He argued that, ideally speaking, or in the Kingdom of ends, everything has either Value or Dignity. Whatever has a value can be replaced by something else which is *equivalent*; whatever, on the other hand, is above all value, and therefore admits of no equivalent, has a dignity. Dignity, Kant argued, does not merely have a relative worth as a means to an end other than itself; rather, it has intrinsic worth as an end unto itself. Only in a moral framework can a rational being seek to be an end in himself, making morality, and humanity as capable of it, being the sole possessors of dignity. For Kant, in other words, the limit of Reason's exchanges, and at the same time its highest achievement, is that ultimate morality of which humanity is capable. This is not exchangeable. It is not negotiable. Dignity is thus above value, not merely sentimentally, but ontically as well as logically.

We might rationally assume then that a Kantian would have argued in precisely the same terms that Thucydides reports the Melians did, notwithstanding the Athenian charge that it is only the weak who seek to make up for the absence of means by resorting to lofty moral arguments.

However, his position would have been based on the principle that human life has a moral content. Depriving it of its content is tantamount to its termination. In this sense, its moral death is more real, if death can be graded, than its physical death. Hence, whether for a Kantian or a utilitarian, human life would seem to constitute a red line, even though for different reasons. Whichever way it is viewed, human life has primacy. Stated differently, it is Reason's limit of negotiations.

But it is clearly also a cross-road of generically different negotiation standards or measures. Proceeding along one direction or path from this cross-road, one could imagine a long line of tolerance of various levels of human degradation, eventually leading to a justification of servility. Only when the added-value to itself from a further act of submission or servility is zero would it cease to be justifiable to choose a course of action whose ultimate measure is the saving of life. Proceeding along the other path, dignity, or the moral content of life, cuts short the limit of justification. So long as an action upholds or further reinforces this dignity, even at the expense, in extreme cases, of physical life, it is to be viewed as justifiable. Accepting life as such a defining line or limit, but cognizant of the two inconsistent and perhaps irreconcilable ways in which it is drawn, and the

two distinct negotiation paths, should one assume therefore that one could proceed further to identify two distinct and logically incongruous sets of upper and lower limits for each path, or should one assume that they are both informed by the same set of upper and lower limits, in such a way that one could suppose that the paths somehow manage to cross one another, making contact or a point of common understanding possible? Is there a common base-line below which life, on either interpretation, ceases to have primacy, and could thus become exchangeable? Is there, analogously, a maximum above which its non-replaceability ceases to be justifiable? Generally, the existence of such limits or parameters, and the specific forms which they are imagined or assumed to have by the various interlocutors, is a determining condition in the negotiation postures of these various interlocutors, regardless of how articulated the consciousness of them is. For example, the Athenian insistence that the Melians give up their neutrality would not necessarily have been conceived as a negotiation demand overstepping the upper limit of justifiability, even though, or because, as the Athenians explicitly argued, it was a demand reinforcing the natural law of inequality, or that the weak should succumb to the strong. The Melian insistence, on the other hand, that their political decision must be informed at all costs by their own free choice, basically reflected the belief that free choice is the

minimum limit below which negotiations cease to make sense. From the Athenian perspective the upper limit of justified demands in negotiations was not being overstepped. From the Melian perspective the base-line or lower limit of justified intransigence was properly being held on to. In other words, the negotiation path used by each side was different. The approach of each side to the interchange was informed by a different measure, and the upper and lower limits defining these measures were distinct from one another. Their respective world-views on life were different. The Athenian upper limit and the Melian base-line were each defined in accordance with its own separate measure. Adopting different measures, or negotiating along different paths, it is arguable that a common point would thus have been unlikely, indeed, perhaps altogether a logical impossibility. The Melian dialogue was doomed to be an example of a failed negotiation from the outset, because one path was informed by right and the other by might.

Generally, negotiation theory distinguishes between (outer-layer) positions and (real) concerns of two parties interlocked in negotiations, and argues in favor of a non-zero-sum, or a win-win formula allowing room for the fulfillment of the two sides' concerns. Even so, however, it is implicitly assumed that the fixed upper and lower limits in such models of negotiation

define the same measures in use by the interlocutors, determining their respective negotiation postures. For example, in negotiating a wage-increase at a factory both parties would be negotiating over a good which is defined in the same terms, which each side wishes to possess more of. Each side thus faces the other along the same path, and both operate within the same parameters. The underlying relationship between employer and employed is fixed, or it is not itself open to negotiations. The language between them is common, in that each side appreciates the worth of the good being negotiated, as well as the generically similar appreciation of it by the other side. It is arguably only within those limits that reconciliation, or the effort to provide a formula addressing concerns, is possible. But what if two generically different measures and different upper and lower limits are in use? Can we still cut through positions, and reconcile between concerns?

Arafat and Barak reportedly clashed at Camp David over how to address the Noble or Holy Sanctuary in Jerusalem (the Dome of the Rock area for the Moslems, and the Temple Mount Area for the Jews). Is it all to be under Moslem (or Palestinian) sovereignty, or is it to have a horizontally two-tiered or layered divided sovereignty? The Clinton formula (a two-layered approach), cutting through stated positions, sought to address the presumed

concerns of both sides: the Jewish concern for history, as well as the Moslem concern for existing reality. Nonetheless the clash occurred, and the two leaders walked out of Camp David feeling outraged (Barak and Clinton at Arafat's apparently irrational intransigence, and Arafat at Clinton's *chutzpah* for making what seemed nothing less but a deeply derogatory offer.) Does one conclude that Clinton's formula, while informed by the right reconciliation principle, nonetheless failed as a successful example of it? Or does one conclude that, while it was a perfect paradigm, it failed because of irrational (i.e. unjustifiable) intransigence? Observers tend to oscillate in their appraisals between these two different explanations. But the problem might lie somewhere else, namely, in the obliviousness of the approach to the generically different negotiation measures in use by the interlocutors, and the generically different upper and lower negotiation limits associated with those different measures. The reason for the failure of the Clinton effort, in other words, might well have been that it was a classic example of trying to mix apples with oranges, or that it was a reenactment of the doomed Melian model.

We have more than one knot to unravel here: first, is it always possible to identify distinctly separate pairs of upper and lower limits for the two

negotiation measures or standards referred to, such that, for any reconciliation effort across those two measures, it is always impossible to fuse the different parties' concerns into one non-zero-sum agreement? Or are we, as we consider the different paths leading away from the cross-road, rather dealing with *non-Euclidean* space where lines keep bending and crossing over one another, such that, for any point of intersection of generically different measures it is always logically possible to identify a point of non-zero-sum agreement? Our second knot is this: to what extent can we be confident, as we formally distinguish between those two negotiation measures, that we fully understand and agree upon what constitutes the moral as opposed to the utilitarian measure? For example, what has undivided vertical sovereignty over a geographic location to do with dignity, or the moral life, or with free choice? Is there no mixing of apples and oranges here? Might one not regard the identification of an inexchangeable good, such as sovereignty over a holy area, merely as an irrational obsession rather than as a moral good which can be viewed as a source of justification?

Our first knot may be such as to defy an answer or a solution altogether; indeed, it may even be such as to disturb whatever solution we may already

have. The implicit assumption there is that whereas a point of agreement is logically possible when the same parameters are in use by two interlocutors, the same is not true (i.e. it is not necessarily true that this possibility exists) when two distinct sets of parameters are in use by those interlocutors. When distinct parameters are used, the effort at reconciling concerns would have to be made one case at a time, such that for any specific new case the question would remain open whether a reconciliation is logically possible or not. So far, and assuming a Euclidean negotiation-space, we do not have a major problem. However, admitting this but arguing from a *non*-Euclidean perspective, it will not be possible to predetermine, for any such new case, whether it lies at an intersection point of the generically different paths or not. If it turns out that it does lie at such a point, then it would not be an open question whether reconciliation is logically possible, because such a point has already been determined by us to admit of such a possibility. Since, however, the question of whether it is more valid to use a Euclidean or a non-Euclidean perspective is indeterminable, it becomes equally indeterminable whether any specific point, given *different* negotiation measures, can admit of reconciliation. But now the following further step can be taken: since we are talking specifically about possible intersection points, our conclusion concerning indeterminability comes to apply to points

which lie in either one of the two paths, indifferently. In other words, we find ourselves confronted with the paradox that, with regard to any specific point even along *one* path or in accordance with *one* measure, it is indeterminable whether that point is determinately reconcilable, although our starting assumption is that it is.

All of the above amply explains why negotiators often end up with headaches but not with solutions. The second knot's complexity is altogether different. An item or a good might have a special worth or value for a person, sometimes outweighing the worth or value that person considers their (or somebody else's) life to have. But do all such items or goods belong in the same basket of justification, and is there a clear standard by which we can lighten the basket's weight by throwing out false items? A young lawyer from Jenin blew herself up over Pesach last year in a partly Arab-owned restaurant which was full of Jewish women, children and Holocaust survivors, killing over 26 people, including herself. For her, the meaning of physical life had expired, and she saw the one last act of her intrinsic self as consisting of nothing other than, in an expression of anger and protest, the termination of this life and those of others belonging to "the enemy". Hers was neither a religious nor a political Cause. It was not an act of negotiation.

But the devastating impact of the failure of negotiations had reached her, depriving her of those matters in life, such as her loved ones, which she considered as constituting her own sense of self-worth, or for which her own life had meaning. It was not so much that physical life had become exchangeable. It had become altogether expendable. The expendability of physical life, whether limited to one's own or spread out to include specified or even unspecified human individuals or groups; and whether for existentialist causes with a small "c" or for grander tribal, social, political or religious Causes (with a capital "C"); and whether in proactive or defensive contexts—all of these cannot simply fit into one category, making all of them equivalently a source of justification, for no reason but that the definition of life for their actors is not utilitarian but has a moral content. Indeed, most of the human history's bestial acts have been committed in the name and under the cover of the so-called grander causes of life, such as the so-called "family honor", the racial or national imperative, or God's supposed calling.

This odd mixture of so-called grander causes should not make us despair of a rational order altogether, and it stands clearly in need of being sorted out by a single defining principle which is at once context-free and above passion, which Kant's dignity and the moral imperative fit quite well. Once

sorted out in accordance with that principle one might better appreciate the weakness of the utilitarian approach. Because, on the one hand and even from a utilitarian point of view, prizing physical life above all else would seem to be subject to a diminishing margin of utility: at some point along the path of human degradation, it ceases to be clear from the point of view of the underdog why human physical life should be regarded as being more sacrosanct than that of a beetle. And if the underdog in the degrading relationship has reached the point where their physical life comes to be viewed as being equivalent to that of a beetle, it would by no means be irrational for them to suppose that, by the same token, the physical life of their tormentor becomes similarly equivalent, and therefore as expendable as the next beetle but oneself. This is the argument that while an act of terrorism is not justifiable by itself, and is indeed morally repugnant, the only possible source for its justification is the act of de-humanization, admitted under utilitarian grounds, which led logically to it. We cannot under utilitarian grounds justifiably assume that a de-humanized individual or group must nonetheless maintain respect for the life or lives of others, least of all for the lives of those who have shared and continue to share in the perpetration of their de-humanization. Even moral repugnancy ceases to have any meaning in this context, except insofar as it is an outsider's

humane sentiment describing revulsion at the moral contortion of which humanity is capable.

On the other hand, and besides moral contortion, Kant tells us that humanity is capable of something else, namely, dignity. One major feature about dignity is its rational and, therefore, human universality. Insofar as they are rational, human beings partake of it equally. Hence, on its account not a single step of degradation or de-humanization is justified, least of all any such step that may constitute a source of legitimization for the taking of life. If a de-humanizing step (like occupation) were nonetheless to be taken, it would itself be illegitimate, and resistance to it would be justifiable. However, it would be justifiable only insofar as it does not undermine or blemish the principle from whose source it received its justification in the first place, namely, the safekeeping of human dignity. In such circumstances, however, the only life that becomes justifiably expendable is one's own, in defense of one's dignity, or, arguably –in such cases as euthanasia- another's, in defense of theirs.

We therefore return full circle to the Melian dialogue with which we started, where the dignity of free agency was not up for exchange, even for the

preservation of physical life. In preparation for my concluding remarks concerning the Israeli-Palestinian case, let me quickly indicate why I believe the Melian model to be informed by a Kantian perspective (to show this would require more time and space): free choice, or *autonomy of the will* as Kant described it, is precisely the instrument by which a rational being chooses or legislates a maxim belonging to a universal law to which he at the same time submits himself. This autonomy is the basis, Kant claims, of the dignity of human and of every rational creature. The Athenians, in their negotiating posture, were denying it of the Melians, or were indeed, suffused by the drunkenness of their might so as to be entirely oblivious to it; while the Melians, perhaps because of the absence of the means of drunkenness as the Athenians charged, were not blinded to its worth as an end in itself.

Now to my concluding remarks: I have already stated that the Melian dialogue model is doomed to failure and, even worse, that a reconciliation between negotiators adopting the same standard or measure is indeterminable. So long as Israel's negotiating posture is informed by might alone, it is bound to destroy whatever negotiation effort it engages in. On the other hand, so long as the Palestinians' negotiating posture is informed by whatever cause that falls short of the Kantian principle of the universality of

autonomy and human dignity, then any negotiation effort on their part is bound also to falter. However, assuming mutual respect of humanity's dignity, a point of reconciliation, though indeterminable, can nonetheless be brought about. It may have the form of equal citizenship in one state, or confederation of states. It may also have the form of distinct citizenships in two neighboring states. Imperatives less than dignity, and informed by national or religious passions, may help articulate the precise form of that point of reconciliation. The two peoples' might feel better off being apart from each other, separated by a border, as solid and as forbidding as any border that can be imagined. However, such a point, however logical, does not unfold mechanically or unilaterally: it requires huge efforts by both sides to bring it about. Paradoxically, therefore, *faith* has to be generated in it, and be used as a political instrument in order that a point, indeterminable in itself, comes to be determined by the peoples themselves.