Daniel Weinstock

2004 *Trudeau Fellow,* McGill University

BIOGRAPHY

Daniel Weinstock taught in the Department of Philosophy of the Université de Montréal from 1993 to 2012. From 2001 to 2012, he was the Canada Research Chair in Ethics and Political Philosophy. Until 2011, he was also the director of the Research Centre on Ethics at the Université de Montréal, which he founded in 2002. He joined McGill University's Faculty of Law in August 2012, and was named director of the Institute for Health and Social Policy at McGill University in August 2013.

Professor Weinstock's research explores a number of public policy challenges faced by modern liberal democracies. His past research has in particular focused on the way in which best to manage the ethno-cultural and religious diversity that has come to characterize such societies.

He received degrees from McGill University (where he worked under James Tully and Charles Taylor) and Oxford University (where he was supervised by Joseph Raz and Baronness Onora O'Neill). He was a Visiting Doctoral Researcher at Harvard University, and a Post-Doctoral Researcher at Columbia University. He was also awarded a Laurence Rockefeller Prize Fellowship at Princeton University.

Professor Weinstock is a 2004 fellow of the Pierre Elliott Trudeau Foundation and a recipient of the André-Laurendeau Prize given by the Association canadienne-française pour l'avancement des sciences (Acfas). His areas of expertise include the politics of language and identity, democracy, citizenship, and pluralism

He has published many articles on the ethics of nationalism, problems of justice and stability in multinational states, the

foundations of international ethics, and the accommodation of cultural and moral diversity within liberal democratic societies. Most recently, his writing has examined the normative issues involved in public policy to do with procreation, education, health, and the politics and planning of cities.

He has been an active participant in public policy in Quebec, having been a member, from 1997 to 1999, of a Ministry of Education working group on religion in public schools and, from 2003 to 2008, the founding director of Quebec's Public Health Ethics Committee. He was a member of the Advisory Board of the Bouchard-Taylor Commission on Reasonable Accommodation.

ABSTRACT

Following in the footsteps of John Rawls, Daniel Weinstock embarks on a deeply philosophical reflection that takes him from his philosophy studies at Oxford to the Faculty of Law and the social and health policies institute he currently directs. Along the way, he examines the role of political philosophy, the conflicts it arises from and the reconciliations it offers. Using examples ranging from Québec separatism to the sex trade, drugs and medically assisted suicide, he explains the implications of harm reduction and eventually proves the multiple facets and perspectives of 21st century philosophy.

LECTURE

"So, Are You Still a Philosopher?"

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Introduction

I wrote my DPhil dissertation at Oxford University on the concept of autonomy. That thesis included several chapters on the fascinating yet highly abstract thought of Immanuel Kant. Today, I find myself teaching in a Faculty of Law and running an Institute for Health and Social Policy, which brings together scholars from a dizzying array of disciplines, including epidemiology, philosophy, political science, and history, to name but a few, who work together to identify policies that might best and most sustainably promote the health of individuals and of populations, both in Canada and around the world. Along the way, I have chaired a public health ethics committee and contributed to the drafting of policy documents in the area of education and health care. It has, to say the least, been a circuitous but fascinating road, one that I could not easily have predicted as I was trying to make sense of the more abstruse passages of Kant's *Rechtslehre* in the Bodleian library.

So, am I still a philosopher? It is quite clear to me that many of my peers and teachers from my Oxford days would claim that I had pretty much abandoned the discipline some years ago. Philosophers, after all, are in the business of concepts and abstract arguments. They are at best at a remove, and at worst at several removes, from

the messy empirics of the policy world. But I still think of myself primarily as a philosopher, and what is more as a philosopher who has taken his cue from the most widely cited and universally revered of 20th-century philosophers, John Rawls.

Let me explain.

Political Philosophy as Reconciliation through Reason

More than 500 pages into his magnum opus, *A Theory of Justice*, John Rawls writes this:

> [J]ustification is argument addressed to those who disagree with us, or to ourselves when we are of two minds. It presumes a clash of views between persons or within one person, and seeks to convince others, or ourselves, of the reasonableness of the principles upon which our claims and judgments are founded. Being designed to reconcile by reason, justification proceeds from what all parties to the discussion hold in common.[1]

I remember reading those words for the first time 30 years or so ago, and I still come back to them whenever someone asks me what a political philosopher actually *does*, or perhaps more precisely, what a political philosopher *should do*. Rawls seems to me to be making three points in these three sentences. The first is that political philosophy is a *practical* activity. It often mobilizes quite complex sets of considerations and deals in lofty abstractions, but it does so in order ultimately to give rise to beneficial effects in the world. Rawls is in a sense reaffirming here what Marx meant in his Eleventh Thesis on Feuerbach: "Philosophers have hitherto only interpreted the world in various ways; the point is to change it".

Second, political philosophy has a practical contribution to make in our world only if that world is marked by *disagreement*. Imagine a world in which there was unforced, genuine consensus about political matters—what rights ought to be enforced by the

1. John Rawls, *A Theory of Justice*, 2nd edition (Cambridge, MA: Harvard University Press, 1999), 508.

state, what policies to pursue within the parameters set by those rights, and so on. There would be no need for political philosophy in such a context. Political philosophers need not worry about losing their livelihoods just yet, however. We are far from living in a world exempt from political disagreements.

Third, when disagreement does occur, the role of the philosopher is to point the way forward toward a possible *reconciliation* of warring factions. This involves identifying grounds for compromise or consensus by revealing to political actors ways of reaching possible agreement that they may not be aware of, enmeshed as they are in the cut and thrust of political conflict. The political philosopher must, as it were, look beneath the surface grammar of political disagreement to see if contending factions are despite appearances united by a commitment to some deeper set of moral and political propositions. And if they are not so united, then he must make them look elsewhere, toward alternative grounds of agreement. In his second major work, *Political Liberalism*, Rawls coined a lovely phrase to denote the strategy that consists in moving political combatants away from the terms in which their conflicts have gotten mired, and toward other, less intractable ways of viewing these disagreements: the "method of avoidance." In 'Rawls's view, it is a fool's errand to attempt to break down disagreements where people's first principles are in play. The truly innovative suggestion in Rawls's later work was to suggest that we could identify grounds for reconciliation even where disagreement on first principles remains.

I am a political philosopher because the tasks that Rawls describes for political philosophy resonate with me. To put it in terms of a slogan that encapsulates what I have suggested thus far, political philosophy is *practical* because it is born in *conflict* and must point the way forward toward possible *reconciliation*. What is more, the general spirit underlying the approach to these tasks that he put forward is one that I share. We cannot hope to achieve the goals of political philosophy unless we can identify grounds of possible

reconciliation that all participants to a debate share, at least when they are acting in good faith, that is, when they are truly motivated by a desire to move beyond conflict and disagreement.

Now, Rawls had a very particular focus in mind when he wrote his major works. He was not so much interested in how to resolve this or that particular debate within the context of a liberal democracy (though he did at times lend his voice to debates about abortion[2] and medically assisted death[3]). Rather, he wanted to identify what the bases for liberal democracy might be. As an American, Rawls was understandably struck by the depths of the disagreements that have at times throughout US history threatened to tear that society apart—from debates about slavery to debates about civil rights and the role of religion in the public sphere. Again quite plausibly, Rawls thought that a basis for consensus among warring political factions in the United States could be found by looking at texts and institutions that all Americans share, and claim allegiance to—the US Constitution, for example, and the way in which the institutions surrounding it and the manner in which it has been interpreted are shared even by those who think that it points in different directions on controversial issues of public policy.

Given Rawls's focus, he was at pains to find ways in which *consensus*, rather than merely *compromise*, could be achieved at the level of these fundamental building blocks. Rawls thought that a pluralistic liberal democracy like the United States could only contain and address particular political disagreements if those disagreements were housed in a deeper consensus about constitutional essentials.

So Rawls went looking for the bases not just of compromise, but of consensus on constitutional essentials. A consensus occurs when people come to view a position as the best one that could possibly

2. John Rawls, *Political Liberalism* (New York: Columbia University Press), 243–44.

3. John Rawls et al., "Assisted Suicide: The Philosophers' Brief," in *The New York Review of Books*, March 27, 1997.

be adopted with respect to some issue. A compromise, on the other hand, occurs when people still think their position is the best one, but they are willing to *adopt* a compromise in order to ensure social peace, or in order to affirm the fact that, at the end of the day, they would rather share political society with those with whom they disagree than allow society to be sundered because neither side is willing to back down from what they view as the best position. Rawls thought that compromise was potentially too unstable a basis for liberal democracies, because parties to a compromise might always be looking to shifts in their strategic position in order to determine whether they are in a position to enforce their preferred views of things on others. Compromise might therefore prove too flimsy a basis for an ongoing democracy in which constitutional essentials are, as it were, taken off the table so that everyday political debate can be allowed to proceed without being too damaging to the body politic.

I disagree, because I do not believe that strategic considerations are the only ones that lead people into compromises.[4] Sometimes we compromise for *principled* reasons—for example, because we want to affirm the good of the political community of which we are a part. Compromising can be a way of expressing the fact that that community is of sufficient importance to us that we are not willing to sacrifice it even when fairly important principles of political morality are in play. To advert to an example that will be developed below, I may think, because I am committed to the principle of individual autonomy, that people ought to be allowed to seek physician-assisted death in a wide range of cases, and not merely when they are already at death's door or in the grips of unrelievable somatic suffering. But I am willing to compromise on a more moderate policy, because I value the political community that I am part of along with people

4. Daniel Weinstock, "On the Possibility of Principled Moral Compromise," in *Critical Review of International Social and Political Philosophy* 16, no. 4 (2013), 537–56.

who may feel that the most important relevant value in the assisted suicide debate is the sanctity of human life in whatever form.

Thus, Rawls defined a task for political philosophers, one that has been central to my way of understanding my own work over the course of the last couple of decades. He also identified what we might think of as the *spirit* with which political philosophers must go into the task of identifying grounds of political reconciliation. But because he focused on constitutional essentials, and because he feared that the absence of consensus on constitutional essentials might be destabilizing, he did not provide us with a *method* usable by political philosophers intent upon serving the practical purpose I have described.

I realize today that I have spent a lot of time fumbling for just such a method. In recent years, I have come close to thinking that such a method exists, at least for a broad range of cases that cause the most trouble in contemporary pluralistic liberal democratic polities. Since every method needs a name, let me call mine "the method of harm avoidance."

The Method of Harm Avoidance

When I returned to Canada to take up my first academic job at the Université de Montréal in 1993, after seven years abroad, the political climate was toxic. The Parti Québécois was in power in Quebec and was gearing up for a referendum on secession, which it hoped would reverse the decision taken by Quebeckers in the first referendum in 1980. As we know, the referendum came quite close to giving rise to a positive answer, though some analysts claimed that the result of the referendum would have been dubiously legitimate, given how convoluted the question was and how small the majority in favour of secession would probably have been.

The toxicity of the debate had to do both with what was directly at issue—should Quebec continue to be part of the Canadian federation in its present form or not?—but also about questions of

legitimacy: should the Quebec government be solely responsible for determining the conditions and the rules under which the referendum would proceed and, at the more fundamental level, whether it would have been morally acceptable for Quebec to secede *even if* a majority of Quebeckers voted in favour of secession?

Looking at the philosophical literature on the issue, which had been starting to grow in the wake of the multiple secessions that followed the dissolution of the Soviet Union and its sphere of regional influence, there seemed to be two camps at odds at the level of fundamental principle. Some theorists observed that the number of groups that might, all things being equal, put forward claims to full statehood was far greater than the number of states that the international system could possibly tolerate. To make national self-determination compatible with the conditions of international stability, federalism would have to be promoted worldwide. These theorists placed a premium on *stability*. Not any stability, I hasten to add, and in particular not the kind of stability that is imposed upon people by arms, but a stability that would ultimately override the desire that some groups might feel for the attainment of full statehood.

For these theorists, the only circumstances in which it might be justifiable for a group to seek secession would be ones in which they were being oppressed by the larger group or groups with which they share political institutions. If a group's members are being denied full citizenship rights, if they are being economically exploited, or if they are subjected to violence, then secession is morally appropriate as a way of remediating an unacceptable situation. Placing an emphasis on stability according to this way of looking at the issue implies that the right to secession will be only a *remedial* right.

Other theorists argued that the right to secede should be primary. That is, the legitimacy of its exercise should not depend upon a group being oppressed. People should be allowed to form a state with whomever they want. Political relationships are a particularly important kind of human relationship, after all, and it seems

ethically inappropriate to impose unwanted political partners upon people. In keeping with this view, we should be just as opposed to limiting the right to secede as we are to limiting people's right to marry whomever they want.

So we have here a conflict at the level of basic moral principle. The participants to the debate disagree as to what principle should be dominant in our decision to allow a certain practice or not. What is more, the debate among theorists maps out onto real-world debates. Many *indépendantistes* in Quebec (and in Scotland and Catalonia, to take but two relevantly similar examples) felt—and still feel—that the only moral consideration here has to do with the right of Quebeckers to determine who they want to associate with politically, whereas many observers in the rest of Canada and beyond felt—and still feel—that the Canadian federation was precisely the kind of peaceful prosperous political entity that instantiates the stability that they feel should be given moral priority.

Looking at this debate, the first thing that struck me was its *intractability*. We can argue with people about what their foundational moral principles imply, but we cannot use arguments as easily in order to get them to hold one set of foundational principles rather than another in the first place. It is very difficult for philosophical argument to gain traction where basic values are in play. There is thus something Sisyphean about joining argument at that level.

The second aspect of the debate that seemed worth highlighting was that neither side could simply be dismissed as being completely *unreasonable*. Both sides put forward arguments based on values that are clearly relevant to the debate. Indeed, the complete rejection of the arguments put forward by the more permissive of the two positions with respect to secession seems unreasonable, since members of majorities derive benefit from being able to avail themselves of that which they are in effect denying to national minorities, namely the ability to enjoy complete sovereignty, with all that is attached to sovereignty in the contemporary international sphere.

The third thing that struck me is that at some level, the view that secession lacks moral legitimacy, and thus ought to be prohibited, lacks relevance for the real world. Secessionist politics *will continue*, whether philosophers think that they ought to or not. More relevantly, they will continue whatever the conditions laid down by international institutions for legitimate secessions are. Secessionist politics are ultimately decided by considerations of realpolitik. If a group has achieved de facto control of a territory, that group will be recognized as possessing de jure sovereignty on the basis of pragmatic considerations on the part of the international community rather than on the basis of its having instantiated the right political theory of secession.

Fourth, outright prohibition, to the extent that it cannot be effectively enforced, risks causing harms that might be avoided were secession *procedurally regulated* in some way. One could imagine a constitutional provision, agreed to by all sides, that lays out rules for secessionist politics. For example, given the gravity of the stakes involved, super-majoritarian conditions might be imposed upon referenda. There might also be limits imposed on the frequency of secessions, and "cooling off" periods preventing secessionist entrepreneurs from being able to trigger secession on the basis of a sudden, contingent spike in secessionist sentiment. Well-regulated secessionist laws or constitutional clauses could give secessionists what they want, namely, a clear path toward secession, while guarding against the worst excesses that unregulated secessionist politics would predictably give rise to. Such a clause would not be grounded in the kinds of first principles that we found to be at loggerheads earlier. Rather, it would in pragmatic spirit note that secessionist politics were not going away any time soon, and it would simply attempt to reduce the potential harms that such politics might generate when unregulated. Lack of effective regulation might moreover stem either from a blanket permission in international and domestic law allowing all groups that wish to do so to organize referenda in order

to quit the larger political entity, or it might just as well emerge from complete prohibitions that go unenforced.

My proposal was thus for multination states to incorporate duly regulated secession clauses into their constitutions as a way of achieving principled compromise between contending factions in the secession debate. The compromise would emerge from both sides agreeing to look beyond their disagreements at the level of first principles, and focusing on measures that might most effectively reduce predictable harm associated with secessionist politics.

Harm Reduction

As my interests began over time to encompass a broader range of public policy debates, I started noticing that many of them had a similar structure to that which I had identified in the case of secession. A practice is the object of ferocious debate among theorists and among political actors who both approach it from the point of view of a different fundamental value. Moreover, there are reasonable values to approach the debates from. Neither one can simply be swept aside as lacking a requisite level of prima facie moral justification. What is more, outright prohibition is not a feasible option. In these circumstances, it seems as if *harm reduction*—regulating a practice in order for its less desirable consequences to be limited—might open the door to compromise among contending factions.

Three debates that are at the time of writing going through the Canadian court system seem to possess this structure. They have to do with sex work, drugs, and medically assisted death.

Sex Work

Consider sex work. Some people believe that even in the most favourable circumstances, in which women and men are selling sex in the absence of coercion or of other threats to their health, sex work is incompatible with the dignity of the person that all societies, according to this view, ought to uphold. In this view, the body simply

should never be commodified. Others believe that there should be no restrictions on what people choose to do with their bodies, as long as people are not being coerced and their actions do not cause harm to others. Autonomy, rather than dignity, should be the dominant value, according to this second perspective on sex work.

As in the case of secession, the debate appears to be intractable, because the two parties to it are starting from opposed evaluative stances, rather than disagreeing about the implications for policy of a shared value. Nor can one say that either party to the debate is unreasonable. Views that link the dignity of the person to the way in which her body is treated have deep roots in a variety of normative frameworks, from fairly conservative religious ones to feminist perspectives. And autonomy is clearly a dominant value in contemporary liberal democracies.

The prospect of wiping out sex work entirely seems to be vanishingly unlikely. People have been selling sex throughout recorded history. Attempts at stamping out the sex trade have simply driven it underground, where it is more difficult to detect. And a sex trade driven underground and thus effectively deregulated seems like the worst of all possible options. Women are most likely to suffer abuse at the hands of pimps and clients when the state adopts the strategy of the ostrich, plunging its head into the sand to shield itself from the view of the consequences that befall vulnerable persons, when the state is either unable or unwilling to enforce its laws.

So the structure that I identified in the case of secession seems to be present as well in the apparently very different case of the appropriate policy responses to sex work. There is disagreement, there is a practice that is likely to survive even attempts by states that would prefer, all things being equal, to prohibit it, and there are harmful consequences that result from the practice being driven underground and thus effectively deregulated.

In such circumstances, a variant of the solution that I arrived at in the case of secession would seem to be appropriate in the case of

sex work. Decriminalizing it means that it can be brought within the purview of public policy with a view to stemming its most undesirable aspects. Sex workers can be afforded various protections (for example, the ability to hire bodyguards or to work indoors) that would protect them from the risk of violence that is a permanent feature of street work. Moreover, sex workers could be required to submit to regular health checkups so as to protect them, but also their clients and their clients' other sexual partners, from the risk of sexually transmitted diseases. Finally, as the prohibition against sex work creates a lucrative market for organized crime, the transition from prohibition to regulation stands a good chance of depriving criminal organizations of one of their main sources of money.

Thus, as in the case of secession, regulation aimed at reducing harm might prove to be a possible point of compromise between those who would in the first instance approach the issue from the point of view of dignity or of autonomy. Indeed, it does not seem unreasonable to suppose that, above and beyond their disagreements at the level of first principles, opponents of sex work and those who believe it should be tolerated *also* share a commitment to the well-being of all persons affected by the manner in which sex work is carried out. Indeed, it would be unreasonable for opponents of the decriminalization of sex work who ground their opposition in a concern for the dignity of women to oppose regulation grounded in a concern for the well-being of women. After all, a concern for the *dignity* of persons should be taken to incorporate a concern for their well-being.

I want to emphasize this latter point because it forestalls an objection that opponents of practices that my approach would tolerate and regulate might have about the strategy of harm reduction as I have expounded it thus far. Indeed, they might observe, a compromise is an outcome in which *both* parties have, as it were, moderated their initial positions so as to move in the direction of

their opponent. In what way does the "compromise" that I have just briefly glossed incorporate *any* of the initial concerns of those who would oppose it entirely?

The answer to this valid question turns upon a subtle philosophical point. There are two ways in which one can affirm a value. One can either (to use Philip Pettit's very apt language) *honour* it or *promote* it. To honour a value means never acting against the value, or never allowing anyone to act against it, even at the cost of its being realized to a lesser degree overall than if one had allowed for a small amount of "local" violation. In the case at hand, "honouring" the value of dignity would require not accepting a legal framework that countenances that value being acted against by anyone. Sex work in this view should be illegal, because if it were not, we would through our participation in the making of the laws somehow be complicit in the violation of the value. *Promoting* a value, on the other hand, means adopting a consequentialist perspective with respect to it. In other words, it means accepting that in certain empirical sets of circumstances, maximizing the degree to which the value is realized means accepting that a condition of this maximization might be local violations of the value in question. Thus, in the case of sex work, if one accepts that the attack upon human dignity occurs not just in the mere fact of selling sex but also in the abject conditions that sex workers are sometimes compelled to sell sex in, then one also accepts that the abolition of such abject conditions represents a gain from the point of view of the value one views as paramount. Now, if it turns out, first, that these abject conditions result from sex work being carried out in an entirely unregulated environment and, second, that absence of regulation can result *either* from a legal silence on the matter of sex work *or* from unenforceable prohibition, then the conclusion is that a duly regulated regime surrounding sex work is the best way to go in order to realize the value one thinks most important to the greatest possible degree.

Drug Use and Medically Assisted Death

I will not go into as much detail with respect to the two other major public policy debates of the present day in Canada that appear to me to present the same structure. I am referring to the debate over drug use and the debate over medically assisted death. In both of these other cases, irreconcilable fundamental values are at issue, values that it is reasonable to hold with respect to the issue. What is more, it is vanishingly unlikely that prohibition will be effective. In both these cases, great risks attend the practice in question being permitted to continue in an entirely unregulated framework. Given the impossibility of prohibition, the absence of regulation can result from legal silence *and* from unenforced prohibition. The best way in which to realize the values that those who, in other circumstances, would have advocated prohibition, values such as the protection of society's most vulnerable persons in the case of medically assisted death, and (perhaps) well-being and health in the case of drug use, is to opt for a regime of regulation, where regulations are at least in part aimed at minimizing the offence that the practice does to the values in question. Yet again, harm reduction seems to be a way of reconciling those who would at the level of abstract principle remain at loggerheads.

Harm Reduction versus Method of Avoidance

My research at present is focused on refining the harm reduction approach which, as I hope to have shown to this point, holds great promise as a way to break through the ideological deadlocks that many public policy debates in Canada and elsewhere reach when they are pitched at the level of contending first principles. To revert to the Rawlsian vocabulary I introduced earlier on, it is a way of practising the *method of avoidance*. In the face of the intractability of certain debates, the approach consists in attempting to avoid those ways of looking at issues of public policy that are least likely to give rise to reconciliation, and to adopt a stance with respect to them that

holds open the prospect of common ground. The animating hope is that whatever their disagreements at the level of abstract principle, both parties to the debate can be brought round to a shared perspective from which they both seek to minimize harm.

I have thus far presented the harm reduction approach in its most positive light. But far more work needs to be done if it is to be convincing when looked at in detail. The following seem to be the main issues that will have to be addressed in order for the method to bear its hoped-for fruits.

A first issue has to do with the scope of the method. An animating premise behind the method as applied to the cases of secession, sex work, drug use, and physician-assisted death is that these are practices about which reasonable people can disagree. With respect to all of these cases, it is neither unreasonable to believe that the practice ought to be prohibited, nor is it unreasonable to hold that it ought to be permitted.

But there may be cases in which it is unreasonable to think that the practice ought to be permitted, just as there may be cases in which it is unreasonable to think that certain practices ought to be prohibited. As an example of the former case, think of Alan Dershowitz's notorious argument, made in the wake of the September 11 attacks, according to which a harm reduction argument should be applied to torture carried out in order to extract potentially life-saving information from purported terrorists. On the face of it, Dershowitz's argument possessed most of the ingredients that I have been describing here. Dershowitz believes, probably rightly, that torture will continue to be carried out by liberal democratic states, and that rather than having it occur entirely "under the radar," we would minimize the harms that the unregulated practice would generate by requiring that would-be torturers obtain torture warrants from judges, and that such warrants be granted only in specific cases in which the evidence for the potential usefulness of torture is sufficient.

Or consider the case of female genital mutilation. Some people have argued that rather than attempting to prohibit the practice, which would lead to girls being mutilated in horrible, unsterile conditions, physicians propose to community leaders that it be carried out in clinical conditions, and that a ritual scar, rather than complete removal of parts of women's sexual organs, be performed. Again, the logic is one of harm reduction: either we regulate the practice or we prohibit it, but unless we are able to enforce the prohibition, we risk inviting dire consequences.

The disanalogy between these two cases and the ones I have been discussing lies in the fact that, in the case of torture and of female genital mutilation, there is no claim that reasonable people can disagree about their prima facie ethical permissibility. For Dershowitz, and for the physicians who proposed to minimize the harmful consequences of female genital mutilation, there is no prima facie case for either practice, when viewed from an abstract, principled point of view. The case for regulation, as opposed to prohibition, is entirely consequentialist.

This disanalogy allows me to point to an important difference between a harm reduction method construed, as I construe it, as instantiating Rawls's idea of the method of avoidance, and harm reduction as it is deployed in the area of public health. As I understand it, harm reduction is a fruitful way forward to identify avenues of possible reconciliation and compromise among reasonable persons who disagree at the level of first principles. The assumption is that the values that they put forward are ones that ground reasonable contributions to the policy debates in question. There is, in other words, a threshold of "reasonability" that all contending positions to a public policy debate must reach before it makes sense even to attempt to include them within the ambit of a compromise. Where that threshold lies is, of course, a vexed question in contemporary political philosophy. The only thing that needs pointing out

in the present context is that, given the task that I define for harm reduction strategies, it is important to suppose that that line exists.

This is not the case in the public health contexts in which harm reduction strategies construed slightly differently have a natural home. As I understand it, a pure public health strategy is one that prescinds completely from *any* moral evaluation of the practices that are the objects of policy interventions. Such strategies bracket the question of whether even morally objectionable practices, such as female genital mutilation, ought to be condemned, and whether over time they ought to be eliminated. The focus in the case of such strategies is to minimize the harm that is caused by such practices, whether the practices and the arguments and values adduced in order to defend them are reasonable or not.

Clearly the purview of harm reduction strategies as I have been using them here is narrower and applies only to practices about which there is *reasonable* disagreement among citizens of a pluralist society.

Thus, there are practices concerning which compromises should not be sought, because no reasonable person could countenance them in the first place. A different but related problem occurs when the move toward compromise is rejected by those who think that a practice in which they are engaged could not possibly be *opposed* by any reasonable person. An example to illustrate this problem: I was recently involved in a panel discussion at the McGill Faculty of Law concerning the *Bedford* decision of the Ontario Superior Court. That decision ruled certain provisions of the Canadian Criminal Code as unconstitutional because they failed to promote the security of those engaged in sex work.[5] In a manner similar to a number of other recent decisions emanating from Canadian courts (including the *PHS* decision of the Canadian Supreme Court (concerning safe heroin injection sites in Vancouver) and the *Carter* decision of the

5. Canada (Attorney General) v. Bedford, 2012 ONCA 186.

BC Supreme Court (concerning the criminal prohibition against physician-assisted death), the Court in the matter of *Bedford* adopted an approach quite similar to the one I cam advocating here in order to regulate the sex work industry. The Court determined that the prohibitions against sex workers being able to hire bodyguards and drivers, or being allowed to work indoors (the former restriction prevents anyone from "living from the avails" of sex work, while the latter prohibits the operation of a "common bawdy house"), unreasonably placed sex workers at avoidable risk.

Our panel included the lawyer who pleaded the case on behalf of associations representing sex workers, and a representative of one of these associations. She opposed the way in which I presented the situation, because she refused the construction that would present sex work as a practice that reasonable people could oppose. In her view, the concession to the opposition that sex work can be seen as a regrettable practice the negative consequences of which we might nonetheless want to contain and restrict (given the impossibility of enforcing prohibitions against it) was unacceptable.

The position I am describing, and which results in practice in an unwillingness to compromise with those who, all things being equal, would rather see sex work abolished, must be seen as unreasonable, according to the view I am defending here. That is, it amounts to a refusal to acknowledge that more than one value (in this case, the individual autonomy of the women and men who choose to engage in sex work) can reasonably be brought to bear on the consideration of sex work. Clearly, however, that refusal flies in the face of many people—feminists, citizens motivated by more conservative moral codes—who believe that the state ought to limit the commodification of the body, even in ideal circumstances in which those who practice sex work are not being forced to do so by grim economic circumstance or by sex traffickers.

I would argue that it is as unreasonable to insist upon compromises about practices that no reasonable person can support as it

is to *refuse* compromise over practices that it is not unreasonable for some people to oppose. Part of the challenge for the development of the harm reduction method is to determine its appropriate range of application.

A second issue has to do with the question of the enforceability of restrictions. One of the premises underlying the harm reduction approach is that those opposed to the practice in question will be brought round to considering harm reduction as a "second best" through the realization that it is futile, or even worse, counter-productive to attempt to prohibit the practice in question altogether. The War on Drugs that has been waged by the US government is only the most highly publicized of recent cases in which the attempt to wipe out a practice leads to the creation of robust criminal subcultures taking over the practice and conducting it in ways that increase pathologies that might be diminished through effective state regulation.

Some opponents of the practice may refuse to move from a posture of categorical opposition to harm reduction because of the feeling that strategies of prohibition have simply not been carried out effectively enough. Rather than acceding to a situation in which the practice they condemn is tolerated and regulated, they may hold that when enforcement of prohibitions fails, new, more effective strategies of prohibition must be found. Thus, for example, many opponents of sex work have looked with some optimism at policies that have been enacted in Sweden to reduce the incidence—and not just the negative consequences—of sex work. These policies have targeted clients rather than sex workers and have relied on the incentive effect of shame preventing men whose standing depends upon their being able to maintain their social and professional reputations in order to depress demand for the services of sex workers.

The effectiveness of such strategies is a matter of some dispute. Some people argue that the Swedish approach has in fact decreased the amount of sex work, while others hold that it has merely driven

it further underground. But the point I want to make here is that different attitudes to prohibition reflect a fundamental asymmetry, as between opponents and defenders of a controversial practice with respect to the "consequentialist turn" that the harm reduction strategy represents. Let me explain.

Opponents of the controversial practices we have been considering—sex work, euthanasia and assisted suicide, secession, drug use, and the like—do not hold logically contrary views as to the way in which these practices should be regulated. Opponents believe that these practices should never be engaged in and thus that the "first-best" policy option with respect to them is outright prohibition. Their opposition to the practice is, to use a philosophical term of art, categorical. Defenders of the practice, on the other hand, believe that people should be able to choose to engage in the practices in question. They are in favour of permissive regimes.

Defenders of controversial practices, therefore, already find themselves, as it were, in the space of regulation that the harm reduction strategy recommends. Very few, if any, defenders of the right to engage in sex work or to use recreational drugs will argue that the state ought to stay out of the regulation of these practices completely. At a minimum, defenders of controversial practices will tend to view permissive regimes as ones that ought to protect children, to restrict practices that are known to offend certain members of the community to certain circumscribed locations, and so on. Now, the defenders of controversial practices who ground their positions in the value of individual autonomy may favour regulations that are less restrictive than those that they will end up agreeing to when they are led to making compromises with opponents. For example, a defender of the right for competent adult individuals to determine the moment at which they will die may argue that physician-assisted death should be available in a broader range of cases and situations than simply in the face of irremediable somatic suffering at the very end of a

terminal disease such as cancer, but may be willing to compromise so as to narrow the range of cases in which it is made available.

Opponents will tend to be categorically opposed to the practice at first, and thus to any form of regulation. As I have been arguing for harm reduction strategies, opponents will tend to come on board when they come to realize that, *from the point of view of the value they most cherish*, suitably regulated permissive regimes will do better than prohibitions. One of the ways in which to move opponents from a stance of categorical opposition to one of consequentialist promotion of the values in question is to point to the ineradicable character of the practice in question. The expectation is that reasonable opponents of a controversial practice will adopt a consequentialist rather than a categorical stance with respect to their preferred value when they are made to realize that outright prohibition is unavailable.

The unavailability of prohibition is never really a matter of physical impossibility. Controversial practices as such could be eradicated or very substantially reduced were we to decide, for example, to deploy far greater resources to the detection and sanctioning of the practice than we presently do. The fact that we do not typically maximize the amount of resources reflects an all-things-considered judgment about how best to devote finite social resources. Devoting resources to the detection and elimination of a practice may simply be a less cost-effective manner of using limited resources than more permissive regimes would be. The problem is that some opponents of controversial practices, such as the ones I have been talking about here, may be loathe to abandon the strategy of prohibition even in the face of considerations of cost-effectiveness, because of the very great importance that they ascribe to the value on the basis of which they ground their opposition. Opponents of sex work or drug use who base their opposition on human dignity may consider that to subject the defence of human dignity to cost-benefit calculations

would be to debase the currency of dignity itself. Dignity is, after all, to paraphrase Kant, "beyond price."

The harm reduction strategy for the resolution of controversial issues of public policy is problematic in terms of the manner in which categorical opponents of a controversial practice can be moved to a more accommodating, consequentialist perspective. This problem points back to a deeper one still. A harm reduction strategy is typically pluralist in nature. By this I mean that the range of harms it aims to minimize will be of various different kinds. Tangible physical harms to persons, implementation costs of various regulatory regimes, more intangible harms to do with the degree to which various policy regimes manage to realize values considered to be important by many members of society—all of these plural considerations will enter into account in standard harm reduction strategies. Opponents of controversial practices who adopt harm reduction strategies as a "second-best" option to outright prohibition will, however, tend to focus exclusively or preponderantly on the way in which different regulatory regimes minimize harm with respect to the value upon which their initial opposition was grounded. That is, the concept of "harm" at work in harm reduction strategies will be controversial and risks bringing back into play the more categorical oppositions that it was supposed to steer us clear of.

The devil is in the details, as the saying goes. The road to compromise that the harm reduction strategy would seem to lay out presents a number of difficulties, and I have described only what I see as the most challenging. Still, it seems to me that the exploration of compromises that the strategy promises is our best hope for dealing in a principled and peaceful manner with many of the problems of public policy that would otherwise risk dividing society into warring clans separated by the seemingly unbridgeable gap of high principle. There is much work to be done to make this approach workable, and it is to this task that I have been devoting much of my work in recent years.

Conclusion

This brings me back to the question with which I began these reflections. Am I still a philosopher? Having abandoned the lofty heights of pure principle for the messiness of compromise, have I betrayed my philosophical forebears?

I have already given some reasons to answer that question by a resounding no. Harm reduction is a way of carrying forward the intellectual agenda that was defined by the leading political philosopher of the 20th century, John Rawls. Harm reduction strategies are ways of practising what Rawls called "the method of avoidance," which enjoins us—philosophers and citizens—to move deliberation over controversial issues of public policy away from considerations of first principles and toward a consideration of the consequences of different policy choices.

The attempt to identify compromises in the spirit suggested by a concern with harm reduction does, however, lead the philosopher to reach for tools and methods that are not those that he or she has traditionally made much use of. To begin with, philosophers who agree to travel the road of harm reduction must embrace the dictum according to which "facts matter." That is, philosophers intent on identifying regulatory regimes with respect to controversial practice that minimize harm along a wide range of dimensions must engage in (often collaborative) research that will, among other things, examine the consequences that have been given rise to by a range of regulatory regimes around the world. They must abandon the bankrupt intellectual pursuit that philosophers have too often engaged in of what might be termed "normative sociology"—the study of the world not as it is but as it should be in order to vindicate my a priori principles—in order to join hands with those that do real, hard-nosed empirical research. Ultimately, it may lead them, as it has done me, out of departments of philosophy and into hybrid, interdisciplinary spaces, like the Research Centre on Ethics at the Université de

Montréal, which I founded in 2002, and McGill University's Institute for Health and Social Policy, of which I became director in 2013. It also means that my work now appears in venues in which I could not have imagined publishing when I was poring over abstruse Kantian texts in the Bodleian library in Oxford. I will leave others to decide whether or not on balance I have remained true to a discipline with which I certainly still identify. I will close, however, by stating what has come to seem to me a truism as I have tried over the years to give serious thought to some of the most controversial and divisive issues of public philosophy we have faced here in Canada: no discipline can alone do all that needs to be done in order to get a clear picture of how we can best move forward as a democratic people in our attempts at doing the right thing where "the right thing" is an issue of such passionate and at times acrimonious debate.