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# Ideological Self-Consciousness: Judith Shklar on Legalism, Liberalism, and the Purposes of Political Theory

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Forthcoming in *Social Philosophy & Policy*

Judith Shklar once remarked that the mere presence of ideology is not objectionable but that pretended immunity to ideology is. I scrutinise this suggestion and Shklar's subsequent view that social theorists should acknowledge that their ideological impulses influence both their methods of study and the questions they pursue. I begin by focusing on the different ways that Shklar characterised ideology before turning to her critique of legalism. I then chart various ways that Shklar's call for ideologically self-aware political theorising feeds into her later work. I conclude by examining what ideological self-consciousness implies for our understanding of the purpose and limits of political theory.

Keywords: Judith Shklar, ideology, legalism, pluralism, liberalism of fear.

Beliefs and social practices are said to be ideological if they serve the interests of the powerful and cannot survive truthful reflective understanding.<sup>2</sup> This implies that non-ideological forms of understanding are in fact possible, while also usually suggesting that the move from the ideological illusion to a distortion-free understanding will be emancipatory. Considering ideology in this 'pejorative' way, as a kind of epistemic affliction to be overcome, pushes commentators to focus on particular questions, for example about how domination is legitimatised, or emancipation might occur, which

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<sup>2</sup> Edward Harcourt, 'Introduction', in *Morality, Reflection and Ideology* (Oxford: Oxford University Press, 2000), 3.

typically express the political preferences of the self-anointed unmaskers. It also directs attention away from other questions about ideology one might take up.

In this essay, I explore the work of a thinker who rarely appears in contemporary discussions of these issues, the political theorist Judith Shklar. Shklar held that ideology is an inescapable feature of purposeful political thought. This is neither to be celebrated as some agonists suppose, nor to be maligned as the Marxist tradition suggests; it is simply unavoidable. Yet Shklar did think that acknowledging one's ideological impulses can have salutary implications. I focus on this element of her thought by exploring her call for ideological self-awareness and examining how it might be seen to reverberate in her wider writings.

I begin with Shklar's view of inescapability of ideology before turning to the argument of her second book, *Legalism*. Following this, I draw out the wider implications of Shklar's view of the inevitability of ideology for her understanding of the point and purpose of political theory. Having done that, I ask how we should conceive of our most basic political commitments and convictions if we see them as ideologically-inflected. I conclude by asking how we can theorise in an ideologically self-consciousness way.

## STARTING POINTS

Shklar distanced herself from those who employed the term ideology in a straightforwardly negative way. In the introduction to her edited collection *Political Theory and Ideology*, she remarked that 'From the first, ideology has been used colloquially to refer to any visionary and grandiose scheme of social reform. As such

it is a word of opprobrium encompassing all political dreams, whatever their significance'.<sup>3</sup> Shklar found this usage unhelpful because it amounted to little more than a lazy way of denigrating ambitious political schemes one disliked, usually by tarring them with the brush of totalitarianism.<sup>4</sup> Most of the time, she avoided this usage.<sup>5</sup> In "Ideology Hunting: The Case of James Harrington", published in 1959, she distinguished between three senses of ideology. First, she insisted we could use the term 'ideology' to describe someone's 'political convictions and preoccupations'. Second, she noted that ideology can be used to describe political thinking that takes a more 'historicist, all-explaining form'. Here the big "isms" are what she had in mind – 'grand' ideologies which seek to explain the course of history and/or present a detailed blueprint for future action.<sup>6</sup> Third, Shklar held that ideology is often employed in a more 'neutral' or 'sociological' sense. When used in this way, individuals and their ideas are regarded as functions of the social wholes of which

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<sup>3</sup> Shklar, 'Introduction', 1.

<sup>4</sup> Katrina Forrester, 'Hope and Memory in the Political Thought of Judith Shklar', *Modern Intellectual History* 8, no. 3 (2011), 601-02.

<sup>5</sup> She does sometimes employ the term more pejoratively. For example, in *Ordinary Vices* she criticises ideology for giving people 'instant guidance' and encouraging people to 'abandon their own judgement': *Ordinary Vices* (Harvard: Harvard University Press, 1984), 21-22. In a lecture on Hegel, she characterises ideologies as political belief systems driven by particular understandings of 'the forces of history'. As Shklar there presents matters, ideologies rely on such theories to justify ends, direct political action, and identify enemies to be defeated, presenting those enemies as obstructing the ends that history has destined human beings to achieve. She contends that Hegel developed the theory of history at the heart of this form of ideological politics: 'Hegel and Ideology' in *On Political Obligation* (New Haven and London: Yale University Press, 2019), 121-28. In *The Faces of Injustice*, Shklar remarks that one of the roles of ideology is to determine what counts as natural misfortune rather than an injustice that can be rectified: *The Faces of Injustice* (New Haven: Yale University Press, 1990), 1. More broadly, the argument of Shklar's first book, *After Utopia: The Decline of Political Faith* (Princeton, NJ.: Princeton University Press, 2020), has complex relations to the end-of-ideology outlooks she later rejected in full-throated terms in *Legalism*. However, in what follows, I focus on Shklar's more considered view that all purposeful political thought and action requires some kind of ideological impetus.

<sup>6</sup> See also, 'Introduction' to *Political Theory and Ideology*, 2-3.

they form a part so that 'the unique and individual ... tends to be ignored, or even to be modified, in order to illuminate the logic of the entire situation'.<sup>7</sup>

In *Legalism*, Shklar's most thoroughgoing exercise of ideological analysis, she primarily employs the first sense of ideology. Shklar states that all purposeful political thought is ideological because it is expressive of the emotional reactions one has to social experiences, and these emotional reactions, whether simple and direct or more comprehensive, 'insensibly' come to 'condition one's interests, one's methods of study, one's conceptual devices, even one's vocabulary'.<sup>8</sup> Although 'ideological responses are often difficult to recognize in oneself', Shklar insists we ought to recognize that all purposeful political thought has some kind of 'ideological impetus'.<sup>9</sup> This has direct implications for the idea that de-ideologizing social theory is either possible or desirable. Although Shklar recognized that the pursuit of ideologically untainted social theory appealed in the post-World War II period, she insisted that the aspiration to arrive at a thoroughly de-ideologized understanding of the social world must be renounced.<sup>10</sup> By stressing that ideology goes beyond grand pronouncements about the end of history and the meaning of life, Shklar was responding to the "end of ideology" thesis. In contrast to those who claimed that the rejection of fascism and Soviet Communism enabled them to escape the clutches of ideology, Shklar claimed they too bring ideological frames of mind to bear. Likewise, she was repudiating those

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<sup>7</sup> Judith Shklar, 'Ideology Hunting: The Case of James Harrington' in *Political Thought & Political Thinkers*, edited by Stanley Hoffmann (Chicago: University of Chicago Press, 1998), 207.

<sup>8</sup> Shklar, *Legalism*, 4.

<sup>9</sup> Shklar, *Legalism*, 4-5. Shklar, 'Introduction', 15.

<sup>10</sup> Shklar, *Legalism*, 5.

who suppose, in a Marxian vein, that ideological thinking is something that might be overcome once the material basis of society is transformed.

In *Legalism*, Shklar focuses on analysing the legalistic mind-set rather than engaging in a fine-grained analysis of ideology itself. However, the basic understanding she employs is broadly compatible with the approach that Michael Freeden has comprehensively developed in his path-breaking work. Freeden emphasises that when we think politically, we impute 'specific meanings, out of a potentially unlimited and essentially contestable universe of meanings' to a range of political concepts.<sup>11</sup> Ideologies thus 'decontest' the meaning of essentially contested political concepts and then systematically relate such concepts to other likewise decontested concepts in particular ways. In the process, they accord some of these concepts core status while pushing others to the periphery. For example, when we examine liberalism, we find that liberty, individuality, and rationality occupy a core status while other concepts, like equality, are more peripheral. At the core of conservatism, on the other hand, are order, authority, and tradition.<sup>12</sup> Freeden thus maintains that ideologies are best understood as 'distinctive configurations of political concepts' which create 'specific conceptual patterns from a pool of indeterminate and unlimited combinations'.<sup>13</sup> On this view, all purposive political thinking includes ideological components.

In accordance with her belief in the inescapability of ideology, Shklar bookended *Legalism* with frank statements of her own political ambitions. This

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<sup>11</sup> Michael Freeden, *Ideologies and Political Theory: A Conceptual Map* (Oxford: Oxford University Press, 1996), 54.

<sup>12</sup> Freeden, *Ideologies and Political Theory*, 87.

<sup>13</sup> Freeden, *Ideologies and Political Theory*, 4.

reflected her view that, as she memorably put it, the mere presence of ideology is not objectionable but that ‘pretended immunity to ideology’ is.<sup>14</sup> In the introduction, she remarks that a core motivation of the argument that follows is to offer ‘a defense of social diversity, inspired by that barebones liberalism which, having abandoned the theory of progress and every specific scheme of economics, is committed only to the belief that tolerance is a primary virtue and that a diversity of opinions and habits is not only to be endured but to be cherished and encouraged’.<sup>15</sup> The book concludes with her reiterating that what she calls ‘the liberalism of permanent minorities’ has informed the argument all along. By making this commitment of hers explicit, she remarks that she is not hoping to excuse a lapse of ‘good academic form’ but is facing-up to the purposeful character of political thought. As she puts it, ‘Either one recognizes one’s moral impulses and their bearing on one’s conceptions, or one does not. In neither case do they disappear. One ought indeed to ask: “Why should they?”’.<sup>16</sup> It is this idea, the suggestion that social theorists ought to practice a kind of ideological self-awareness, which I examine in what follows. I begin by focusing on Shklar’s analysis of legalism.

### SHKLAR’S CRITIQUE OF LEGALISM

Shklar regards legalism as both the reigning ideology of the legal profession and a broader social outlook.<sup>17</sup> She pithily describes it as ‘the ethical attitude that holds moral conduct to be a matter of rule following, and moral relationships to consist of

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<sup>14</sup> Shklar, *Legalism*, 6.

<sup>15</sup> Shklar, *Legalism*, 5-6.

<sup>16</sup> Shklar, *Legalism*, 224.

<sup>17</sup> Shklar, *Legalism*, viii.

duties and rights determined by rules'.<sup>18</sup> For Shklar, legalists thus hold that 'Claims and counterclaims *should* be made in terms of shared and enduring principles, and the impartial assessment of what is due to all claimants – justice – is seen as the highest and most rational form of conduct'.<sup>19</sup> This has far-reaching ideological consequences. Shklar stresses that legalists bring an ideological frame of mind to bear in the sense that they structure human relations into 'the forms of claims and counter-claims under established rules', and assume a set of rules are "there" that can be employed by an impartial adjudicator to authoritatively end disputes.<sup>20</sup> Yet Shklar insists legalists are inadequately reflective about when the kind rule- and claim-oriented behaviour they celebrate is in fact desirable, and whether or not such rules can be uncovered.<sup>21</sup>

Shklar develops her case by analysing both natural law theory and analytical positivism, maintaining prior political aspirations tacitly condition both approaches. Shklar claims analytical positivism obscures the ideological motivations that underpin its sharp separation of law and morals. She insists that it is neither logically or conceptually necessary to regard law and morals as totally distinct entities, and contends that because this separation is never fully maintained in practice (as everyone accepts), the attempt to isolate law from morality and politics in legal theory does 'considerable violence to political actualities'.<sup>22</sup> Positivists sharply separate law from morals and politics because they seek to articulate a properly de-ideologized legal theory. Yet Shklar insists the quest for a pure, politically and morally neutral

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<sup>18</sup> Shklar, *Legalism*, 1.

<sup>19</sup> Judith Shklar, 'In Defense of Legalism', *Journal of Legal Education*, 19 (1966), 51.

<sup>20</sup> Shklar, *Legalism*, 10.

<sup>21</sup> Shklar, 'In Defense of Legalism', 51-52.

<sup>22</sup> Shklar, *Legalism*, 34-35.



understanding of law is itself a matter of political preference.<sup>23</sup> Most saliently, she claims it expresses the liberal desire to preserve ‘the diversity of morals which is in constant danger of ideological and governmental interference’.<sup>24</sup> In so doing, she believes positivism bolsters the legalistic ethic by encouraging us to think about law in general in a way that reflects a particular account of ‘the ideal purposes of law’.<sup>25</sup>

Unlike the positivists, adherents of natural law make no pretence about the moral underpinnings of their position, but Shklar alleges they nonetheless still assume that if the correct rules, grounded in a genuinely objective understanding of the common good, are applied legal decisions escape ‘the normal conflicts of pluralistic society’.<sup>26</sup> Yet like many other critics of natural law, Shklar denies that any such rational consensus on the common good is forthcoming. In fact, in this area deep disagreement is dissent so persistent it even afflicts natural law theory. As Shklar cuttingly puts it, ‘One of the delights of those who do not happen to be partial to natural law theory is to sit back and observe the diversity and incompatibility among the various schools of natural law, each one insisting upon its own preferences as the only truly universally valid preferences’.<sup>27</sup> Shklar claims that natural law theorists proceed as they do because they want the social diversity that confronts us in

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<sup>23</sup> Shklar, *Legalism*, 38.

<sup>24</sup> Shklar, *Legalism*, 42.

<sup>25</sup> Shklar, *Legalism*, 35. In conversation, Brian Leiter and Dimitrios Tsarapatsanis have raised important concerns about Shklar’s understanding of positivism, arguing that a major merit of the positivist distinction between law as it and law as it ought to be is precisely that it allows us to recognise the ideological provenance of both law and legal decisions. It is, however, worth stressing that Shklar was most interested in highlighting the legalistic ways positivism could be taken up (and perhaps misused) as well as the legalistic frames of mind she thought it encouraged. As I am concerned with what Shklar’s critique of legalism can teach us about her view of ideology and ideological self-consciousness, I leave these questions aside here.

<sup>26</sup> Shklar, *Legalism*, xiii.

<sup>27</sup> Shklar, *Legalism*, 68.

pluralistic society to disappear.<sup>28</sup> They are thus committed to what she calls an ideology of agreement. She alleges its proponents would like such ‘prefabricated’ principles to obtain because this would make deciding how social conflict should be resolved less onerous.<sup>29</sup> However, it is illusory to suppose that a determinate common good, immune to the controversies of partisan political conflict, can be invoked to adjudicate the social and political conflicts we experience.

Shklar’s engagement with Hayek is especially instructive of her misgivings about consequences of thinking about law in an ideologically unselfconscious way. In *Legalism*, Shklar claims that Hayek’s work is a ‘grand ideology’ because it promotes ‘its own theory of history, of psychology, of epistemology, of economics, and of politics’. At the heart of this grand ideology lies Hayek’s Manichean distinction between the healthy instincts of society and the destructive nature of the state-power. He presents the rule of law as the antidote to dangers of the latter, miraculously suggesting, as Shklar notes, that it enables us to enjoy ‘government without coercion’. This claim rests on Hayek’s distinction between direct commands and general rules which Shklar, like many others, insists is hard to maintain when one thinks in concrete terms.<sup>30</sup> More importantly, she claims that it has the purpose of delegitimising any purposive political action that goes beyond providing for ‘the barest of needs of peace and order in society’. Shklar claims that according to the vision of political freedom

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<sup>28</sup> Shklar, *Legalism*, 122-23.

<sup>29</sup> Shklar, *Legalism*, 88. Given that Shklar’s criticism of legalism implicates natural law theorists in this way, I disagree with Seyla Benhabib that ‘the real target of her critique is the legal positivist tradition’: Seyla Benhabib, *Exile, Statelessness, and Migration: Playing Chess with History from Hannah Arendt to Isaiah Berlin* (Princeton, Princeton University Press, 2018), 128.

<sup>30</sup> She claims it is ‘difficult to imagine what laws other than traffic rules can possibly have the character that is ascribed to genuine law’: *Legalism*, 23.

Hayek endorses, 'security and freedom, tradition and legality' are 'totally identified'. She thus alleges that Hayek favours his (admittedly idiosyncratic) understanding of the rule of law because of the politically conservative implications it promises.<sup>31</sup>

In *The Faces of Injustice*, Shklar's criticism escalates. Though she commends Hayek for recognising that the market generates undeserved fortunes for some and unwarranted hardship for others, Shklar objects to his view that these outcomes cannot be considered just or unjust. Hayek presents the market as an impersonal force and, due to his ideological understanding of the rule of law, holds that when governments legislate and act to redress and alter market outcomes such political interference is nakedly coercive. In a law-governed polity, Hayek thus insists government will recognise it has nothing to distribute and will simply react intuitively 'to the traditions of a people, not to fulfil any plan or achieve any specific results, but merely to allow everyone to pursue their chosen parts in a play that has no author and that appears to simple be *there*'.<sup>32</sup> Thus understood, Shklar claims that Hayek's account of the rule of law serves to fuse traditionalist politics and free market economics. However, she is adamant this is not an inexorable implication of a neutral or objective understanding of law.<sup>33</sup> Indeed, to make sense of Hayek's legal thinking she insists we must foreground his political preferences and interpret many of his legal claims as political choices. Here again, Shklar insists Hayek's grand

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<sup>31</sup> Shklar, *Legalism*, 24. Shklar returns to many of these themes in her late essay 'Political Theory and the Rule of Law', *Political Thought & Political Thinkers*, 27 – 37.

<sup>32</sup> Shklar, *The Faces of Injustice*, 78.

<sup>33</sup> She also finds it politically unattractive because she believes 'that when we can alleviate suffering, whatever its cause, it is passively unjust to stand by and do nothing', as 'It is not the origin of injury, but the possibility of preventing and reducing its costs, that allows us to judge whether there was or was not unjustifiable passivity in the face of disaster': *The Faces of Injustice*, 81.

understanding of the rule of law performs an important ideological function. In this sense, the accounts of Hayek's thought Shklar proffers in *Legalism* and *The Faces of Injustice* are closely related. In the former, Shklar highlights the political motivations that she claims underpin Hayek's understanding of law. In the latter, the criticism sharpens insofar as she contends that these political choices naturalize misfortune, by framing the outcomes of the market as unavoidable or natural, rather than as remediable injustices. In other words, what she initially seemed to regard as 'pretended immunity to ideology' she later presents as something akin to mystification in the Marxian sense.

Alongside her criticisms of particular schools of legal thinking and thinkers, Shklar offers a more general account of the deleterious consequences of legalism. She insists legalism encourages us to regard politics 'not only as something apart from law, but as inferior to law'.<sup>34</sup> In contrast, Shklar claims that while it is sometimes appropriate to invoke a settled body of rules to determine what we should do, this is neither always possible nor necessarily helpful.<sup>35</sup> She recognises that some are likely to believe that her view of the entangled relationship of law, morals, and politics illustrates that law is simply an instrument of the ruling class. Shklar's response to this is arresting. She accepts that law 'is a conservatizing ideal and institution'.<sup>36</sup> However, she does not believe this recognition must undermine a commitment to the rule of law because, as she enigmatically puts it, 'there is politics and politics'.<sup>37</sup> Her point is that so long as legalism generates beneficial political outcomes, we can recognise the

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<sup>34</sup> Shklar, *Legalism*, 111.

<sup>35</sup> Shklar, *Legalism*, 143.

<sup>36</sup> Shklar, *Legalism*, 10. See also 142; 187; 220.

<sup>37</sup> Shklar, *Legalism*, 143. See also 145; 209-10.

political character of law without this rendering our commitment to rule by law itself unstable. In the main she thought legalism functioned in precisely this way, referring to it as a ‘civilized political ideology which, in spite of some absurdities, must claim the loyalty of all those who care about decent government’.<sup>38</sup> Yet she insists that ‘the ethos must be saved from its own intellectual obstacles’.<sup>39</sup> She thought it could be if we see law in a broader social setting and focus on the moral and political ends that law-governed politics serves, rather than treating law in isolation from these.<sup>40</sup>

### NUREMBERG AND TOKYO

This insight drives Shklar’s bracing treatment of the post-war trials in Nuremberg and Tokyo. In both cases, she claims that legalist ideologues pathologically sought to identify strict legal rules that could be impartially administered even though none existed and, in so doing, illustrated the limitations of legalism.<sup>41</sup> Shklar was adamant that if one thinks in terms of pure legality both trials were ‘simply unjust’ because no established rules of international law were “there” which could be invoked to condemn the actions of Germany and Japan. But this did not settle the question of whether or not the trials were nonetheless justified all-things-considered because

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<sup>38</sup> Shklar, ‘In Defense of Legalism’, 51.

<sup>39</sup> Shklar, ‘In Defense of Legalism’, 52.

<sup>40</sup> Shklar, ‘In Defense of Legalism’, 52, n. 3. Hence in ‘Political Theory and the Rule of Law’, Shklar claims the rule of law originally had two quite distinct meanings which have become blurred due to ‘ideological abuse and general over-use’: 21. She expresses her support for approaches which paint rule of law in distinctly political terms, as she claims Montesquieu did, by seeing the rule of law as ‘institutional restraints that prevent government agents from oppressing the rest of society’: 22. The alternative approach, which Shklar traces back to Aristotle, sees the rule of law as ‘as nothing less than the rule of reason’: 21-22. Central to this understanding is the idea of a judging agent as the dispenser of justice: 24. Among Aristotle’s modern followers in this regard, Shklar includes Lon Fuller and Ronald Dworkin: 27, 32-36.

<sup>41</sup> William Scheuerman, ‘Law and the Liberalism of Fear’ in *Between Utopia and Realism: The Political Thought of Judith N. Shklar*, edited by Samantha Ashenden and Andreas Hess (Philadelphia: University of Pennsylvania Press, 2019), 57.

'strict justice is not everything'.<sup>42</sup> There are, Shklar contends, 'occasions when political trials may actually serve liberal ends, where they promote legalistic values in such a way as to contribute to constitutional politics and to a decent legal system'.<sup>43</sup> Shklar believed Nuremberg could be defended on these ground because the legalized punishment of leading Nazis promised to revive an older tradition of politics and law the Nazis purposefully crushed. 'If one judges it in terms of its foreseeable effects upon those Germans who inevitably would and did write West Germany's constitution and dominate its political life', Shklar claims, 'the Trial was not only justified, but it was the only justifiable way of dealing with the Nazi leadership' because it illustrated, to this elite, the 'meaning and value of legalistic politics, not only by offering a decent model of a trial ... but by presenting evidence in a way that the political elite could not shrug off'.<sup>44</sup> However, because she claimed these traditions lacked a basis in Japanese history, Shklar claims the Tokyo trial was understandably seen as little more than the imposition of 'the nationalistic ideology of the victors'.<sup>45</sup>

The post-war trials exemplified what so frustrated Shklar about legalism. As a liberal, she held that the political value of legalistic politics was immense, whilst simultaneously insisting that legalistic ideology forbade the only tenable defence of itself. Legalism, in this sense, not only blinds its adherents from recognising the limitations of legalistic practice. It also stopped committed liberals from thinking realistically about how their underlying political commitments might best be

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<sup>42</sup> Shklar, *Legalism*, 160.

<sup>43</sup> Shklar, *Legalism*, 145.

<sup>44</sup> Shklar, *Legalism*, 168-69.

<sup>45</sup> Shklar, *Legalism*, 183. For useful discussion of Shklar's account of both trials, which highlights some of her more questionable assertions, see Moyn 'Judith Shklar versus the International Criminal Court', 483-85.

defended and put into practice.<sup>46</sup> One of the most important implications of *Legalism* is that all social theorists must forgo the attempt to find some politically 'neutral' standpoint outside of contentious politics from which they can adjudicate how those conflicts should be resolved. Instead, they should recognize that *any* stance they endorse will reflect a particular ideological position among others.<sup>47</sup>

The attack on the law/politics distinction that Shklar mounts in *Legalism* will not strike many readers as radical or surprising today, and I will not dwell on it here.<sup>48</sup> Instead, I shall focus on Shklar's controversial suggestion that a more ideologically self-aware defence of the rule of law, which stresses the salutary liberal consequences the legalistic ethic can generate, would strengthen a commitment to the kind of law-respecting politics she favoured. In his thoughtful discussion, Samuel Moyn insists that attempting to justify a commitment to the rule of law on directly liberal grounds is unlikely to succeed because the legalistic mindset 'seems to depend on large numbers of people following rules laid down as more than simply a matter of political preference'. As he succinctly puts it, 'Lawyers are not supposed to adopt legalism only in cases in which it promotes liberalism'. Thus, Moyn contends that 'it is almost unavoidable to conclude that, according to her own defense of it, the legalistic ethic has to be taken up naively – as if it were not an ideology – precisely in order for it to have the beneficial consequences she prized'.<sup>49</sup> In this sense, Moyn accuses Shklar of endorsing a version of the noble lie. This, he maintains, is not just a theoretical

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<sup>46</sup> Scheuerman, 'Law and the Liberalism of Fear', 57.

<sup>47</sup> Giunia Gatta, *Rethinking Liberalism for the 21<sup>st</sup> Century: The Skeptical Radicalism of Judith Shklar* (New York: Routledge, 2018), 111.

<sup>48</sup> On this point, see Judith Shklar 'A Life of Learning', 274-75.

<sup>49</sup> Moyn, 'Judith Shklar versus the International Criminal Court', 478-79.

problem, but one that undermines the defence of Nuremberg she articulates. 'How', Moyn asks, 'could a society suffering from an excessively political interpretation of law under the Nazis switch to a more humane and liberal politics by adopting a legalism they simultaneously knew was a myth but adopted purely and self-consciously as a matter of its political utility?'<sup>50</sup> If Moyn is right, greater ideological self-consciousness would not strengthen legalism but upend it.

Does Moyn overstate his case? Following Shklar, we may distinguish two things. First, the perspective internal participants must adopt for legalistic practice to remain stable. As Moyn notes, the kind of law-governed politics Shklar favours requires these participants to endorse the authority of legal decisions regardless of whether or not they, in particular cases, further particular political goals. Second, Shklar insists we must adopt an external perspective when we question the value of legalistic practice as a whole. Thus understood, Shklar endorses the pluralist idea that legal values are not supreme, but one set of values among many other values that also deserve our respect. Further, she insists that although justice itself may be an important value within a legal system, it often competes with other interests. Thus, in the preface to the 1986 edition of *Legalism*, she remarks that her account undermines the quest for 'the holy grail of perfect, non-political, aloof neutral law and legal decisions', and recognises this invites the objection that a 'politically oriented legal system spells the end of judicial legitimacy'.<sup>51</sup> However, she denies that things are this stark. 'Although it is philosophically deeply annoying', she insists 'human institutions survive because most of us can live comfortably with wholly contradictory beliefs'. In

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<sup>50</sup> Moyn, 'Judith Shklar versus the International Criminal Court', 494.

<sup>51</sup> Shklar, *Legalism*, x.



the case of legalism, she claims that thoughtful citizens ‘know that the courts act decisively in creating rules that promote political ends ... They also insist that the impartiality of judges and the process as a whole requires a dispassionate, literal pursuit of rules carved in spiritual marble’. This may seem ridiculous, but Shklar insists it is not ‘socially or psychologically indefensible’ and that provided ‘we value flexibility and accept a degree of contradiction, this paradox may even seem highly functional and appropriate’.<sup>52</sup> This is part of her more general position that liberalism demands that we live with ‘contradictions’ and ‘unresolved conflicts’.<sup>53</sup>

Rather than propagating a noble lie, it is thus perhaps better to read Shklar as endorsing the pluralist claim that we can and often do occupy multiple perspectives and standpoints which enable us to regard our institutions and practice under different aspects, and that these perspectives are often in tension with one another.<sup>54</sup> For Shklar, this kind of double-mindedness is not necessarily confused or inconsistent, but a condition of life in pluralistic societies. This pluralism is, as we have seen, something that strict legalism denies because it elevates legal values above others, especially those associated with ‘mere’ politics. In other words, Shklar’s commitment to legalism is not a lie even though it is not total. She is not denying that, much of time, the ethical attitude legalists insist on is, indeed, valuable. The important point is that, as pluralists, we ought to recognise that this ethic is not ‘the only morality among men

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<sup>52</sup> Shklar, *Legalism*, x. See also 121-22.

<sup>53</sup> Shklar, *Ordinary Vices*, 249.

<sup>54</sup> For discussion of this point in relation to the literature on value pluralism in moral and political philosophy see Edward Hall, *Value, Conflict, and Order: Berlin, Hampshire, Williams and the Realist Revival in Political Theory* (Chicago: University of Chicago Press, 2020), 108-09.

in generally legalistic societies'<sup>55</sup> *and* that this is a good thing because of the importance of non-legalistic values.<sup>56</sup>

Moreover, it is worth bearing Shklar's intended audience in mind when one considers the accusation that Shklar's ideologically self-aware defence of the rule of law must undermine it in practice. Shklar must have recognised that non-liberal adherents of natural law theory were not likely to be moved by her remonstrations against it given her polemical and dismissive tone. For this reason, it makes sense to see her as writing for liberals, who endorsed either natural law thinking or analytical positivism, who she thought were being misled about the relationship between law, morals, and politics by legalist frames of mind. Of course, Shklar would not have hubristically thought the force of her argument alone would immediately cause committed legalists to abandon their theoretical views. She was always too sceptical about the power of theoretical argument to be *that* confident about the power of any academic tract. Instead, I suggest that her hope was that liberals seduced by legalistic thinking and practice might come to re-evaluate their views. Put another way, although Shklar was undoubtedly preaching to the (large) liberal choir, she was trying to persuade them to change denomination.

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<sup>55</sup> Shklar, *Legalism*, 2.

<sup>56</sup> In personal correspondence, Samuel Moyn questions this line of response by noting that it is very hard to participate in the politics of many countries without thinking and acting legalistically because of the unquestioned and socially domineering role that legalist assumptions play. This strikes me as an acute political observation. However, it is not clear that it undermines the kind of response articulated above. Indeed, liberals of Shklar's stripe are likely to claim that many of the pathological features of current politics – including its excessive legalism – are a direct result of a widespread refusal to recognise the kind of value pluralism they highlight. In other words, the failure to take pluralism seriously often causes people to ignore how complex and difficult it is to make responsible judgements about we should live together, here and now.

Recognising that many of Shklar arguments in *Legalism* arguments are not directed at a politically aloof audience but at one that is, in some important sense, already likely to be sympathetic to the kind of politics that Shklar is trying to rejuvenate is instructive. It suggests that her work often aims to *persuade* an audience that shares many of her most basic political commitments and preferences rather than attempting to convert staunch ideological opponents to the politics she favours. One important implication of *Legalism*, then, is that having a realistic grasp of the particular audience one writes for and what one is trying to persuade them of, may be a viable way of practicing the ideologically self-aware political theory Shklar commends.<sup>57</sup>

#### THE NATURE OF POLITICAL THEORY

Many of the scattered remarks about the point and purpose of political theory one finds throughout Shklar's corpus speak to this concern. At one point in *Legalism*, Shklar remarks political theory is not 'a work of discovery' but an attempt to re-examine, adapt, or reject received ideas by asking if they give coherent intellectual expression to our political experiences.<sup>58</sup> Likewise, when commenting on Rousseau's literary style in *Men and Citizens*, Shklar remarks that 'Political theory is meant to be persuasive' and that its style therefore falls between pure rhetoric and scientific discourse because it 'aims at changing attitudes, at making the reader see his world

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<sup>57</sup> Bernard Williams addresses the issue of the audience of political philosophy through a discussion of Shklar's work in his essay 'The Liberalism of Fear' in *In the Beginning was the Deed: Realism and Moralism in Political Argument* (Princeton, Princeton University Press, 2005), 52–62. Though Williams's distinction between audience and listeners is characteristically perceptive, he does not address what I am referring to as Shklar's ideological self-consciousness.

<sup>58</sup> Shklar, *Legalism*, 28. See also 224.

differently, and so to discover new meanings'.<sup>59</sup> In the final chapter of *Ordinary Vices*, when reflecting on her foregoing argument that liberals should put cruelty at the head of the vices, Shklar remarks that she has done what she takes the job of political theory to be: 'to make our conversations and convictions about our society more complete and coherent and to review critically the judgements we ordinarily make and the possibilities we usually see'. When proceeding in this way, she remarks that she deliberately refers to "us" and "we" because she *is not* addressing a group of strangers.

Who are the "we" of whom I seem to talk so confidently? I have assumed that I live among people who are familiar with the political practices of the United States and who show their adherence to them by discussing them critically, indeed relentlessly. We have been educated as is now only possible in liberal democracies and we have a fund of historical and literary memories on which we can draw as we contemplate ruling and being ruled. The institutions of constitutional government and representative democracy are our political givens, but we can draw on a considerable range of other possibilities to sharpen our political imagination. As a result, we can talk to, as well as at, each other intelligibly. Whether we disagree or are at one, we can know quite well why it is so. There is nothing in the least unusual about such an enterprise.<sup>60</sup>

When other political theorists make use of this vernacular, they attempt to derive various thick political prescriptions from the settled beliefs and traditions they insist "we" are committed to. Think of John Rawls's attempt to build a determinate political conception of justice from the fund of basic ideas and principles he claims are implicit in the public political culture of modern constitutional democracies.<sup>61</sup> Alternatively, consider the way that communitarian theorists seek to offer an account of a substantive common good based on their interpretation of 'our' shared social understandings and the habits and traditions they claim are unique to particular

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<sup>59</sup> Judith Shklar, *Men and Citizens: A Study of Rousseau's Social Theory* (Cambridge: Cambridge University Press, 2009), 225.

<sup>60</sup> Shklar, *Ordinary Vices*, 226-27.

<sup>61</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), 8.

societies. Though Shklar targets the same “we” as Rawls and the communitarians, she thinks there are reasons for being sceptical of their respective enterprises.

In a letter she wrote to Rawls discussing the approach he adopted in *Political Liberalism*, she remarks that anyone who tries to build a theory on the back of the implicit values of an actually-existing polity cannot ‘evade the demand for demonstrably accurate historical evidence to show that these are indeed the latent values’. Having made this point, Shklar directs the following questions at Rawls: ‘How latent? How widely shared? How deeply held and by whom at what times?’<sup>62</sup> Shklar also scorned Walzer’s view that the responsible social critic offers an account of the immanent values of society, insisting on them as the ‘common understanding’ of all members, before employing these values to criticise deviant social practices. Contra Walzer, she insists that citizens of modern liberal states are ‘culturally disparate and often deeply hostile to one another as individuals and especially as members of ascriptive groups’.<sup>63</sup> No plausible account of our shared understandings, she insists, can slight the fact that in liberal societies such conflicts are ever-present and that any appeal to shared understandings is, therefore, another argumentative move in a contentious political debate.

In making these points, Shklar insists that *we* must not evade the fact that conflict among *us* is ‘both ineluctable and tolerable, and entirely necessary for any degree of freedom’.<sup>64</sup> If political theorists choose to speak of a “we”, they should

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<sup>62</sup> Hannes Bajohr, ‘The Sources of Liberal Normativity’, in *Between Utopia and Realism*, 166. Bajohr cites Letter to John Rawls, November 10, 1986. Papers of John Rawls, Harvard University Archives, HUM 48, Series: A Personal Name Correspondence 1973-2001, Box 41.

<sup>63</sup> Judith Shklar, ‘The Work of Michael Walzer’, *Political Thought & Political Thinkers*, 383.

<sup>64</sup> Shklar, *Ordinary Vices*, 227.

recognise this can only mean one of the many “we’s” in liberal society.<sup>65</sup> In this regard, Shklar claims that though Rawls and Walzer both purport to recognise the particularity of the audience they speak to, they in fact attempt to evade the discordant political actualities that confront them. There is consequently a sense that their work, like the natural law theorists whom she attacks in *Legalism*, is expressive of the desire for a more widely shared set of common political understandings than actually obtains in modern liberal regimes. Shklar, in contrast, insists liberals must give up on the attempt to uncover a thick communal unity beneath the disordered surface of real politics.

Recognising these elements of Shklar’s broader thought suggests a new understanding of the most famous element of her work – her articulation and defence of a liberalism of fear which is motivated not by the realisation of some positive moral values, but rather the minimisation of cruelty, in particular state-perpetrated cruelty. In her essay of that name, Shklar notes the liberalism of fear refrains from articulating a *summon bonum* and instead focuses on a great evil (*summum malum*) we should avoid: ‘That evil is cruelty and the fear it inspires, and the very fear of fear itself’.<sup>66</sup> It pushes us to make the prohibition against cruelty the “basic norm” of liberal political practice.<sup>67</sup> Ironically, many commentators have read Shklar’s argument in favour of the liberalism of fear as resting on the (in their view outlandish) suggestion that prohibitions against cruelty and fear ‘possessed an easy intelligibility which made for

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<sup>65</sup> Judith Shklar, ‘Injustice, Injury, and Inequality: An Introduction’, in *Justice and Equality Here and Now*, edited by Frank Lucash (Ithaca: Cornell University Press, 1986), 15.

<sup>66</sup> Judith Shklar, ‘The Liberalism of Fear’ in *Political Thought & Political Thinkers*, 10-11.

<sup>67</sup> Shklar, ‘The Liberalism of Fear’, 12.

quick and universal agreement about principles'.<sup>68</sup> On such readings, when articulating the liberalism of fear, Shklar claims to speak from a vantage point beyond the reach of ideological conflict by offering an account of the foundations of liberalism on which a genuine moral consensus can be forged. Thus, Matt Sleat insists Shklar's objective 'is to identify a single value that all persons consider most important such that it overrides their numerous moral, religious and political disagreements'.<sup>69</sup> If these interpretations are correct, it would seem that when outlining and motivating the liberalism of fear, Shklar abandons her earlier ideological self-consciousness and ends up propounding her own ideology of agreement.

These readings undeniably have some basis in Shklar's work.<sup>70</sup> However, when articulating and motivating the liberalism of fear, it is possible to read Shklar as proceeding in a more ideologically self-conscious manner. That is, as seeking to persuade her fellow liberals to re-think the most basic elements of their politics because she believes this will have salutary political implications, rather than herself attempting to take a stand outside of (liberal) politics. In other words, Shklar may, again, be read as writing with a particular audience in mind, seeking to persuade them to re-evaluate their beliefs and practice in light of their existing ideological convictions

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<sup>68</sup> Corey Robin, *Fear: The History of a Political Idea* (New York: Oxford University Press, 2004), 145.

<sup>69</sup> Matt Sleat, *Liberal Realism: A Realist Theory of Liberal Politics* (Manchester: Manchester University Press, 2013), 100-01.

<sup>70</sup> For example, in 'The Liberalism of Fear' Shklar claims that "Because the fear of systematic cruelty is so universal, moral claims based on its prohibition have an immediate appeal and can gain recognition without much argument". Yet she continues by remarking, "Liberals can begin with cruelty as the primary evil only if they go beyond their well-grounded assumption that almost all people fear it and would evade it if they could". Developing this point, she insists that prohibitions against cruelty can be universalized because if we ask whether the "prohibition would benefit the vast majority of human beings in meeting their known needs and wants," we can answer in the affirmative. This test, she claims, renders the liberalism of fear compatible with both Kantian and utilitarian approaches to ethics: 11-12.

rather than attempting to engage in the kind of philosophical justification that marks much contemporary political philosophy.

At the beginning of “The Liberalism of Fear”, Shklar remarks that despite their differences, all strains of liberalism focus on securing the ‘political conditions that are necessary for the exercise of political freedom’ and hope for a politics in which every adult is ‘able to make as many effective decisions without fear or favor about as many aspects of his or her life as is compatible with the like freedom of every other adult’.<sup>71</sup> Her account of the liberalism of fear is an effort to persuade those who share this broad commitment to think anew about how it can best be realised here and now. Among other things, Shklar insists on reminding her readers that ‘all governments are coercive’<sup>72</sup>, that political power is routinely abused by those who wield it, and that these abuses most harm the powerless members of society. She remarks that ‘Cruelty ... is often utterly intolerable for liberals, because fear destroys freedom’ and states that this is why ‘liberal theory’ may well ‘put cruelty at the head of the vices’.<sup>73</sup> In developing these points, Shklar claims she is seeking to make sense of the fact that putting cruelty first is something that many liberal and humane people already do.<sup>74</sup> In a nutshell, the point of *Ordinary Vices* is to think through the paradoxes and puzzles that follow from doing just that. Yet Shklar never shies away from the fact that though liberal norms claim the allegiance of many of us, this allegiance is far from uniform.

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<sup>71</sup> Shklar, ‘The Liberalism of Fear’, 3.

<sup>72</sup> Shklar, *Ordinary Vices*, 244.

<sup>73</sup> Shklar, *Ordinary Vices*, 2-3.

<sup>74</sup> Shklar, *Ordinary Vices*, 44. Shklar endorses this claim while also insisting that ‘Putting cruelty first has ... been tried only rarely, and it is not often discussed’ because ‘It is too deep a threat to reason for most philosophers to contemplate at all’, *Ordinary Vices*, 8. The point, I take it, is that in practice many people may not have thought about this much, even if she believes that some reflective liberals of her stripe recognize the seriousness of cruelty, and others can be persuaded to put it first.



She was adamant that liberals must accept that ‘ours is a culture of many subcultures’.<sup>75</sup> At a time when other liberals were trumpeting the end of history, she warned of the continuing threats of ‘Catholic authoritarianism, romantic corporatist nostalgia, nationalism, racism, proslavery, social Darwinism, imperialism, militarism, fascism and most types of socialism’.<sup>76</sup>

When read in the round, it is clear that Shklar does not expend much energy seeking to justify, on disinterested philosophical grounds, why every rational agent should put cruelty first. Rather she is, in large part, reproaching her fellow liberals for interminably focusing on the question of how liberalism might (perhaps) be philosophically justified instead of addressing the political question of how we can work to lessen the likelihood of the abuse of power.<sup>77</sup> She never attempts to philosophically ground the basic liberal commitment to personal freedom that drives her argument, and the case she makes for the liberalism of fear is rarely presented as being made from some ideologically neutral standpoint.<sup>78</sup> Like her account of how we should understand the appeal and limitations of legalism, her claims about the liberalism of fear are centrally concerned with persuading liberals to re-think their

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<sup>75</sup> Shklar, *Ordinary Vices*, 4; 78.

<sup>76</sup> Shklar, ‘The Liberalism of Fear’, 4.

<sup>77</sup> Bernard Yack, ‘Political Liberalism, Political not Philosophical’, *Perspectives on Politics* 15, no. 1 (2017), 116.

<sup>78</sup> In this respect, Shklar’s account of the liberalism of fear *may* differ from the account of social standing she articulates in her final book, *American Citizenship: The Quest for Inclusion* (Cambridge, Mass: Harvard University Press, 2001). In that book, Shklar claims that a reading of American history and the entrenched beliefs and understandings of American democracy suggest that social standing is dependent on the right to vote and earn. Kerry Whiteside contends this argument displays similarities to Walzer’s own reliance on shared meanings: ‘Justice Uncertain: Judith Shklar on Liberalism, Skepticism, and Equality’, *Polity* 31, no. 3 (Spring 1999), 515-16. I do not have space to respond fully to this line of criticism here. However, for a reading of Shklar’s account of social standing that goes some way toward addressing this worry by highlighting the significance of Shklar’s call for political theorising grounded in history and political science, see Rebecca Buxton, ‘Judith Shklar’s Social Theory of Citizenship’ (unpublished).

already-existing convictions and their practice, taking it for granted that they *do* already hold such convictions and want to go-on with such practices.

Theorists who self-consciously proceed in this way reject the idea that the task of political philosophy is, in the words of Allan Bloom, to provide a ‘rational determination of values’ in order to offer a ‘permanent statement about the nature of political things’.<sup>79</sup> Many political philosophers – and not just Straussians like Bloom – are likely to regard Shklar’s focus on a particular ideologically-inclined audience as a form of defeatism which has given up the honourable pursuit of the genuine truth about politics for the mere clarification of pre-existing opinions and sentiments. Yet if one endorses a philosophical account of the *limits* of ethical and political reflection the accusation that this is a lamentable retreat from the ‘proper’ ambitions of political philosophy is instead what is most properly called into question.

Shklar’s view that our political preferences and experiences insensibly condition our purposeful political thinking sharply resembles the view that we cannot engage in reflection unencumbered by the character traits and dispositions we have acquired.<sup>80</sup> In *Ethics and the Limits of Philosophy*, Bernard Williams famously made this point when he states that ‘I am, at the time of mature reflection, what I have become, and my reflection, even if it is about my dispositions, must at the same time be expressive of them. I think about ethical and other goods *from* an ethical point of view that I have already acquired and that is part of who I am’.<sup>81</sup> This is one of Williams’s

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<sup>79</sup> Allan Bloom, ‘John Rawls versus the Tradition of Political Philosophy’, *American Political Science Review* 69, no. 2 (1975), 649.

<sup>80</sup> I am not suggesting Shklar consciously endorsed this philosophical position. Rather this view is compatible with her discussions of the nature of political theory and can help us to make sense of some of the underlying theoretical issues she did not address.

<sup>81</sup> Bernard Williams, *Ethics and the Limits of Philosophy* (London: Routledge, 2006), 51.

driving reasons for insisting that it is misguided to see ‘philosophical reflection in ethics as a jump to the universalistic standpoint in the search of a justification, which is then brought back to everyday practice’.<sup>82</sup> Williams thus contends that the very attempt to unmoor oneself from one’s deepest dispositions and commitments will only mean that one is unable to give ‘an adequate picture of the value of anything’, *including one’s own dispositions and commitments*.<sup>83</sup>

Shklar’s account of the inevitability of ideological commitments conditioning our political thinking has a close affinity with this account of ethical reflection. Like Williams, Shklar not only seems to endorse the view that our most basic ethical and political attitudes ‘outrun our ability to provide them with rational justification’.<sup>84</sup> She also stresses that these attitudes and commitments fundamentally condition our ethical and political engagement with the world by, among other things, generating ideological frames of mind that motivate our thoughts and actions. Awareness of this may be unsettling because it suggests we will never consider all of the possible courses of action that are available to us; courses of action that others, with different experiences, pre-rational commitments, and dispositions may well have pursued. We may feel that the most appropriate way to respond is to open ourselves up to new ways of reflecting on the situations we face, in the hope that we might break free of these shackles. However, if the broad contours of the position sketched above are correct, in the very attempt to do that, one will still express one’s pre-rational dispositions and ideological motivations. On this view, it is an illusion to suppose that

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<sup>82</sup> Williams, *Ethics and the Limits of Philosophy*, 110.

<sup>83</sup> Williams, *Ethics and the Limits of Philosophy*, 51.

<sup>84</sup> R. Jay Wallace, *The View From Here: On Affirmation, Attachment, and the Limits of Regret* (New York: Oxford University Press, 2013), xi, n. 1.

when one engages in moral or political reflection one's most basic dispositions and preferences can *ever* fully be cast-off.

#### COMMITMENT IN THE SHADOW OF SELF-CONSCIOUSNESS

How should we conceive of our moral and political commitments if we recognise their perspectival and ideological character? Some commentators have argued that because of Shklar's ideological self-consciousness, she remained 'agonistic about the general and theoretical validity of her liberalism, and on its grounding' and insisted on seeing the liberalism of fear as simply 'one voice in the struggle, not the voice that settles the struggle'.<sup>85</sup> On this view, Shklar's ideological self-awareness commits her to an 'agonistic' liberalism that focuses on opening up spaces of political contestation.<sup>86</sup> Those who read Shklar in this way contend that the liberalism of fear is a species of the non-foundationalist 'ironic' liberalism endorsed by thinkers like Richard Rorty.<sup>87</sup>

To evaluate this suggestion, it is instructive to turn to Rorty's own engagement with Shklar's work. In *Contingency, Irony and Solidarity*, Rorty appropriates Shklar's work when describing liberals as those who think that cruelty is the worst thing we do. Liberal ironists, he contends, endorse this commitment while also having 'radical and continuing doubts about the final vocabulary' they use, recognizing that no arguments they employ using their current vocabulary could hope to settle these doubts. Rorty thus maintains they refuse to believe their vocabulary 'is closer to reality than others'.<sup>88</sup> This certainly suggests some affinities. One implication of Shklar's view

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<sup>85</sup> Gatta, *Rethinking Liberalism for the 21st Century*, 114, 115.

<sup>86</sup> Gatta, *Rethinking Liberalism for the 21st Century*, 117.

<sup>87</sup> Gatta, *Rethinking Liberalism for the 21st Century*, 114.

<sup>88</sup> Richard Rorty, *Contingency, Irony, and Solidarity* (Cambridge: Cambridge University Press, 1989), 73.

of the inescapability of ideology is that it is hopeless to try and find some position outside of one's basic commitments and preferences from which one can conclusively justify those commitments to any agent by the sheer force of reason alone. However, the way Rorty explicates and motivates his liberal ironism indicates some important differences. According to Rorty, liberal ironists unflinchingly accept that their beliefs and commitments are derivative from the morality of their 'historically conditioned community'.<sup>89</sup> This is why his ironist liberals choose solidarity over objectivity. 'There is', Rorty maintains, 'no "ground" for such loyalties and convictions save the fact that the beliefs and desires and emotions which buttress them overlap those of lots of other members of the group with which we identify for purposes of moral or political deliberation'.<sup>90</sup> Rorty anticipates the charge that such a position is vulnerable to the objection that 'a child found wandering in the woods, the remnant of a slaughtered nation whose temples have been razed and whose books have been burned, has no share in human dignity'. He accepts this is a consequence of his approach but insists it does not follow that 'she may be treated like an animal' because 'it is part of *our* community that the human stranger from whom all dignity has been stripped is to be taken in, to be re clothed with dignity'.<sup>91</sup>

This jarring declaration demonstrates, however, a vital difference between the self-understanding Rorty's ironist favours, and the way that liberals who have truly taken Shklar's ranking of the vices to heart would conceive of their convictions. Shklar *does not* derive the liberalism of fear's opposition to cruelty and intimidation from the

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<sup>89</sup> Richard Rorty, 'Postmodern Bourgeois Liberalism', *The Journal of Philosophy* 80, no. 10, (1983), 584.

<sup>90</sup> Rorty, 'Postmodern Bourgeois Liberalism', 585.

<sup>91</sup> Rorty, 'Postmodern Bourgeois Liberalism', 588.

kind of shared communal values that Rorty invokes, and for very good reason. Proponents of the liberalism of fear should regard Rorty's response to the concern raised by those who question how his postmodern bourgeois liberalism would respond to the above-mentioned child with disdain due to its deeply romanticised take on the content of "our" moral and political traditions. A moment's reflection on the fact that some of the most cruel aspects of the immigration control policy of contemporary Western regimes are relatively popular among the citizens of these states - from the hideous family separation policies associated with the Trump regime's border policy in the USA, to my own country's shameful attempt to deport refugees seeking asylum to Rwanda in contravention of its clear moral and legal obligations - dramatically problematizes such a cheery take on the settled moral traditions of the kinds of communities that Rorty had in mind. Shklar never slighted these concerns about our moral traditions. This is why she rejected the communitarian suggestion that the only legitimate mode of social criticism is to articulate "socially immanent values", holding instead that the refusal to step outside local customs to interrogate the acceptability of the politics they engender usually leaves us unable to scrutinise "traditional" standards altogether.<sup>92</sup> A truthful reckoning with our moral tradition is not straightforwardly going to privilege the values Rorty celebrates. Seen in this light, Rorty's turn to the morality of historically conditioned communities does not only seem deeply complacent but ideological in the pejorative sense because it serves to obfuscate disquieting facts about the cruelties that our societies have always inflicted - and still do.

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<sup>92</sup> Shklar, 'The Liberalism of Fear', 16.

This calls into question the idea that the label 'agonistic' liberalism accurately captures Shklar's position. Although Shklar did not believe that either philosophy or history furnished liberalism with a firm extra-political foundation – and also recognised that the liberalism of fear is one among many versions of liberalism, and that liberalism is one among many political ideologies – she does not seem to waver in her view that the liberalism of fear is the best way of making sense of liberalism's deepest political commitments. For this reason, the claim recently made by Gatta that Shklar's account of the liberalism of fear serves to open up 'the agon' is misleading.<sup>93</sup> When motivating the liberalism of fear, Shklar straightforwardly suggests that political ideologies which wish away the problem of the abuse of power are deficient. She is also adamant that a strong case for putting cruelty first can be made given what we have learned about the realities of politics and the ever-present danger of the abuse of power. Liberals, given their commitment to freedom, are likely to be especially receptive to the kinds of warnings about the abuse of power. However, those abuses, and the pain and suffering that state-perpetrated cruelty generates, are not ideological inventions. They are part of the historical record. The way that liberals of fear prioritise cruelty may thus be ideologically-inflected, but liberals of fear also insist that all viable political theories must reckon with the danger of investing too much hope in state power and/or the good intentions of the powerful. For this reason, pace Rorty, proponents of the liberalism of fear do believe that some voices in the *agon* are more in touch with political reality than others. Of course, if they have given up on the consolations of metaphysical sponsorship and the possibility of either historical or

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<sup>93</sup> Gatta, *Rethinking Liberalism for the 21<sup>st</sup> Century*, 115.

theistic providence, they will not believe they have miraculously stumbled upon a transhistorical truth about the objective requirements of political morality. They should also accept that these insights will be ignored by some given their political preferences and experiences. They will recognise this while simultaneously thinking they have arrived at genuine insights nonetheless.

In this sense, I have serious doubts about those who present Shklar as an attempting to ground a widespread moral consensus on a minimalist version of liberalism that ought to be endorsed by *any* rational agent, regardless of their wider ideological commitments. In the main, she was simply not concerned in offering that kind of philosophical justification of the liberalism of fear. I also dissent from those who regard Shklar's argument for putting cruelty first as a defence of an anaemic, cold-war liberalism that merely points out that ways that liberal constitutional democracies avoid the tyrannical horrors perpetrated by authoritarian regimes like Nazi Germany and the Soviet Union. In contrast to these left-critics of Shklar, I believe Shklar's brand of negative liberalism still has a genuinely liberatory role to play today.<sup>94</sup>

This brings us to the question of whether proponents of a particular ideology can evince the kind of self-consciousness that Shklar calls for without this undermining their commitment to their moral and political convictions. This is, needless to say, a thorny philosophical question. Much depends on what one thinks follows from the sceptical account of the limits of reflection sketched earlier. One consequence that such accounts do have is to suggest that the central aim of moral

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<sup>94</sup> For a detailed defence of the second claim, see Edward Hall, 'Complacent and Conservative? Redeeming the Liberalism of Fear', *The Journal of Politics* (forthcoming).



and political philosophy cannot be to convert, via the sheer force of rational argument, aloof third-parties to one's own moral and political views. The ideologically self-conscious theorist who takes this to heart is likely to regard philosophical reflection on the standing of their commitments as an attempt to decide, in a much more self-reflexive way, whether or not their current values and commitments are worth sticking to given that they cannot claim any metaphysical or historical sponsorship. They will also acknowledge that such accounts will not function as a justification for just *any* rational agent, merely as such. As Shklar knew, most Catholics are never going to commit to the liberalism of fear because they put sin rather than cruelty first. Nor will revolutionary socialists who commit to Marx's philosophy of history because they prioritise the demands of class struggle. Yet like many other pluralists, Shklar clearly did not think this kind of skepticism about the reach of philosophical argument must lead to political withdrawal.

## CONCLUSION

I have argued that road that Shklar takes in her late work – trying to persuade her fellow liberals to re-think their most basic political commitments – is one way of practicing the kind of ideological self-consciousness she called-for. I want to conclude by asking what else ideologically self-consciousness theorising might demand. Two especially significant implications seem to follow. First, provided that they are averse to the infliction of the pain and suffering that almost always accompanies political attempts to overcome political conflict and disagreement, the theorist who displays the kind of ideological self-consciousness that Shklar advocates is likely to accept a

large degree of moral and political pluralism and recognise that ideologies which seek to overcome it, are, at best false, and at worst, positively dangerous. Second, if we accept that our political preferences and emotional reactions to our experiences condition and constrain our thinking by shutting down some avenues of reflection while opening up others, we have reason to worry about whether our political thinking does that in a disconcerting way. To combat this second concern, the ideologically self-conscious agent can strive to offer an honest account, to themselves and others, of what they value and where they think that leads us while being cognizant of how the kind of charges Shklar levelled at legalism – that it is often myopic, constraining, and prone to wishful thinking – might be levelled at their own views.

To illustrate this point, consider charges of this kind that might be levelled against the liberalism of fear. Some might maintain that by emphasising state-perpetrated cruelty adherents of the liberalism of fear mistakenly focus on immediate acts and harms rather than more important “structural” issues. Others may scoff at the idea that liberal institutions should be valued because they are the most effective and reliable way of minimizing state-cruelty by pointing to all the horror and cruelty that has been, and still is, inflicted in the name of liberalism at home and abroad. Still others may allege that the liberalism of fear serves to defend the political status quo and/or undermine the pursuit of the kind of radical political and economic change which is required if we are to, for example, secure the political freedom of all in capitalist modernity or get to grips with the climate emergency. Finally, other liberals may contend that the liberalism of fear’s aversion to state power is likely to undermine

liberal politics in the long-run because if liberal regimes are to combat the illiberal political movements sweeping the globe they need to cultivate particular virtues and dispositions in their citizenry, and this requires a more 'muscular' liberalism which calls for the noble exercise of state power. Ideologically self-conscious liberals of fear must be open-minded about the accusation that they either conceal these problems, or wishfully believe they are more tractable than they, in fact, are.

The only viable way for the proponent of any political ideology to respond when these kind of charges are raised against them is by facing-up to these accusations. This is perhaps a rather banal point. Yet it worth stressing because this kind of open-mindedness is hard to practice precisely because criticism from ideological opponents is regularly insincere and needlessly combative, and sometimes brazenly untruthful. Of course, when any reflective agent considers these issues they cannot fully distance themselves from their innermost dispositions and commitments, for the reasons I have noted. But despite this, general standards of historical accuracy, and the basic conditions of realistic social and political understanding, apply. Thus, though reflection of that sort cannot honestly claim to be politically impartial, it is not a free-for-all either. While respecting the basic standards of truthfulness will not, therefore, insure anyone against charges of ideological thinking and the dangers that follow, it may help them to avoid some of the worst consequences of the kind of pretended immunity to ideology that Shklar warned against.