Normativity, Equal Opportunity, and the Adjustment Problem in *The Just State*

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The Just State, as Richard Winfield notes at the outset, is the culmination of an ambitious project devoted to limning the contours and content of a systematic philosophy of right.[1] Apart from its value as a substantial contribution to the understanding of Hegel's *Philosophy of Right*, *The Just State* offers its own self-standing, content-rich account of political justice. Winfield's book is overflowing with argument and analysis, which calls for careful, detailed consideration, and the brief set of comments that follow cannot possibly do it full justice. It is useful, however, to focus on a specific topic concerning normativity discussed in the 'Introduction'. In particular, I would like to raise some questions about the principle of equal opportunity and the adjustment problem that arises from it.

Before turning to those questions, it might be helpful to offer an overview of the overarching structure of *The Just State*. The 'Introduction' and eight chapters can be clustered thematically into three parts. The 'Introduction' has the important task of clearing away the obstacles thrown up by sceptical arguments against the very possibility of a normative theory of political justice. Chapters 1-3 set the stage for the account of political justice proper, which then takes up the remainder of the book, chapters 4-8. So the argument starts, in the 'Introduction', with a refutation of the sceptical denial of the project of political philosophy understood as the normative theory of political justice. This is important because the positive upshot of this anti-sceptical argument is the identification of a singular normative criterion: self-determination. The portion of the argument that follows, in the second segment of the book, aims to show that this normative criterion is embodied in distinctive pre-political forms of the practice of rights. This then leads to the account of the just state in the third part of the book. This structure is warranted, Winfield argues, because the state is just only if it relates in the right ways to these pre-political forms of justice. With a preliminary description of the four cardinal 'features of political self-determination' – reflexivity, universality, autonomy, and supremacy – the path is finally prepared for the core account of the just state in terms of the constitutional division of the legislative (which takes up a full quarter of the book as a whole), authorising, and executive powers of self-government. Winfield concludes his conceptualisation of political justice with a critical examination of the relevance and justification of the principle of federalism and, finally, with his relatively brief but, under current circumstances, particularly pertinent consideration of foreign and international relations.

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Within this broad-brush account of the book and its overall structure, it is clear that the topic of normativity and the anti-sceptical arguments of the 'Introduction' are central to the argument. In fact, the project of the 'Introduction' can be described as the 'overcoming of nihilism'.

Winfield begins by forging a distinction between two questions, 'What is the state?', and 'What should the state be?' He marks this difference by contrasting them, respectively, as a descriptive and a prescriptive question.[2] However, the latter prescriptive question about the ought can easily be reformulated as a descriptive 'What is' question so that it reads: What is the just state? Is such a reformulation defensible? Here is one argument in its defence: it is admissible to substitute the descriptive reformulation for the prescriptive original, if the modifier 'just', like other normative terms such as 'good' and 'beautiful' or 'noble', can be construed as what one might call justifier terms, which act like stamps of normative certification for the referents of the terms they modify. Take a statement of the form 'x is J', in which 'J' is a variable for one of these justifier terms. On this view about the certifying function of such 'J' terms, they convey the following message: 1) there is some justifying property P, which supplies the specific normative content;[3] 2) whatever that justifying property P is, x has that property; and consequently 3) x is normatively justified. Thus, plugging in this analysis of justifying terms, the reformulated question 'What is the just state?' asks: what is the property P that a state has to have in order to be normatively justified? Saying that 'The state is just' means that the state in question is such that it instantiates the justifying property constituting political justice, and for that reason alone is normatively justified. Since, accordingly, any normative theory will offer an account of some justifying property, a theory of justice in particular is a normative theory that provides an account of the justifying property of political justice. *The Just State* takes as its specific task to provide precisely this account of the justifying property of political justice.

Accepting this reconstruction of Winfield's 'prescriptive' question implies that the opening distinction of the 'Introduction' can be read as differentiating two types of descriptive questions, formal and normative.[4] A formal description is so called because it is normatively neutral, abstracting from normative differences marked by contrasting conceptual pairs in order to highlight features shared in common. These features constitute the essential properties of that which can then be the subject of contrasting normative predicates. In epistemology, a formal description of belief abstracts from the normative difference between true and false belief in order to attend to those properties constitutive of belief whether true or false. Likewise, a formal description of action abstracts from the contrast between good and evil action in order to specify the properties that make anything an action, whether good or evil. The same goes for character, in abstraction from its nobility or baseness, or the abstraction from justice and injustice to distill by way of a formal description the

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essential properties of law, institution, or practice. A normative description, by contrast, takes the formal account for granted and looks to articulate the normatively relevant justifying properties themselves.

This difference between the formal and normative types of a descriptive question implies that in both cases what is being described is a class characteristic. In the case of formal description, the characteristic in question is the normatively neutral property that dictates what sorts of things can gain membership in the class of states. Any member of this normatively neutral class that instantiates the normative class characteristic, that is, the justifying property of political justice that describes the just state, will also count as a member of the normative class of just states. It is in fact the relations between members of these two different classes that occupy Winfield's attention in the section of the final chapter on foreign and international relations.[5]

Whether in epistemology or ethics, the issue of normativity, perennially the target of sceptical argument, is one of justification, of validating or certifying normative status by appeal to norms.[6] The logic of justification is straightforward enough: candidates for justification, whose normativity is in question, gain their warrant provided that they pass muster imposed by a criterion or standard of justification, where measuring up consists in the candidate's instantiating the justifying property that constitutes the content of the criterion. The process of justification always consists in making a judgment about whether or not a given candidate instantiates the justifying property and thus is a member of the class having normativity, whether it is the class of justified beliefs in the case of epistemology or, as in the case of ethics, the class of morally right actions, rules, institutions or the like. As the discussion above about formal and normative descriptions indicates, the trick for a normative theory, therefore, is to come up with an account of the justifying property that serves as the class characteristic defining membership in this exclusive class.

Justification or normative validation is not a problem, provided that operative standards or criteria are available with which to evaluate candidates for normative validity. It is at best too unqualified a formulation to state baldly that ethics 'cannot take any norms for granted' (Winfield 2005: 18). Ethics can take some norms for granted, provided that it can show these are derivative from more fundamental principles or particular instances of more general norms. Despite this caveat, the truth behind the unqualified statement is that the justification of norms, if it concerns the ultimate criteria of validity themselves, quickly becomes what looks to be an insoluble problem. For those criteria, in order to win justification, would have to be treated like any other candidate seeking normative certification and one would then face the trilemma of vicious circularity, infinite regress, or regress-halting dogmatism. Every normative theory, in proposing its account of the justifying property, ends up either begging the question, generating an endless hierarchy of norms, or settling for foundational norms with the status of 'privileged givens', to use one of Winfield's favourite formulas. This so-called problem of the criterion, from which the sceptical

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challenge to normativity naturally arises, helps motivate such well-known second-best solutions to the normativity problem as relativism, contextualism, and reflective equilibrium, which function as so many accommodating responses to the sceptic's problem.

Winfield has never been willing to concede the field to the sceptic and is no more prepared to do so now in *The Just State*.[7] The normative theory he defends here can be called a rights-based conception of political justice. Interestingly, his defence of this rights-based conception does not follow some familiar paths, for instance, that it fits and justifies, coheres with, reflects, or explains our intuitions or considered judgments about political justice, or accounts for the principles operative in our political institutions, laws, or constitution. Not that he denies or is indifferent to whether his conception bears these coherence and explanatory relations to our intuitions, considered judgments, and political practices and institutions. On the contrary, he is interested in exemplifying where and to what extent his normative conception does in fact bear these relations, and so achieve additional corroboration.[8] But he is also interested in indicating where such coherence ends and discordance begins, and that is just where these intuitions, institutional practices, and constitutional law are no longer justified. Grant that in empirical science the principle of justification of empirical evidence has probative force in theory choice: where evidence and theory conflict, so much the worse for theory. Systematic normative theory, however, cannot accept an evidentiary role for intuitions, judgments, or practices, and not only because these are not relevantly similar to empirical data and hence cannot serve the functional analogous role in justifying theory acceptance. In the event of clashes in this sphere between theory and intuitions or the like, the direction of fit has to favour theory. Even if intuition and its ilk could overcome obvious objections and be allowed to play a probative role as functional equivalents of empirical evidence, the demands of systematic normative theory would not permit it, for the reason that doing so would by implication concede victory to the sceptic and thus the need to acquiesce in a second-best solution. Since Winfield refuses to go along with such second-best solutions, he cannot avoid confronting the sceptical challenge at his earliest possible convenience.

To make good on his claim, against the sceptic, to have provided a systematic, normative account of the just state (put prescriptively, what the state ought to be), Winfield's specific task consists in showing that his proffered normative description of the justifying property of political justice is informed by a foundation-free conception of normativity, which even the sceptic cannot but accept.

Winfield's approach to his head-on collision with ethical skepticism,[9] which he calls nihilism, is quite simple: his strategy is to call this scepticism into question by arguing that the sceptical refutation of ethics is incomplete due to a sin of omission.[10] The sin of omission consists in unjustifiably supposing that all justification requires

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appeal to a principle that functions as a foundation, thereby failing to countenance the foundation-free alternative. To carry through this anti-sceptical response, Winfield assumes two premises acceptable to the sceptic from which to begin the consideration of arguments concerning normativity in ethics (Winfield 2005: 19ff.): firstly, a fairly rudimentary concept of rational agency, according to which agents engage in voluntary action in that they act deliberately, that is, with an end in view, and secondly, a standard according to which any successful argument for normativity must avoid reliance on privileged givens, to use Winfield's formulation, that is, on premises a sceptic can without logical penalty reject. The first premise is innocent enough; no one will disagree that discussion in ethics unavoidably includes normatively neutral reference to agents taking action. The second premise also immediately gains the sceptic's allegiance, since it gives expression to the dogmatic foundational horn of the trilemma he exploits. For this reason, Winfield is willing to accept the very specific sceptical conclusion that two standard approaches to establishing normativity in ethics – appealing to predetermined ends and to the form of agency – both fail precisely because they employ forms of foundationalist argument, which suffer from the fatal infirmity of relying on privileged givens. As Winfield reconstructs these two 'complementary avenues' for establishing normativity, the one takes the form of teleological ethics with its emphasis on the final end as the highest good, the other that of procedural ethics, which, accepting the failure of teleological ethics, takes its bearings from 'the form of willing' rather than its ends (Winfield 2005: 19ff.).

While Winfield agrees with the sceptic that both teleological and procedural ethics are hobbled by dilemmas they cannot resolve, he parts ways at precisely this point by arguing that the sceptic fails to consider a non-foundationalist form of argument for normativity. Winfield does not leave it at suggesting the mere possibility of such a neglected alternative. He actually presents an anti-sceptical, non-foundationalist argument: starting, in good elenchtic fashion, from premises the sceptic cannot reject on pain of having to abandon his scepticism, Winfield argues that normativity, considered in its most bare generality, consists in the structure of self-determination, and that, consequently, any normative conception of agency in particular must have the character self-determining agency. To avoid being saddled with foundational normative givens, self-determining agency must be such that what agents determine themselves to be is a function of their reciprocal relation structured by correlative rights and duties of various types. This entails, as a further consequence, that there is a plurality of kinds of self-determining agency, and that this variety of kinds of rightful or just relations among self-determining agents is more than a sheer manifold of kinds indifferently related to a genus; for the political relation, in which agents as citizens exercise self-government, has the singular status, vis-à-vis the other non-political relations, that, as the culminating form of self-determination, it relates all these relations to one another and to itself. Because this form of self-determination unites all the others in relation to itself, political justice is the adequate form of self-

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determination and, consequently, the full instantiation of the very principle of normativity.

Winfield's anti-sceptical argument in the 'Introduction' raises a number of questions. Is all foundationalist argument in ethics doomed to failure due to its vulnerability to the reasons the sceptic supplies? Does scepticism have any resources to muster up a reply to the systematic, anti-foundationalist argument? That would leave Winfield susceptible to the counter-complaint that he too has committed a sin of omission, not taking into account such further sceptical considerations in constructing his anti-sceptical defence of the normativity of ethics. More fundamentally, what is it specifically about self-determination that allows one to employ it to immunise arguments for normativity against the corrosive effects of scepticism? Are there yet other anti-sceptical alternatives Winfield has not considered, which would render the sort of philosophy of right he pursues an option rather than 'if not my way then the highway'? Here I will have to leave these questions open, since my aim is to discuss in some detail the principle of equal opportunity, on which Winfield relies extensively in his arguments concerning political justice. In what follows, I will assume for the sake of the remaining discussion the success of the anti-sceptical argument in the 'Introduction', which enables the subsequent discussion in *The Just State*.

Before proceeding with an examination of the principle of equal opportunity and the adjustment problem in Winfield's argument about political justice, one needs to grant a number of what must appear as so many assumptions without the accompanying arguments Winfield has offered in their defence. The first such assumption is that in general self-determined agency is essentially relational. No agent can determine himself or herself apart from his or her relation to another of the same sort, an agent who likewise determines himself or herself in and through his or her relation to his or her like. Second, this relation should be understood as a right so to determine oneself, and a duty to respect that right. Third, we will suppose as established that self-determined agency as right or just conduct, consisting in the exercise of specific kinds of rights and the carrying out of their correlative duties, takes a variety of forms. Fourth, the bare minimum or rudimentary type of self-determined agency takes the form of property relations in which agents first determine themselves as owners or rightful possessors of property, and most minimally as self-owners, only by complying with their correlative duty to afford every other agent the same right of ownership. Fifth, assume that the owners have jurisdiction over externals but also over their own actions and intended consequences, with all that such owned action entails. From this follows the additional form of moral relations in which moral agents acknowledge one another's right to act for ends called for by their conscience, having the right and duty of responsibility only for the pursuit and outcome of those ends that their own conscience dictates. Sixth, grant the three

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kinds of self-determination comprising familial, civil, and political relations as institutional practices or forms of ethical community in which agents, already morally self-determining, further determine themselves respectively as family members, members of society, including membership in economic classes, and citizens of a polity. Seventh, it must be assumed that the more minimal relations are necessary normative conditions ingredient in the more complex forms of self-determination. For this reason, finally, one must take it that Winfield's argument about the normativity of political justice concludes that political self-determination is that unique form of freedom in which citizens take as their end not only their own political form of freedom, but the maintenance of the non-political forms of freedom or self-determination as well.

The principle of equal opportunity is implicated, firstly, because of the equality of rights implied by the structure of self-determination that agents enjoy as members of ethical communities, and, secondly, because of potential conflicts of rights and duties accompanying different spheres of ethical community. Equal opportunity is specifically made an issue at the political level since it is both the right and duty of political agents to pre-empt or resolve these potential conflicts by enacting the ways and means of their harmonisation.

The adjustment problem arises because enforcing the right of equal opportunity requires adjusting or accommodating the duties and prerogatives imposed by the different spheres of right to secure their compossibility with one another. These adjustments or accommodations cannot be made by eliminating one or the other of the types of rights that are the sources of potential conflict. That would be tantamount to eliminating spheres of right that enjoy normativity in virtue of embodying forms of self-determining agency. Indeed, according to the theory of the just state, it is the right and duty of citizens to ensure the maintenance of those non-political rights threatening conflict by seeking their mutual reconciliation. Thus, whatever the adjustments or accommodations, they must preserve each of the diverse types of rights or duties in accord with the philosophically derived constitution of liberty. One question that needs to be raised is how these adjustments are to be effected in a permissible way. Is there a higher principle that prioritises, a lexical principle of some kind, to use a Rawlsian turn of phrase? This sounds like a question for the adjuster who operates practically at the political level. But the question actually points to the more interesting theoretical issue of whether and if so to what extent philosophical argument can solve these adjustment problems a priori so that they never arise legitimately as topics for political deliberation. Again, what does systematic theory have to say about the relation between philosophical constitution and political legislation? How much and what kind of political action can philosophy pre-empt by a priori deduction?

The theoretical difficulty weighing on the normative theory of political justice is that talk of 'equal opportunity' is notoriously ambiguous. Thus, if one argues, as

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Winfield often does, that equal opportunity justifies adjustments in conceptualisation of rights and duties that lead either to their expansion or restriction, then whether those adjustments are warranted depends on which conception of equal opportunity is driving the adjustment. The results can be different depending on which conception is at work.

The expression 'equal opportunity' is of relatively recent vintage. Its ambiguous use in ordinary discourse as well as in contemporary theoretical discourse in law, policy, social science and social and political theory, has led to distinguishing weaker or more restricted from stronger or more encompassing senses. The weakest sense is primarily negative in that equal opportunity implies only a negative right. To say that someone is entitled to equal opportunity in this weak sense is to say that he should face no obstacle to his chosen pursuit. In the context, for example, of the civil right to an education, to say that an agent has equal educational opportunity enunciates in effect an anti-discrimination principle. Thus, this equal opportunity implies that a Gov. Orval Forbus who would close down the schools to block any attempts to integrate them, or a Gov. Wallace standing arms akimbo for the same racist reason blocking entrance to the school house door, violates a duty to uphold equal opportunity. Such evaluative judgments are not empirical claims that follow as deductions from appeal to positive law. Nor are they moral judgments that follow from the dictates of a moral principle embedded in someone's conscience. Instead, they are conclusions that follow from the a priori premises of a normative theory of civil and political justice, which in turn derives from the more basic entailments of the concept of self-determined agency.

The weakest conception of equal opportunity is weakest because its implications are the least far-reaching. Thus, if the student's right of educational equal opportunity implies a negative duty of anti-discrimination, on the narrow reading of equal opportunity it does not imply that the public welfare authority, justified a priori to correct for market failures that undermine economic opportunity, has a duty to underwrite the student's tuition and associated costs. But this is not because education is not included as part of the rights guaranteed by economic freedom. Rather, the principle of equal opportunity as a negative right does not imply an affirmative duty of aid as its correlative. Equal opportunity must be taken in a stronger sense if an agent's educational equal opportunity is to imply that he has a kind of positive right. Respecting weak equal opportunity, Gov. Forbus might welcome the student to whom he intended to bar entry in the previous scenario. But if the student is unable to pay his tuition by drawing on private means, such as his own savings, or funds of his parents or friends, or a private philanthropic agency, then he lacks equal opportunity in the stronger sense, unless public welfare levels the playing field by stepping in to pay his tuition or grant him a special student loan. On the political level, if the state finds violations of narrow equal opportunity, it sends in the Guard or lets

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civilians take some appropriate police measure to unblock the route to the school house door, but it is required to go no farther. If, on the other hand, stronger equal opportunity is conceptually operative, then the political authorities will have to ensure not only anti-discrimination, but also steps taken by the public welfare authority or some other relevant agency to underwrite the student's educational costs. If doing so entails raising taxes, and if this in turn requires placing limits on economic equal opportunity to put one's private wealth and income to one's own use, then this stronger sense of equal opportunity implies adjustments to the a priori understanding of that dimension of economic rights, adjustments which would not be required if equal opportunity were restricted to its narrow, negative sense of anti-discrimination. What argument does the systematic normative theory of justice bring forward to decide which sense of equal opportunity is required? Or does the theory argue that this is not a matter determinable by reason but is, rather, precisely the sort of question that citizens exercising their right of self-government must deliberate about and decide through their realisation of their powers of legislation, authorisation, and execution?

To alter the education scenario slightly, suppose that the student does not need welfare aid to pay tuition and associated costs, but is unable to compete in the admissions game because he lacks the relevant skills or talents; and suppose this lack is not due to past injustice, but the student is simply a victim of what theorists have come to call the socio-historical lottery. Does this individual too suffer a violation of equal opportunity? If so, this increases the strength of the more expansive concept of equal opportunity even further. Now, the right to equal opportunity in education will perhaps entitle a positive right to remedial education, and if such remediation involves costs the student cannot manage privately, then, by parity of reasoning, the public authority will have a duty to foot the bill with all the adjustment implications already mentioned.

Consider, finally, the strongest version of equal opportunity: suppose that our student is in need of such remediation, due neither to past injustice nor socio-historical misfortune but, instead, to his lack of luck in the natural lottery. If there were some kind of genetic intervention that could bring him to normal function so that he could compete on a level playing field, would equal opportunity entitle him to that? And if it required funds he was unable to supply privately, then would the public authority, on a priori grounds of his right to educational equal opportunity, have the affirmative obligation correlative to that right? Would it be required to pay for his genetic therapy, with all that this would logically entail for obligation at the political level and its feedback upon the civil and familial spheres? Could the family, for example, by exercise of its familial right, refuse such therapy for its child? Or would an adjustment, determined a priori from theoretical premises, curtail familial right? Or should this be a political question to be decided by citizens through the exercise of their various political powers? How does systematic theory decide such questions

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about where to draw the line between philosophical and political practical reason? If applied to political equal opportunity, is there one among the increasingly expansive conceptions that follows from the premises of systematic theorising about political justice, and if so which one?

To underline the issue at stake, take as another case the one Winfield offers concerning the conflict between family right to have children and civil right to pursue a career, claiming that economic equal opportunity justifies the entitlement to paid maternity leave. By analogy, the suggestion is that a similar entitlement is justified when determining the rightful shape of legislative office. But again, why should this adjustment be a matter of the one sphere of right taking precedence over the other, when there are different ways of resolving the tension depending upon which sphere is privileged vis-à-vis the others? If the demands of political office are greater than what the demands of family can bear, what prevents the conclusion that, at least for the moment, one ought not to be involved in politics, even if trumping the political in favour of the familial ends up disadvantaging the work of the body politic and by implication the other spheres of right for which the political has ultimate duty? And again, is this a political or philosophical question?

To look at yet another instance, can social or civil justice mandate public provision for dependent care, if such provision in turn requires a tax that disadvantages others who must pay it to underwrite what might be viewed merely as someone else's opportunity costs? What exactly is the difference between an opportunity cost and a disadvantage that amounts to a violation of an equal opportunity right? Or does theory require opportunity costs that inevitably accompany all choice to be conceptualised as a matter of social justice?

Winfield's discussion of the political rights and duties implied by legislation and its pre-requisites is replete with examples of potential conflicts between different spheres of right, familiar tensions that require 'negotiation', 'accommodation', 'flexibility' and the like. But is adjustment in all these cases a matter of justice? Does political justice justifiably demand that the other rights and duties bend precisely where Winfield claims they do? In many cases, it looks like the needed adjustment is an empirical matter for political prudence: we have evidence from life showing that doing one thing will make it difficult or impossible in practice to do another efficiently or effectively. It is a matter of cost/benefit, not logic. Is there a way to mark out a priori what sort of equal opportunity adjustment problems call for this kind of accommodation and curtailment, and what kind are susceptible to philosophical resolution? And what would the a priori argument be for drawing a line between these?

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Notes

[1] See Winfield 2005: 13, and Winfield 1988: 16.

[2] Winfield denies that an a priori description of the state is possible: the absence of a 'descriptive philosophy of the state' and its counterpart in a descriptive account of the family or civil society is due to reason's inability to provide such an account and its need to 'hand over all describing to the corrigible labors of a [*sic*] historical empirical understanding. Any attempt to specify what the state is a priori is a futile exercise in nominalism that either surreptitiously apes empirical generalization or indulges in arbitrary speculation' (Winfield 2005: 17).

[3] Of course, the justifying property typically will be not a simple property but, instead, a set of properties comprising a single or unitary complex property. The just state is the state that instantiates this complex set of properties. A normative theory of political justice is the account of this complex property.

[4] While Winfield argues against the possibility of a descriptive philosophy of the state or any other convention for that matter (see note 1 above), he also accepts, consonant with this denial, that, while 'the celebrated pioneers of political philosophy have never even attempted to conceive what the state is prior to and apart from an investigation of what the state should be', they have 'distinguished between the just state and unjust body politics … the overarching identity of politics gets always [*sic*] established within the ethical investigation of normative conduct and institutions' (Winfield 2005: 16-17). Thus, it is not so much that a descriptive philosophy is as such impossible, but rather that it cannot be possible unless it is done in essential connection with the normative project. This is consistent with the claim made in the text that the formal description is made via abstraction from the normative difference. In any case, when speaking about action shortly after, Winfield makes clear that a distinction can be made between its formal and normative description, since he lists some of the 'preconditions of conduct' that suffice for 'all possible action without exception', thus making them unserviceable for use in differentiating 'between the right and wrong conduct that they equally make possible' (Winfield 2005: 19). In turning, just after this statement, to the impasse caused by the sceptical challenge that 'what is normative must be discovered without taking it for granted', Winfield refers to the 'rudimentary structure of action in proper abstraction from any distinction between good and bad' (Winfield 2005: 19).

[5] In the penultimate section 8.5, Winfield casts his analytical light on the lawful relations, such as they may be, between just and unjust states.

[6] When it comes to politics, the concern with justification is explicable enough as a matter of psychology. It is perfectly natural, when confronted with political phenomena, to want more than simply their description and classification. Nor will explanation and prediction suffice to quiet the desire. Knowing whether political phenomena are in line with the law shows greater promise to satisfy, because it offers normative criteria, precisely the sort of thing needed to guide evaluation and prescription regarding these phenomena, and thus to answer questions of justification. But since law is itself ultimately a political phenomenon as well, in the end it too leaves the desire looking beyond the law for something more than legal validation. It is not only that decision making and action involve, implicitly or explicitly, normative claims of different sorts that explains this interest in justification. The spectator sports of praise and blame, of moral evaluation, especially in terms of justice, in addition to being themselves political phenomena, are also familiar reactions to the political phenomena that bespeak the justificatory concern. For such prescriptive and evaluative judgments that comprise the practices of praise and blame subject their targets to the process of justification. And in order to do so, they must operate with standards and criteria whose normativity can easily be called into question. Actors and spectators want to be confident in their decisions and judgments, and this desire for epistemic security motivates the concern to satisfy the higher-order desire for justification.

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Whether such a psychological explanation of the preoccupation with justification might be false because it is too superficial to reach the deeper psychological cause is not at issue. It might be if a better explanation would justify its function as a diagnosis, exposing and debunking the justificatory impulse as a form of malady, as a state in need of therapy to liberate its sufferer from its debilitating effects. But the theoretical hypothesis that would construe the justificatory urge as a symptom of psychic infirmity is one that cries out for justification even as its therapeutic trajectory points to health as freedom from it. The way to deal with the demands for justification that our normatively laden practices impose upon us cannot be through debunking psychological explanations, no matter how sophisticated, but through philosophical reflection. But can such reflection deliver?

[7] 'One should never rest content with complacent labors of "deconstruction" and "reflective equilibrium," which resign reason to investigating the presuppositions and internal coherence of existing ideologies and practices … there is no excuse for abandoning the task of calling all givens into question and thinking without foundations. Only when that challenge is tackled can right be defended in theory, if not in practice, from its enemies' (Winfield 2005: 14).

[8] 'If ethics can overcome the challenge of nihilism and mandate that agents ought to participate in a form of association sufficiently resonant with common usage to bear the term "political," a normative conception of the state becomes possible that escapes the arbitrariness of nominalism while providing the standard by which deviating political formations can be distinguished' (Winfield 2005: 17).

[9] Winfield sees the account of the just state as the task of political philosophy, placing the latter as a part within the larger frame of the more comprehensive normative philosophical discipline of ethics. Ethics as a whole provides a normative theory of justice or right; political philosophy is that part of ethics that supplies the normative theory of the political, that is, the theory of the just state. The ethical sceptic or nihilist can attack political philosophy indirectly, directing his or her challenge more globally toward ethics.

[10] 'Only by following them through can a third alternative be made intelligible, an alternative that escapes their limits and saves political philosophy from the impending triumph of nihilism' (Winfield 2005: 20). The reference to 'them' is to the basic logic of the two 'complementary' alternative types of argument to establish normativity, which, the sceptic agrees, follow from 'the basic anatomy of willing as voluntary action'.

Bibliography

Winfield, R. D. (1988), *Reason and Justice*. Albany, NY: State University of New York Press.

Winfield, R. D. (2005), *The Just State: Rethinking Self-Government*. Amherst, NY: Humanity Books.

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