

Communities of Judgment and Human Rights

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The debates over "universal" human rights versus alleged abuses in the name of culture and tradition are best understood as conflicts between different communities of judgment. This article attempts to respond to the pressing need for an adequate theory of the role of judgment in order to address these debates. Using Hannah Arendt's work on judgment as a starting point, the article tackles the problems and possibilities that arise out of Arendt's view that judgment relies on a "common sense" shared by members of a community of judging subjects. The author identifies some of the puzzles surrounding the concepts of "common sense," "community," and "other judging subjects," concepts not fully developed in Arendt's theory. Section I begins with a brief outline of Arendt's theory and its relation to Kant's. In Section II, the author points to some of the virtues of a community-based theory of judgment and, in Section III, to the link between the issues in international human rights and judgment as community-based. Section IV identifies a set of interlocking puzzles posed by the idea of "community-based" judgment, while Section V offers a more detailed account of the concepts of "enlarged mentality" and "common sense" that serve as the basis for exploring these puzzles. These puzzles are then worked through in Section VI, particularly, the question of how can one decide to change or oppose "common sense" when it seems to be presupposed for judgment to be possible. Finally, Section VII addresses the implications of these theoretical arguments for human rights and the insights human rights debates provide for the theory. The author shows that it is necessary to understand these debates as a concrete manifestation of the problem of judgment across communities and how this particular problem, in turn, helps to refine the issues the theory must articulate and resolve. The modern world makes huge demands

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on our linked capacities for autonomy and judgment; in order to best meet these demands, we must understand the ways in which judgment is community-based.

INTRODUCTION

As we enter into the twenty-first century, there is a pressing need for an adequate theory of judgment. Institutions central to Western culture, such as law and science, have long rested upon claims of objectivity that are now subject to serious dispute. In the physical sciences, it is now widely recognized that the "objective" pursuits of science take place within paradigms that are often not themselves the result of objectively determined selection. The necessary choices among theories involve such elusive (and competing) values as elegance and messiness.¹ Methodologies involve choices between stances of distance and detachment as opposed to loving engagement.² And commitments born of a researcher's life work based on a particular paradigm routinely, perhaps unavoidably, hinder the recognition of alternatives.³ In short, science requires not just reproducible results, but judgment.

In law, scholars point to the way unexamined, largely unconscious metaphoric frameworks shape the ways judges see and choose among alternatives.⁴ Others argue that the ruling model of impartiality requires the suppression of attention to difference — with negative consequences for women and other subordinated groups.⁵ Others still show how the unstated norm in law is a male norm.⁶ And, in a slightly different vein, many argue that the inevitable interpretive choices in law involve an important subjective

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- 1 Elizabeth Anderson, *Feminist Epistemology: An Interpretation and a Defense*, 10 *Hypatia* 50 (1995) [hereinafter Anderson, *Feminist Epistemology*]; Elizabeth Anderson, *Knowledge, Human Interests, and Objectivity in Feminist Epistemology* (1995) (unpublished manuscript) (on file with the Bora Laskin Law Library, University of Toronto).
 - 2 Evelyn Fox Keller, *A Feeling for the Organism: The Life and Work of Barbara MacIntock* (1983).
 - 3 Thomas Kuhn, *The Structure of Scientific Revolutions* (2d ed. 1970). This issue is also discussed by Anderson, *Feminist Epistemology*, *supra* note 1.
 - 4 See, e.g., Gary Peller, *The Metaphysics of American Law*, 73 *Cal. L. Rev.* 1151 (1985).
 - 5 Iris Marion Young, *Impartiality and the Civic Public*, in *Feminism as Critique* 57 (Seyla Benhabib & Drucilla Cornell eds., 1987).
 - 6 See, e.g., Catherine MacKinnon, *Feminism Unmodified: Discourses in Life and Law*

element. The purpose of these diverse arguments has often been to call into question traditional claims of neutrality and objectivity. In addition, these arguments have been useful not simply for revealing hidden biases, but for highlighting the centrality of choices that must inevitably have a subjective dimension.

The recognition of subjectivity inherent in human judgment is not, of course, limited to law and science. For example, many of the contemporary debates about the nature of moral decision-making or of the values people hold⁷ are, in essence, a debate about how it is possible to make reasoned, defensible judgments on matters about which there is no universal, clearly demonstrable, or objective truth.⁸

The task now is to reconstruct the norms of optimal decision-making in all fields — in other words, to articulate the nature and norms of judgment. It is crucial *not* to assume that once we acknowledge the role of subjectivity, we are in the realm of the arbitrary, of interests that can only be negotiated or advanced through the force of power. A great deal of contemporary political and economic rhetoric assumes that anything subjective is an "interest" or preference that can be counted, maximized, or bargained about, but is not something to be treated as a judgment, subject to evaluation or persuasion. This rhetorical stance is powerful and pervasive and infects all areas where claims of subjectivity are made.

Law, in particular, needs an articulation of the nature of judgment, with its irreducible element of subjectivity, that can sustain the core values of the rule of law.

Hannah Arendt's work on judgment offers a promising starting point from which to generate a theory of judgment that can meet all these needs. It is only a starting point because she did not live to write the volume on judgment that would have completed her projected trilogy for *The Life of the Mind*.⁹ Arendt

(1987); Robin West, *Jurisprudence and Gender*, 55 U. Chi. L. Rev. 1 (1988); Ann Scales, *The Emergence of Feminist Jurisprudence*, 95 Yale L.J. 1373 (1986).

7 See, e.g., Martha C. Nussbaum, *Valuing Values: A Case for Reasoned Commitment*, 6 Yale J.L. & Human. 197 (1994); Steven L. Winter, *Human Values in a Postmodern World*, 6 Yale J.L. & Human. 233 (1994).

8 Some philosophers now define "truth" in ways quite similar to the understanding of judgment I present here. See, for example, Cheryl Misak, *Truth, Politics, Morality: Pragmatism and Deliberation* (2000). So defined, of course, truth does not work as a contrast to judgment. But I find invoking more conventional understandings of truth to be a useful way of seeing the importance of a concept of judgment.

9 Arendt died just before beginning the volume on judgment, which was to be the third volume of *The Life of the Mind*. Her notes for lectures on judgment at the New School were published posthumously by Ronald Beiner as *Hannah Arendt, Lectures*

was interested in political judgment, and she claimed that Kant's work on aesthetic judgment¹⁰ provided the key insights into the special human faculty for judgment. She wanted to show that it was this faculty that was crucial in politics. Arendt's appropriation of Kant is contested,¹¹ and I shall render that appropriation more complex (and contested) still. Neither Arendt nor Kant thought that this special capacity for what Kant called reflective judgment was involved in law. Both saw legal judgments as determined by rules or principles, whereas one of the key characteristics of reflective judgments is that they cannot be determined by rules or concepts. And Kant thought moral judgments are also determined by basic moral principles (the categorical imperative, in particular), whereas I think Arendt's position on that point is not quite clear. My own view is that one should have an open mind about the nature of judgment in these different spheres and, indeed, about the nature of judgment in all the daily forms it takes: in the evaluation of character, of policy, of books, of arguments, of courses, colleagues, students, and exams. I think it is likely that all of these forms of judgment share a basic nature; they all pose the problem of making thoughtful, defensible judgments that cannot be determined by rules or concepts. It also is likely that there are interesting differences between judgments made by judges in court and those made by legislators or ordinary citizens in evaluating policy. And, yet again, there may be interesting differences between these judgments and those about poetry, novels, or movies. A full theory of judgment would articulate both the core similarities and the differences.

This essay will not, of course, offer such a theory. Rather, I want to take up one set of problems and possibilities raised by Arendt's approach: those that arise out of her view that judgment relies on a "common sense" shared by those who are members of a community of judging subjects. Arendt had not developed her theory sufficiently to offer clear definitions of any of these terms — common sense, community, other judging subjects. This essay will identify some of the puzzles surrounding these concepts and begin the process of unraveling them.

These problems are interesting not just because they are central to Arendt's approach and what I hope to do with it, but because they illuminate many

on Kant's Political Philosophy (1982) [hereinafter Arendt, Lectures]. There is also an early important discussion of judgment in Hannah Arendt, *The Crisis in Culture, in Between Past and Future* 197 (1963) [hereinafter Arendt, *Crisis in Culture*].

10 Immanuel Kant, *Critique of Judgement* (Werner S. Pluhar trans., 1987) (1790). All citations will be to this edition.

11 See, for example, Ronald Beiner, *Rereading Hannah Arendt's Kant Lectures, in Philosophy in a Time of Lost Spirit: Essays in Contemporary Theory* 184 (1997).

contemporary contested problems. In particular, I think that community-based judgment poses the same set of problems that underlie contemporary debates over international human rights. The debates over "universal" human rights versus alleged abuses defended in the name of culture and tradition are best understood as conflicts between different communities of judgment. We need an adequate theory of the role of community in judgment in order to address these debates.

I will begin with a very brief outline of Arendt's theory and its relation to Kant's. My intention is to provide just enough to make sense of the role of community in Arendt's framework (upon which I will elaborate in *infra* Section V).¹² In Section II, I point to some of the virtues of a community-based theory of judgment in order to show why it is worth the trouble of working through the puzzles that immediately present themselves. Section III briefly states the link between the issues in international human rights and judgment as community-based. In Section IV, I identify a set of interlocking puzzles, which this essay will try to address. Section V offers a more detailed account of the concepts of "enlarged mentality" and "common sense" that serve as the basis for exploring these puzzles. Then, in Section VI, I work through those puzzles, in particular, how can one decide to change or oppose "common sense" when it seems to be presupposed for judgment to be possible. Section VII returns to the implications of these theoretical arguments for human rights and to the insights human rights debates provide for the theory. We see how we can better understand the human rights debates as a concrete manifestation of the problem of judgment across communities and how that practical problem, in turn, helps refine the issues the theory must articulate and resolve.

I. THE CORE OF JUDGMENT FOR KANT AND ARENDT

For both Arendt and Kant, the key idea of judgment is that it is neither about truth claims nor about mere subjective preference. According to Kant, the claim "This painting is beautiful" cannot be proven as a truth; but in contrast to "I like this painting," it is not merely a statement of preference. The claim of beauty is a genuine judgment because it makes a claim of agreement from others who judge. I cannot compel agreement, as I could logically with a truth claim.¹³ But I can persuade and claim that if the other judge is truly

12 I also discuss Arendt's and Kant's theories in Jennifer Nedelsky, *Embodied Diversity and the Challenges to Law*, 42 McGill L.J. 91 (1997).

13 A judgement of taste differs from a logical one in that a logical judgement subsumes a presentation under concepts of the object, whereas a judgement of

judging, is not being biased by private inclinations, he will agree. I thus claim that my judgment is valid for the community of judging others.

The core of what makes such judgment possible is our "common sense," shared by other judging subjects. It is this shared sense that allows us to exercise an "enlarged mentality" by imagining judgments from the standpoints of others. When we judge, we imagine trying to "woo the consent" of others to our judgment.¹⁴ In this process of considering the standpoints of others, we can free ourselves from our private idiosyncrasies. It is because we share a common sense that it is possible to communicate about such seemingly private and subjective experiences as beauty and, thus, also to imagine the perspectives of others. When we use this capacity for an enlarged mentality to free ourselves from idiosyncrasies and inclinations, then we are capable of true judgment, for which we claim validity.

This brief description holds both for Kant and for Arendt's use of Kant. But there is an important difference. For Kant, the ground for the "common sense" is the identical cognitive faculties of imagination and understanding that all human beings share. The common sense is, thus, universal, and Kant can say that in exercising the enlarged mentality, we put ourselves in the place of every other person. Judgments are, thus, universally valid. The validity is a claim upon the agreement of *all* others, despite the fact that that agreement, unlike truth claims, cannot be compelled by reason (hence, the universality is "merely subjective").¹⁵

For Arendt, the validity is more limited:

claims for validity can never extend further than the others in whose place the judging person has put himself for his considerations. Judgment, Kant says, is valid "for every single judging person," but

taste does not subsume it under any concept at all, since otherwise the necessary universal approval could be [obtained] by compelling [people to give it]. But a judgement of taste does resemble a logical judgement inasmuch as it alleges a universality and necessity, though a universality and necessity that is not governed by concepts of the object and hence is merely subjective.

Kant, *supra* note 10, § 35, at 150-51. What matters most broadly here is that true judgment, what Kant called reflective judgment, is called for whenever one cannot subsume a particular under a general concept. Judgment is called for when one must engage directly with the particular.

14 This is Arendt's translation. She says that taste judgments "share with political opinions that they are persuasive; the judging person — as Kant says quite beautifully — can only 'woo the consent of everyone else' in the hope of coming to an agreement with him eventually." Arendt, *Crisis in Culture*, *supra* note 9, at 222, citing Immanuel Kant, Critique of Judgement § 19 (1790) (German).

15 See *supra* note 13.

the emphasis in the sentence is on "judging"; it is not valid for those who do not judge or for those who are not members of the public realm where the objects of judgment appear.¹⁶

What matters here is not the accuracy of Arendt's interpretation of Kant, but the way in which she bases judgment in actual community. For Arendt, the common sense that makes judgment possible is not based in universally-shared cognitive faculties, but in shared community. She also implies that not only is membership in a community necessary for judging, but that the practice of judging is part of what constitutes one's membership. What interested Arendt was that "the capacity to judge is a specifically political ability in exactly the sense denoted by Kant, namely, the ability to see things not only from one's own point of view but in the perspective of all those who happen to be present."¹⁷ The claims for validity are, thus, not universal, but for the community of judging subjects whom one invokes in the exercise of the enlarged mentality.

II. COMMUNITY-BASED JUDGMENT

There are many virtues to Arendt's use of actual community, but it also is the source of unresolved problems and puzzles. This essay will focus on the puzzles, but let me begin with a brief indication of what is so valuable about the idea of judgment as community-based.

First, the Kantian-Arendtian conception of the enlarged mentality (whichever concept of community is invoked) offers an extremely important framework for understanding that subjectivity need not collapse into mere arbitrariness. Judgment in this scheme remains irreducibly subjective, even while claiming validity. As I noted at the outset, the recognition of the role of subjective judgment in such traditional bastions of objectivity as science and law means that it is crucial to be able to articulate persuasive grounds for validity. For law in particular, a theory of judgment is necessary to proceed beyond the critiques of objectivity and neutrality to offer new criteria for what would count as "good judgment." By basing judgment in real community, Arendt invites the question that underlies so much jurisprudential and political debate: good judgment for and according to whom?

The attraction of Kant's transcendental universality is, of course, that it

16 Arendt, *Crisis in Culture*, *supra* note 9, at 221.

17 *Id.*

seems to make the question unnecessary. But Arendt's reliance on actual community provides a way of using the Kantian framework in the face of doubts about a universality of judgment, even in the realm of aesthetics. At the least, it seems clear that what is seen as beauty in art varies across time and culture. Agreement on judgment of the beautiful is possible within some more bounded context than the timeless universality of all mankind. Precisely what is contested about her interpretation of Kant¹⁸ is what is helpful about her own approach: it is explicitly about human interactions in the social world. A useful theory of political or legal judgment belongs in that context. Judgment in actual human communities is what we want to know about.¹⁹

For example, Arendt's theory provides an account for the extraordinary transformation that took place via women's consciousness-raising groups in North America in the 1970s: they transformed the "common sense" of the women who participated. Having a new community in which to base their judgment transformed how each one saw her life and judged its justice, fairness, and satisfaction. In the course of recounting their experiences to other women whose own stories became points of reference, the women's sense of those experiences changed. And as it did, their individual, and emerging, collective judgments shifted as well. The consciousness-raising groups created alternative communities of judgment, whose common sense about women's roles was no longer that of the mainstream community. It was not their lives that had changed, but the context in which they judged them.²⁰

This conception of alternative communities of judgment continues to be important as a way of understanding why such contested organizations as women-only women's centers and black caucuses are important and justifiable. It is only by temporary exclusion of the dominant group that the subordinated can create spaces for deliberation and exchange in which their own "common sense" can emerge and provide a basis for judgment.

18 For more on Arendt's interpretation of Kant, see Beiner, *supra* note 11. I do not entirely agree with his argument, as I have elaborated in Jennifer Nedelsky, *Judgement, Diversity and Relational Autonomy* (unpublished manuscript) (on file with author).

19 Whether people making judgments with reference to their actual communities may also invoke the idea of the community of all mankind is a question I will address further on.

20 This view also helps account for the repeated stories of bewildered husbands whose previously "happy" wives joined consciousness-raising groups and became sad, angry, and insistent on change.

Of course, it is not really news that people can feel reinforced in their views when they associate only with like-minded people. And the idea of the enlarged mentality is presumably aimed in part at the limitations of judgment based on insular communities. (I will note later the dangers of insularity in institutions like the judiciary.) What I have identified above is an account of how people's judgments can change when they change their communities of reference and, therefore, the importance of marginalized groups having the opportunity to create their own communities of judgment. These insights and advantages, however, immediately pose problems. I have chosen examples that imply that the shifts in judgment were good and important. Thus the exclusion that makes them possible seems justified. Not only is this apparently a shift from Arendt's emphasis on *expanding* one's mentality, but this use of her theory raises the obvious problem of when exclusion is justified. Of course, other versions of this issue are familiar in the arguments that those who oppose business clubs that exclude women are engaging in hypocrisy or inconsistency when they advocate university support for women's centers that exclude men. And it is not clear whether the usual reply noting the difference between dominant and subordinated groups will answer the broader problems posed by my use of communities of judgment. In North America, extreme racist groups like the Ku Klux Klan or neo-Nazis might reasonably describe themselves as despised and subordinated. And while one might not wish to preclude all opportunities for them to meet in exclusive groups, surely few would consider their marginalized status grounds for forming university-supported clubs.

It is worth noting, however, that in the case of women's groups, the exclusion *did* serve to expand rather than contract the enlarged mentality available for judging. The exclusion allowed for the recognition of perspectives that had previously been effectively blotted out by the dominant views on women's roles. A similar argument would apply to organizations like caucuses for people of color. It is not clear to me that those who identify around a marginalized ideology like neo-Nazism would experience an expansion in the scope of their perspectives if their ability to create exclusive groups were facilitated.

At this point I mean to do no more than identify some of the ways the interesting and troubling potentials of community-based judgment go together and to raise some further questions. In which communities should judgments be made? How is deliberation to be carried out between those in the mainstream and those who must live most of their lives outside the alternative communities they have created? Whose standpoints are to be considered by whom? These are just some dimensions of the broader questions of exactly what is meant by community, by being members of

the public realm. If the common sense essential to judgment is not that of Kant's transcendental world of all human beings with the identical faculties of imagination and understanding, what is it? In short, the concept of the enlarged mentality is extremely valuable, but how does it work in a diverse and contested social domain?

III. HUMAN RIGHTS AND COMMUNITIES OF JUDGMENT

The theoretical problems embedded in this core question map on to current debates over international human rights. Put differently, the debates over human rights require a theory of judgment. They require an understanding of the relationship between the universal and the particular in human judgment (an issue at the heart of judgment theory that I will only touch on here), and they require a clear sense of the community (or communities) from whom claims of agreement are made. The core of the debate I have in mind is over claims for universality of human rights. This debate is particularly charged for feminists concerned with abuses of women's rights. The claim of universality sometimes seems necessary for making demands on regimes to change practices they either enforce or condone in the name of "culture." But, as is well known, these claims of universality have been challenged as false, as merely the imposition of a particular Western conception of rights on others with different conceptions of core human values. And the charge of false universality is one that feminists are familiar with and sympathetic to, since women were notoriously excluded from many of the rights men claimed were universal. Moreover, there are important arguments that these exclusions were inherent in the conceptions of citizenship and rights themselves.²¹

One problem posed by this troubled history of universal rights language is how to ground or justify claims of abuses of rights. What is the basis for such claims? Or to put it differently, with reference to which community is the judgment about abuses of rights made? Is it the community of all mankind, timeless and universal, to which we all belong by virtue of being human?²² Is it the particular community in which the abuses are taking place?

²¹ See, for example, Ursula Vogel, *Is Citizenship Gender-Specific?*, in *The Frontiers of Citizenship* 58 (Ursula Vogel & M. Moral eds., 1991); Iris Marion Young, *Justice and the Politics of Difference* at ch. 4 (1990); Carole Pateman, *The Sexual Contract* (1988).

²² It may be that such a reference can make sense even if the traditional Western invocation of the term is problematic. For example, two separate international

And do we envision that community as monolithic, as singular in the sense of encompassing only one relevant shared "common sense"? Or do practices alleged to be abuses often take place within multiple overlapping communities with different "common senses"? Alternatively, perhaps it makes sense to say that there is a world community that is not transcendental in nature, but empirical: a social world constituted by communication and actions such as ratification of declarations of human rights. And perhaps the norms of such a world community can be articulated in terms that are universal and yet can be conscientiously applied in ways that are responsive to the particulars of local context.²³ When we understand the puzzles of community-based judgment better, we will be better equipped to work through the debates surrounding international human rights.

IV. PUZZLES

In this section I shall outline a series of interlocking puzzles posed by the idea of community-based judgment. The first is how can one form a judgment in conflict with one's own community? This is surely one of the key questions of judgment in the shadow of the Holocaust. What makes it possible for some, but not most, people to judge not only differently from, but in opposition to, their communities? If a theory of judgment based in community cannot make sense of this question, it cannot be an adequate theory, since we know for a fact that some people were able to judge against their national communities. Of course, such judgment is only a problem if actual human communities (as opposed to universally-shared cognitive faculties) are the basis for judgments, or at least their starting points. Like so much of Arendt's work on judgment, it was too preliminary to know exactly how she saw it. I think that probably she had not gotten far enough to see the full extent of the problems, much less work out the answers. One telling quote is the following:

One judges always as a member of a community, guided by one's

NGOs, El Taller, based in Tunisia, and Asian Women's Human Rights Council, with offices in the Philippines, have called for a "new universalism."

23 See, for example, Annie Bunting, *Particularity of Rights, Diversity of Contexts: Women, International Human Rights and the Case of Early Marriage* (1999) (unpublished S.J.D. thesis, University of Toronto) (on file with the Bora Laskin Law Library, University of Toronto). Bunting shows how the language of universal human rights is often effectively applied in a context-specific way.

community sense, one's *sensus communis*. But in the last analysis, one is a member of a world community by the sheer fact of being human; this is one's "cosmopolitan existence." When one judges and when one acts in political matters, one is supposed to take one's bearings from the idea, not the actuality, of being a world citizen and, therefore, also a *Weltbetrachter*, a world spectator.²⁴

I take the phrase "in the last analysis" seriously. I think one should understand the first stages of judgment as based in one's more immediate community. And it is here that the problem of judging against one's community arises, followed then by the question of what is meant by judging as a member of the world community.²⁵

The idea of a need to judge against one's community presupposes another problem: what do we mean when we say that an entire community is wrong, that its common sense is distorted, that it is characterized by bad judgment or by a failure to exercise judgment? From what standpoint is this claim made? How is that judgment exercised?

If we start with the idea that judgment begins as grounded in a local community, we will quickly come to the recognition that most communities are not homogenous. Many contain sub-communities. What scope of community do we envision for the exercise of the enlarged mentality? As I noted in the opening discussion of human rights, most people in the modern world will be exposed to multiple and overlapping communities, communities that differ in their "common senses" in at least some respects. This poses a problem that could not arise for Kant (with his notion of common sense arising out of universal human faculties) and that Arendt did not address: how do we exercise our enlarged mentality when different judgments will appear valid depending on which community's common sense we have reference to? Must we choose among communities as the context for our judgments? On what grounds would we make the choice?

A related question is how "valid" judgments are to be made across

24 Arendt, Lectures, *supra* note 9, at 76.

25 The claim that judgment is based in community but can transcend community in order to judge against it raises the issue of autonomy. While I have dealt with the question of autonomous judgment elsewhere, I want to note the link here. If we form our judgments in a process of considering the perspectives of others, how are the judgments truly autonomous? If judgment is truly autonomous, then it must be able to transcend the community. This is just a restatement of the question of how judgment can be based in community yet transcend it. In *Judgement, Diversity and Relational Autonomy* (Nedelsky, *supra* note 18), I argue that a relational conception of autonomy helps unravel this puzzle.

different communities — as arguably is required in Canada, where the scope of the Charter of Rights and Freedoms extends not only to Anglophone and Francophone Canadians, but to aboriginal peoples as well. This leads to the crucial political question of what has to be shared in order to form a community of judgment, a community in which one lays claim to the assent of one's fellow members.

Finally, there is the issue that sometimes what one wants to do is change the common sense of one's community. If its failures of judgment rest on a faulty common sense, then one who is committed to her community will not just try to judge against it, but to change it. I think that one might so describe the project of many feminists, a project that has succeeded in part in Canada and the United States. The "common sense" that a woman's place is in the home that could be invoked in a U.S. Supreme Court opinion in 1873²⁶ would be unacceptable in that forum today. In American society in general, this issue may still be contested, but it is no longer a settled matter of common sense. So, again, the question is how are we to understand the project of transforming common sense in terms of a theory of judgment that seems to invoke it as a starting point?

V. ENLARGED MENTALITY AND COMMON SENSE

These questions direct us back to the core concepts of the enlarged mentality and common sense. I shall begin with a discussion of what Arendt does and does not tell us about how the enlarged mentality works and then move on to the relation between the enlarged mentality and common sense. I will identify some of the unresolved problems in Arendt's work and connect them to the issue of the meaning of community. Beginning with Arendt, contrasting her views with Kant's and offering my own view of a useful development of her insights, I will work through the key components of Arendt's theory of community-based judgment. Finally, I will consider some of the implications for what it would take to foster the capacity for enlarged mentality. In Section VI, I will return to the puzzles of community-based judgment and their implications for human rights.

Arendt tells us that in forming a judgment, we transcend our private idiosyncrasies by considering the perspectives of others. She says that she does not mean by this empathy for others, imagining that we could know what actually goes on in their minds. Rather, you compare your

26 *Bradwell v. State*, 83 U.S. (16 Wall.) 130, 141 (1873) (Bradley, J., concurring).

own judgment²⁷ not with the actual judgment of others (that would be just replacing your prejudices with theirs), but with the judgment you would make from their standpoint: "actually, the place where they stand, the conditions they are subject to, which always differ from one individual to the next, from one class or group as compared to another."²⁸ One has to go through a variety of such standpoints in order to achieve one's own "general standpoint."²⁹ And "the greater the reach — the larger the realm in which the enlightened individual is able to move from standpoint to standpoint — the more 'general' will be his thinking."³⁰ Arendt insists, however, that this generality is not the "generality of the concept."³¹ To make this point, she uses the example of the concept house under which one can then subsume various kinds of individual buildings. But I think a more telling contrast between the general thinking of the enlarged mentality and the generality of the concept is provided by the concept of humanity. It is not the generality of the concept "humanity" that characterizes enlightened, "general" thinking: "it is, on the contrary, closely connected with particulars, with the particulars of the different standpoints one has to go through in order to arrive at one's own 'general standpoint.'"³² The idea of "one's own" general standpoint is, therefore, yet another dimension of the particularity involved. There is not a universal standpoint of humanity that one arrives at, but one's *own* general standpoint, developed through attention to the particulars of the different standpoints one considers. Thus, the generality of the enlarged mentality does not have either of two common meanings: it does not yield a general concept under which one can subsume the particulars of a situation requiring judgment; and it is not a universal perspective, but one generated by each individual's encounter with multiple particular standpoints. Judgment always remains tied to the particular. I will return to this emphasis on the particular when I turn to the issue of communication.

Arendt does not elaborate on exactly how she envisions this process of considering the standpoints of others. I think it helps to think of it in stages (one of which might involve empathy), but here I can do no more than give an indication of how I see the process in such terms.³³ Putting

27 In my terms, I would say your own tentative, initial judgment.

28 Arendt, Lectures, *supra* note 9, at 43.

29 *Id.* at 44.

30 *Id.* at 43.

31 *Id.*

32 *Id.* at 44.

33 I plan to elaborate on the notional idea of stages of judgment in a later article. I began to address the issue of emotion in judgment in Nedelsky, *supra* note 12.

together her discussion of standpoints with her emphasis on the claim on the agreement of others, one might imagine the following: a process by which a person reflects on and perhaps modifies her initial judgment as she considers each standpoint and then imagines trying to persuade someone from another standpoint of her (modified) judgment. This process would (notionally) be repeated as one considered each standpoint. And then one would form one's considered judgment and imagine, again, persuading others.³⁴

Arendt tells us that "an 'enlarged mentality' is the condition *sine qua non* of right judgment; one's community sense makes it possible to enlarge one's mentality."³⁵ She says that what Kant means by *sensus communis*, as distinguished from *sensus privatus*, is a community sense.

This *sensus communis* is what judgment appeals to in everyone, and it is this possible appeal that gives judgments their special validity. The it-pleases-or-displeases-me, which as a feeling seems so utterly private and noncommunicative, is actually rooted in this community sense and is therefore open to communication once it has been transformed by reflection, which takes all others and their feelings into account.³⁶

The validity is not that of truth; one can only "woo" or "court" the agreement of everyone else. "And in this persuasive activity one actually appeals to the 'community sense.' In other words, when one judges, one judges as a member of a community."³⁷

There is something confusing about this invocation of community — as is often the case in her lectures where she began with Kant and proceeded to her own elaboration. Is it simply the community of all mankind to which we belong by virtue of being human? When Arendt says that we must take "[a]ll others and their feelings"³⁸ into account, this has a Kantian transcendental ring to it. Surely if we need to know the particularity of the standpoints of the others whose perspectives we are considering (as she emphasizes), we cannot literally take everyone into account. I attribute this language (from lecture notes published posthumously) to a slip into Kantian language that was not, in fact, consistent with what she was doing with his ideas.

There is something else confusing here. One of her quotes from Kant suggests that he uses *sensus communis* as a kind of synonym for judgment.

34 Of course, one cannot literally engage in all these steps with every judgment.

35 Arendt, Lectures, *supra* note 9, at 73.

36 *Id.* at 72.

37 *Id.*

38 *Id.*

Under the *sensus communis* we must include the idea of a sense *common to all*, i.e., of a faculty of judgment which, in its reflection, takes account (a priori) of the mode of representation of all other men in thought, in order, *as it were*, to compare its judgment with the collective reason of humanity.³⁹

What Arendt wants to emphasize here is that this special "extra mental capacity (German: *Menschenverstand*) ... fits us into a community."⁴⁰ She quotes Kant, stating that the "'common understanding of men ... is the very least to be expected from anyone claiming the name of man.' ... It is the very humanity of man that is manifest in this sense."⁴¹ Thus she sees in Kant's conception of judgment a view that

sociability is the very essence of men insofar as they are of this world only. This is a radical departure from all those theories that stress human interdependence as dependence on our fellow men for our *needs* and *wants*. Kant stresses that at least one of our *mental faculties*, the faculty of judgment, presupposes the presence of others.⁴²

There are various puzzles here. The first is another version of the question of the kind of community we are talking about here. Is the reference to community just another way of asserting the social nature of human beings and its significance for judgment? Just what is meant by common sense, and what is its relation to Arendt's invocation of community and the capacity to communicate? To sort out these questions, it is helpful to go back briefly to Kant's view. I shall then turn to Arendt's interpretation of Kant and to her own approach. This will lead me into my own understandings of these issues and how I interpret Arendt as helpful.

For Kant, common sense and the capacity to communicate are two different ways of describing the nature of judgment. To be capable of judgment *is* to have the shared faculties that make claims of validity and communication possible. Put another way, the communicability of subjective feelings is made possible by the shared common sense, and it is only those feelings that are capable of communication that are the proper subject of judgment.⁴³ Otherwise they remain in the purely private, subjective realm. Both the *sensus communis* and communicability are universal: "[w]e could

39 *Id.* at 71.

40 *Id.* at 70.

41 *Id.*

42 *Id.* at 74.

43 "Hence taste is our ability to judge a priori the communicability of the feelings that

even define taste as the ability to judge something that makes our feeling in a given presentation *universally communicable* without the mediation by a concept."⁴⁴

Kant insists that judgment of beauty must not be influenced by an interest in the object. But in section 41 of *Critique of Judgement*, he digresses to discuss "the empirical interest in the beautiful."⁴⁵ In this section, Kant makes the very interesting (although I think overstated⁴⁶) point that people's interest in beauty lies in its very communicability. What is special about beauty is that what is ordinarily incommunicable, private feelings of pleasure is shared and, thus, can be communicated to others.⁴⁷ This capacity for communication, which both reveals and is a central part of our sociability, is why beauty matters to us, why we have an (empirical) interest

(without mediation by a concept) are connected with a given presentation." Kant, *supra* note 10, § 40, at 162.

44 *Id.*

45 He reminds us at the end of the section that this empirical interest is of "no importance for us here, since we must concern ourselves only with what may have a reference a priori ... to a judgement of taste"; *id.*

46 He goes so far as to say that "someone abandoned on some desolate island would not, just for himself, adorn either his hut or himself; nor would he look for flowers, let alone grow them, to adorn himself with them"; *id.* at 163-64.

47 Both Kant and Arendt distinguish judgment from taste in the sense of preferences for one kind of food over another. Arendt insists that we cannot really have judgment about how things taste, because taste in this literal sense cannot be the subject of communication or even imagination. She says we cannot call up in our mind, through our imagination, the taste, say, of pea soup (Arendt, Lectures, *supra* note 9, at 66). I think this is one of the idiosyncrasies of her argument. I, and others I have spoken to, believe we can call up memories of tastes and smells that are no less vivid than visual images (although I find them more fleeting and harder to bring forth at will). What is interesting about Arendt's idiosyncrasy is that it actually reinforces the point that matters: the possibility of communication as crucial to judgment. Anyone who has spent time around wine fanciers knows that they have developed a whole language to describe the different tastes of wine and that they see themselves as engaged not just in the statement of private preferences, but in judgment about what is a really excellent wine. The theory would predict that whenever genuine judgment is engaged, there must be a language of communication — even if that language is only shared by the members of the judging community, in this case, the wine fanciers. I am told that a similar language exists for describing and evaluating perfume. In both cases, the possibility of communication transforms purely private pleasure into a possible subject of judgment. There remains an interesting question about the relation between our capacity to "represent" an experience (such as taste or smell) in our imagination and the existence of a language to communicate with others about that experience (and also the role of language in facilitating the representation).

in it. And the role of this interest in beauty and its communication is not simply a constant generated by our shared faculties: "[w]hen civilisation has reached its peak, it makes this communication almost the principal activity of refined inclination, and sensations are valued only to the extent that they are universally communicable."⁴⁸

To return to Arendt, let me juxtapose two statements she made in her last lecture on judgment: "'an enlarged mentality' is the condition *sine qua non* of right judgment; one's community sense makes it possible to enlarge one's mentality;"⁴⁹ "communicability obviously depends on the enlarged mentality; one can communicate only if one is able to think from the other person's standpoint."⁵⁰ I think that Arendt had not worked through the different kinds of uses of common sense and community that she invoked. As I said at the outset, I think she did not believe that the common sense that makes judgment possible is universal. The faculty of judgment is universal (which is closer to what Kant meant by common sense), but the *practice* of judgment is not. And the scope of the claim of validity is also not universal. What enables one to judge is membership in a community of other judging subjects who share a common sense that makes their judgments, and their inherent claims of validity for the community, possible. The question then is what is this narrower meaning of common sense and community?

One might restate the question in these terms: what kind of common sense, or shared community, is necessary to make possible taking other people's *different* standpoints into account? For Arendt, the project of the enlarged mentality is an encounter with difference; but it is one that presupposes some commonality, a commonality sufficient for imagining a different standpoint. The community for whom one claims validity is the community of other judging subjects whose perspectives one has taken into account. Thus, the community might be defined by those who exercise their capacity for judgment and who share the common sense sufficient to imagine the range of different standpoints the community encompasses.

The question of what has to be shared in order to understand/explore difference is a large one to which many different disciplines might contribute. Beyond identifying the question, I will point to two different suggestions in Arendt's writings about the meaning of common sense and community. The first is the suggestion that people who share the same taste form a kind of sub-community. Their judgments of taste reveal themselves to each other as

48 Kant, *supra* note 10, § 41, at 164.

49 Arendt, Lectures, *supra* note 9, at 73.

50 *Id.* at 74.

belonging together: "[b]y communicating one's feelings, one's pleasures and disinterested delights, one tells one's *choices* and chooses one's company: 'I would rather be wrong with Plato than right with Pythagoras.'"⁵¹ These comments raise very interesting questions about how our judgments, and those of others, matter to us and why their communication is important.⁵² But I do not think Arendt means that the kind of belonging created by shared taste is the same as the community that forms the basis for judgment. She does not use the language of community or common sense in these contexts, and a group defined by shared taste often would be too narrow to provide the scope necessary for exercising the enlarged mentality.

Arendt's other suggestion points in the opposite direction. She says, "[T]he larger the scope of those to whom one can communicate, the greater is the worth of the object."⁵³ It is here that she draws on Kant's discussion of empirical interest in beauty, and she argues that "at this point, the *Critique of Judgment* joins effortlessly Kant's deliberation about a united mankind, living in eternal peace."⁵⁴ She says that for Kant, eternal peace is the "necessary condition for the greatest possible enlargement of the enlarged mentality"⁵⁵ and quotes the following from Kant: "If everyone expects and requires from everyone else this reference to general communication [of

51 *Id.*

52 This is a fascinating and underdeveloped dimension of Arendt's thinking: why it matters to us to have our tastes, in the sense of our aesthetic judgments, shared.

We all know very well how quickly people recognize each other, and how unequivocally they can feel that they belong to each other, when they discover a kinship in questions of what pleases and displeases. From the viewpoint of this common experience, it is as though taste decides not only how the world is to look, but also who belongs together in it.

Arendt, *Crisis in Culture*, *supra* note 9, at 223. This, in turn, is partly the case because "by his manner of judging, the person discloses to an extent also himself, the kind of person he is" *Id.* Thus it is interesting to ask what are the things about which it matters to us to have our judgments shared by our friends. Matters of simple private preference, such as vanilla versus chocolate ice cream, are not things about which we care if our friends share. (In this sense, Arendt was right about food preferences.) But it often does matter to us whether friends share our judgments about a book that is important to us or a movie. A further exploration of these issues will reveal more about the nature of community, of shared common sense, and of the role of judgment in who we are and appear to others to be.

53 Arendt, *Lectures*, *supra* note 9, at 74.

54 *Id.*

55 *Id.*

pleasure, of disinterested delight, then we have reached a point where it is as if there existed] an original compact, dictated by mankind itself."⁵⁶

As Arendt sees it, even for Kant, the fully general standpoint seems to have an aspirational rather than a descriptive quality: Arendt goes on to comment that

this compact according to Kant would be a mere idea, regulating not just our reflections on these matters but actually inspiring our actions. It is by virtue of this idea of mankind, present in every single man, that men are human, and they can be called civilized or humane to the extent that this idea becomes the principle not only of their judgments but of their actions. It is at this point that actor and spectator become united.⁵⁷

To understand what Arendt means by community and the possibility of enlarging the enlarged mentality, let us return again to Kant for a moment for the purposes of comparison. Arendt's quote about the "original compact" is part of Kant's discussion (referred to above) about the progress of civilization. He concludes his discussion by saying that when civilization has reached its peak, "even if the pleasure that each person has in such an object is inconsiderable and of no significant interest of its own, still its value is increased almost infinitely by the idea of its universal communicability."⁵⁸ I would say that there is some ambiguity here about whether the idea of universal communicability comes to be increasingly realized in practice. Does the *actual scope* of communicability expand, or is it that there is an increasing *recognition* of the possibility of universal communication? I would say that

⁵⁶ *Id.*, citing Kant, *supra* note 14, § 41.

⁵⁷ *Id.* at 75. This quote is part of the discussion I referred to above about the progress of civilization. Kant concludes his discussion by saying that when civilization has reached its peak, "even if the pleasure that each person has in such an object is inconsiderable and of no significant interest of its own, still its value is increased almost infinitely by the idea of its universal communicability"; Kant, *supra* note 10, § 41, at 164. I would say that there is some ambiguity here about whether the idea of universal communicability comes to be increasingly realized in practice. Does the actual scope of communicability expand, or is it that there is an increasing recognition of the possibility of universal communication? I would say that for Kant, it is the latter, which, however, makes a practical difference to the nature of human society. The nature of common sense and, thus, the scope of communicability are a given, a constant. The recognition of that scope of communicability can shift, and the regulative ideal can help direct that shift.

⁵⁸ Kant, *supra* note 10, § 41, at 164.

for Kant, it is the latter, which, nevertheless, makes a practical difference to the nature of human society. The nature of common sense and, hence, the scope of communicability are a given, a constant. The recognition of that scope can shift, and the regulative ideal can help direct that shift.

I think that Arendt was sympathetic to that sense of the role of the regulative ideal. But because her understanding of community was actual, empirical community, the nature of communicability and the scope of the enlarged mentality were not fixed. To say more about her own understanding requires that I go beyond her existing texts and offer an interpretation of how to put her insights and suggestions together in a useful way. So at this point, my interpretation blends into my own efforts to build a theory of judgment.

I began this discussion with Arendt's statements that one's community sense makes it possible to enlarge one's mentality and that the enlarged mentality makes communication possible. In order to avoid simple circularity, I think one needs to see common or community sense as distinct from (although interactive with) communicability.

The way I see it is that exercising one's capacity for the enlarged mentality is, in fact, an exercise. It is not automatic, and the exercise takes effort. In addition, one can make efforts to enlarge the *scope* of one's enlarged mentality. For example, Arendt comments parenthetically, "[H]ow serious Kant was about the enlargement of his own mentality is indicated by the fact that he introduced and taught a course in physical geography at the university. He was also an eager reader of all sorts of travel reports."⁵⁹ In other words, one can expand the scope of one's mentality by acquiring a broader base of knowledge. One's common sense is a starting point because one cannot begin to put oneself in another's place without something that is shared. But one can build that common sense.⁶⁰

Once one has made efforts to expand the base of one's common sense, one

59 Arendt, *Lectures*, *supra* note 9, at 44.

60 One could also restate this interpretation in ways consistent with what I offered as a Kantian approach above. One could say that it is not the actual common sense that is enlarged by knowledge, but our consciousness of the extent of our commonality. This increased consciousness then expands the scope of our ability to consider the perspectives of others, which, in turn, would increase the effective scope of our communication. There are some attractions to this approach, and it may be that there are some deep forms of commonality that are best described in these terms. But this approach does not lend itself to attending to the particularity of the other (to which we will come in a moment), nor to the problem of what kind of shared substantive views might be necessary for, say, political or legal judgments.

still needs to make the effort of trying to consider the standpoints of others (to "take others into account"⁶¹). This, then, is the exercise of the enlarged mentality, which in turn makes communication possible. As Arendt put it, "one can communicate only if one is able to think from the other person's standpoint; otherwise one will never meet him, never speak in such a way that he understands."⁶²

I interpret this quote to refer to the necessity of both effort and particularity. If we do not exert ourselves to understand the standpoint of others, the mere fact of our common humanity will not be sufficient for communication. Nor will the shared sense of the community suffice (at least for some purposes). In addition to making an effort, one needs an understanding of the particularity of another's standpoint in order to take account of it. One cannot just see the other as an interchangeable instance of the common sense of all others. In my view, this insistence on particularity is crucial to the practical usefulness of the theory of judgment.⁶³

With these views of common sense, enlarged mentality, and communication, one then can imagine a growing, interactive expansion of each component of the effective capacity to judge: success in communication builds a broader base of community, of shared common sense, which, in turn, expands one's ability to put oneself in the place of others — with all due attention to their particularity. This then expands one's capacity to communicate. Or one can start with the effort to expand one's common sense, which expands the scope of the standpoints one considers in exercising the enlarged mentality and, in turn, expands the community to whom one can communicate. Remember that the very essence of judgment is a claim of agreement, of validity, despite the subjectivity of the judgment. The others from whom this claim is made thus play a role in each "component" of judgment. I think the implications of Arendt's comments are that the others in question are an actual community, which, however, is not static. The exercise of judgment itself can expand that community.

61 Arendt, Lectures, *supra* note 9, at 44.

62 *Id.* at 74.

63 One *could* read this quote as simply a reiteration of the importance of exercising the enlarged mentality without this un-Kantian emphasis on particularity. But the emphasis is consistent with Arendt's descriptions of the particularity of standpoints, as well as with the centrality of the particular to judgment more generally. It is the insistence on particularity and its practical implications, which I will discuss shortly, that make the practical difference between what I have presented as my interpretation of Arendt and what I called the Kantian interpretation of common sense and community.

What is missing from this account is what makes any of it work in practice. I noted Arendt's parenthetical remark about Kant's interest in geography and travelogues; but she says very little about the kind of actual experience necessary to enable one to acquire the information and openness of mind necessary to consider other standpoints. Indeed, her comment about Kant is a bit troubling. She says, "[H]e — who never left Koenigsberg — knew his way around in both London and Italy; he said he had no time to travel precisely because he wanted to know so much about so many countries."⁶⁴ This highly removed form of knowledge seems a somewhat problematic example of what it takes to consider the viewpoints of those whose experience, backgrounds, and standpoints are quite different from one's own. I will comment later on different means of acquiring such knowledge. For now, I will just say that it is essential to understand the kind of experience and encouragement necessary to make a practice of the enlarged mentality and to be able to engage in it successfully. And for that we have to go beyond what Arendt offers.

Finally, Arendt said very little about what substantive views or beliefs constitute the community sense relevant to judgment. This issue is relevant to each dimension of community that underlies the "components" of judgment: to the community common sense that enables the enlarged mentality; to the community whose various standpoints one takes into account and, therefore, from whom one makes claims of agreement; and the community to whom one is able to communicate. In my own view, the capacity to judge may sometimes be aided by reference to a regulative ideal of a universal standpoint — as opposed to one's *own* general standpoint — generated by considering the particular standpoints of others. I shall return to this issue later. But for most purposes, the community relevant to judgment in each sense is bounded by substantive beliefs.

For example, many important political and legal judgments presuppose a set of shared understandings that are not universal. The whole process of the enlarged mentality works within a community that shares at least a core of the underlying values, conceptions, understandings of the world. It would quite literally not make sense to try to form a legal judgment⁶⁵ about a dispute over land ownership by taking into account the perspective of someone who does not see land as something one owns. (It is a more open question whether a debate over land redistribution or designation of public land as park land would be enhanced by considering such a perspective.)

64 Arendt, Lectures, *supra* note 9, at 44.

65 Kant did not think legal judgments were matters of true, reflective judgment. I do, although I cannot pursue that argument here.

In commenting on the "general standpoint" to which one aspires in judgment, Arendt says that for Kant, the standpoint was that of world citizen. But, she says, "[D]oes this easy phrase of idealists, 'citizen of the world,' make sense? To be a citizen means among other things to have responsibilities, obligations, and rights, all of which make sense only if they are territorially limited. Kant's world citizen was actually a *Weltbetrachter*, a world-spectator."⁶⁶ Presumably, the judgments one is called upon to make as a citizen have some comparably bounded quality (although I would add that it is not always territoriality as such that defines the community).

In considering the substantive beliefs, frameworks, or understandings that make judgment possible, one must remember that the question is not only what must be shared in order to take another's perspective into account (which I commented on earlier). The question is also whose perspectives matter in comparing and assessing one's initial judgments? From whom do you *want* to claim agreement, whose agreement matters to you? These questions define, in part, one's community of judgment. Without trying to canvass the range of possibilities of what must be shared in order to constitute such a community, let me just suggest one way of thinking about this question that I find intriguing: it may be that in some instances, it is shared memories that define the relevant community of judgment.⁶⁷

Finally, it is worth noting that if one takes what Arendt says seriously, community is not only necessary for judgment, but the exercise of judgment, with its components of communication and taking others into account, is part of what builds community.

Let us consider now a few brief examples of communities and what fosters the capacity for judgment. Consider first the kind of communities in which judging subjects participate as part of their routine interactions with others. If their communities are highly insular, so that the "judges" encounter only others very much like themselves, then the range of standpoints that they are capable of considering will be very limited. And the validity of the judgments will be correspondingly limited. This has compelling implications

66 Arendt, *Lectures*, *supra* note 9, at 44.

67 I take the term "shared memory" from Avishai Margalit. His definition of shared memory is one that is not only widely available to those in a community, but the product of communication and integration of different individual memories. It thus has some resonance with the idea of judgment developed here. Of course, there are many fascinating questions about how such shared memories come into being, especially in divided communities. Avishai Margalit, *The Ethics of Memory*, Harry Crowe Memorial Lecture, York University (Feb. 3, 2000).

for the composition of the judiciary.⁶⁸ It also has implications for, say, the importance of public education in a democracy. If children are effectively segregated by class,⁶⁹ race, ethnicity, or religion, their subsequent capacity to consider the relevant standpoints of others in making judgments about public policy will be very limited. [b]y contrast, if throughout their education, the citizens of a democracy are used to talking with and trying to understand and persuade people from backgrounds and experiences very different from their own, then the universe of standpoints available to their imagination for the purposes of judgment will have the necessary scope for the enlarged mentality that democratic deliberation requires.⁷⁰

One might note that the idea of community-based judgment could also yield a counter-argument. One might understand why it is important to parents to send their children to a school that forms a community of values that will reinforce their own religious, ethical, or cultural commitments. When children are both citizens of a diverse democratic country and members of a distinct sub-community, the choice of the optimal community for their education is a difficult one. Children face many complex judgments as they mature, and the perceived common sense of their schoolmates becomes a crucial reference point.⁷¹ The significance of the structuring of school systems is just one concrete manifestation of the complexities of what it takes to foster the conditions for an enlarged mentality.

We can also see the importance of openness of communication for the creation of judgment communities. Unless people share their views with each other, with the respectful stance that allows different perspectives to be heard, no common sense can develop. For example, I have written elsewhere about the isolation from one another experienced by mothers working in the professions.⁷² While we are no longer isolated from the

68 Nedelsky, *supra* note 18; Nedelsky, *supra* note 12.

69 This happens in large American cities where the middle-class has given up on the public school system.

70 Of course, mere contact with diverse groups alone will not lead to the spirit of openness necessary for the enlarged mentality to flourish. The institutional settings must foster that spirit. But without the contact, the capacity of the enlarged mentality will be very limited.

71 Of course, this example also reminds us of the tensions inherent in the idea of community-based judgment. The distinction between bowing to peer pressure and making appropriate reference to the common sense of one's community is itself as important a matter of judgment in the schoolyard as it is in politics.

72 Jennifer Nedelsky, *Dilemmas of Passion, Privilege and Isolation: Reflections on Mothering in a White, Middle-Class Nuclear Family*, in *Mother Trouble* 304 (Julia Hanigsberg & Sara Ruddick eds., 1999).

public sphere in the homes of our nuclear families, we now have very limited participation in the judgment communities of motherhood that once formed in playgrounds and kitchens. In addition, a reticence to discuss the difficult issues of motherhood with our professional colleagues means that new forms of judgment communities do not adequately develop in the public spaces of our professions.

The reluctance to openly discuss issues of racial hierarchy and oppression, to use another example, prevents the development of shared understandings of the dynamics, pain, and privilege of racism. This lack of open communication prevents the emergence of shared understandings and norms both among "Whites" as well as between them and the groups the dominant society constructs as inferior. For example, discussions of affirmative action often reveal not just differences of opinion about optimal policy, but a true absence of shared common sense about existing entitlements and expectations, their source and fairness.

Of course, these problems arise despite the presence of the key requirements for the effective functioning of the enlarged mentality: freedom of speech, press, and association. As every dictator seems to sense, people cannot exercise their judgment well when the channels of communication that create and shift common sense are cut off. For example, Arendt comments that Eichmann virtually never encountered dissenting voices and notes that even high-level Nazi officials became unreliable when they were stationed in Denmark where they constantly encountered opposing views.⁷³

VI. CHANGING AND OPPOSING COMMON SENSE

Once we take this sort of empirical view of judging communities, we see that common sense — in the sense of the shared understandings that make the enlarged mentality and communication possible — cannot be understood as static. It will shift over time and in the course of encountering alternative "common senses." And as I said earlier, sometimes, as in the feminist movement, one of the core aims of a movement is to shift the common sense so that there is a different framework for judgment. What, at the outset, forms a seemingly unbridgeable gap of difference — such as what is taken for granted about the roles of men and women — needs to become a common subject of debate and judgment. How is this done? I think always

73 Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* at ch. VII, 172, 175 (1970).

by finding something that works as a point of commonality, from which connections can be seen, analogies can be drawn: in the United States, for example, arguments for gender equality built on understandings of racial discrimination; in Canada, the reverse. In both cases, some widely-shared commitment to equality (however contested as to its practical implication) served as an available starting point. The struggles for gender and racial equality reveal both the possibility and the difficulty of basic transformations in common sense (and its corresponding social structures).

Again, it is worth noting that there are societal structures and patterns that can either foster or undermine the possibility for change. For example, in 1949, Lillian Smith described the American South as "a culture that lacked almost completely the self-changing power that comes from honest criticism, because in the past it forced out its children who saw dangers and tried to avert them ... : because it bruised those who grimly stayed, unwelcomed, until their energies were depleted."⁷⁴ One of the questions Smith tried to answer was how the fierce attachment to racial hierarchy persisted despite the seeming availability of frames of reference such as Christianity and the rhetoric of democracy, which should have allowed Southerners to see the evils of the Jim Crow system. On her account, the churches failed to provide real alternative communities of judgment. The seemingly available language of equality and brotherhood of man was constructed in ways that, for a long time, did not provide a foothold, a familiar point of reference from which the common sense of white supremacy could be shifted.

South Africa offers an interesting study in both transformation and the capacity of communities to insulate themselves from critique. The international condemnation of Apartheid was formulated in language that the dominant group could not simply reject as foreign imposition. For example, the South African elite claimed a commitment to the rule of law, to the legal protection of rights. Ironically, the South African judiciary justified its cooperation with Apartheid in those terms.⁷⁵ Given the availability of internal critiques in law reviews as well as the occasional exemplary action, it is striking how effectively the judiciary maintained its own "common sense" of legitimacy. (I take this example as a more general warning about the capacity of judges to create insular communities that simply reinforce their own, limited perspectives. Judicial independence should not be confused with insularity.)

On the other hand, I heard a fascinating interpretation of the demise of

74 Lillian Eugenia Smith, *Killers of the Dream* 152 (W.W. Norton & Co. 1994) (1949).

75 David Dyzenhaus, *Judging the Judges, Judging Ourselves: Truth, Reconciliation and the Apartheid Legal Order* (1998).

Apartheid from a young Afrikaner who was in high school and university during the years leading up to Mandela's release from prison. On his account, so many of the Afrikaner youth had rejected the legitimacy of Apartheid that their elders had virtually no one to whom they could pass on their regime. In his view, it was this recognition that accounts for their willingness to participate in the transformation. If this is true, then one might say that the critiques in language of rights and rule of law, which the Afrikaner youth accepted as their own, worked to shift the common sense of a new generation. It would be an interesting project to find out what role was played by external critiques, internal sub-communities of critique, and the opportunity to leave and be exposed to wholly different communities of judgment.⁷⁶

Another question I posed earlier was how a community-based theory of judgment can make sense of the possibility of choosing against one's community. Ronald Beiner posed a similar question, in which the link to the Holocaust is clear: "How does the judging subject secure his own subjectivity when the community of judgment appealed to is rendered radically problematical?"⁷⁷ I think the answer, to be true to the Arendtian picture (or what I want to do with it), is that there must be some other community of judgment to which one has recourse, at least in one's imagination. (Otherwise one will feel and, perhaps be, insane.⁷⁸)

There are two kinds of sources of an alternative community. First, even totalitarian governments are not literally monolithic. Sub-communities of dissent, of resistance, exist even if they are rare and well hidden. In modern democracies, one can rightly speak of the power of mutually reinforcing frameworks of thought and social structures, such as liberal individualism, patriarchy, racism, or "[T]he market." But however powerful and limiting (in ways people are often not conscious of) these frameworks are, they are not literally monolithic. There are books and articles that criticize these frameworks. People find ways of creating "communities" where they can

76 Wilhem Verwoerd, grandson of one of the architects of Apartheid, wrote a compelling account of his personal transformation. Studying in Holland and encountering a group of anti-Apartheid South Africans was a crucial step in the process. Wilhelm Verwoerd, *My Winds of Change* (1997).

77 Ronald Beiner, *Political Judgment* 115 (1983).

78 Arendt quotes Kant: "The only general symptom of insanity is the loss of the *sensus communis* and the logical stubbornness in insisting on one's own sense (*sensus privatus*), which [in an insane person] is substituted for it." Arendt, *Lectures*, *supra* note 9, at 70-71, *citing* Immanuel Kant, *Anthropology from a Pragmatic Point of View* § 53 (1798).

develop alternative ways of seeing the world through their communication with each other.⁷⁹ These communities are crucial both to the possibility of change, of shifts in the common sense, and to the possibility of resistance, of judging against one's community.

My own experience offers the sort of small example that can matter in a liberal democratic society. When I was a graduate student at the University of Chicago in the early 1970s, I felt as though I was moving back and forth between different worlds as I crossed the campus between my department, the Committee on Social Thought, and the offices of the Chicago Women's Liberation Union. Although it took me a long time to find ways of integrating the frameworks in which I participated in each place, it was important to me in those days just to have the alternative world of a feminist organization. I would say that in a less stark way, my participation in my church community today provides me with alternative ways of understanding success and, more generally, priorities in life. I can often feel a kind of sense of shift in orientation, in the grounds of judgment, as I settle in on a Sunday morning.

Membership in actual communities cannot, however, be the only source of alternatives that make judgment against one's community possible. While many rescuers in Germany and Nazi-occupied countries ultimately became part of a network of people helping Jews hide or escape, the initial action of hiding a Jewish neighbor often came spontaneously from people who were not part of any kind of resistance organization.⁸⁰ Nevertheless, it is common for such people to say that it was not really a choice; they felt they had to act. The action was not the result of careful, painful deliberation, even when there were risks to their families as well as to themselves. To them, the right action was clear despite the fact that almost no one around them was taking such action. I do not intend here to try to offer an explanation for this individual clarity of judgment and sureness of action in communities that, at best, offered little resistance to the Nazis. I do want to offer a way of understanding these historical accounts in a way that still makes sense of the idea of community-based judgment.

This is where the idea of imagination enters in a slightly different way.

79 To anticipate my argument a bit, people who only read and do not discuss critiques and alternatives with others have the possibility of generating an alternative community of judgment in their imaginations. But they are at a disadvantage. They will not have the experience of persuading others, of testing their understanding of different standpoints.

80 See, for example, Kristen Monroe, *The Heart of Altruism: Perceptions of a Common Humanity* (1996).

I suggest that those people who knew what was right and acted on that knowledge, despite their community's abandonment of moral standards, were relying on standards of judgment that had been part of what one might call their moral education.⁸¹ I suppose that they had been exposed to books, to teachings, to examples that taught something like a core respect for human dignity and integrity. This perspective was immediately available to them in their imaginations, so that they knew that what was being tolerated or approved by everyone around them was clearly wrong and intolerable. On this theory, it would not have been possible for them to recognize the wrongs had they not already been exposed to a frame of reference, to perspectives that could provide a community of judgment in the imagination. And here, of course, it is important that I am using imagination as Arendt did, not to refer to the capacity to make things up, but to call forth perspectives one has some knowledge of. (I will return to the question of what imagined perspectives one might have recourse to when I return to the implications for international human rights.)

Of course, this approach does not account for those who seemed to have had more or less the same exposure to sources of moral education

81 I have now introduced the complication of moral judgment. I have deliberately avoided addressing the interesting and complex issue of whether and how moral, political, and legal judgments differ, as that would take me beyond the scope of this essay. I should, however, just note that Kant treated moral judgment as determinate, and not reflective, and thus not really a matter of judgment (see Arendt, Lectures, *supra* note 9, at 10, 72). Arendt described moral issues as being highly internal; the key moral question for her was "Can I live with myself?" And that question does have a great deal of resonance with the way rescuers describe their sense of the imperative of action. Although I cannot pursue it here, I want to point to a puzzle about the notion of community-based judgment in the moral realm. There are many traditions that suggest that every human being has an innate capacity to recognize moral right and wrong. And there are teachings that the best path to this inner knowledge is some version of meditation that allows one to tune in to this inner wisdom, in part, by tuning out the chatter of the surrounding world. Even in this context, however, at least some Buddhist traditions emphasize the importance of the *sanga*, a community of meditation. The practice is highly internal, yet it is best developed in community with others committed to the practice. And one of the results of meditation is said to be a deep understanding of one's interconnection with others. There is an interesting puzzle here about the role of community in developing the insights and capacities that come from within. Many traditions seem to share with Kant the sense of core capacities that are shared by all human beings, which are the basis for bonds of communication among them and whose ultimate source is transcendent — and with respect to which community nevertheless plays an important role.

and yet did not act.⁸² But we cannot expect the theory of judgment alone to account for why some people can hold to core values of humanity and continue to exercise good judgment even when the community around them can no longer provide a basis for that judgment (though we can hope for some sense of what fosters their capacity to do so). What matters here is that the idea of multiple communities and communities sustained in one's imagination based on past experience and education makes it possible to understand how community-based judgment can judge against one's community.

This discussion now brings us back to the question of competing or conflicting communities of judgment. If alternative communities make it possible for us to shift the dominant common sense and to judge and act against it, this means that we will sometimes find ourselves exercising our enlarged mentality and finding conflicting sets of judgments. For example, Lillian Smith tells a very moving story of the anger and despair of an adolescent girl from the American South of the 1940s who had spent a summer at a camp that encouraged the kids to explore their beliefs in the equal moral worth of all people, "Black" and "White." The girl came to the director late one night at the end of the summer after a dramatic encounter with these beliefs. In tears of fury, she said she would never expose a child to values she could not live by once she returned home.⁸³ It was too cruel to set up impossible choices between one's love and loyalty to family and community, on the one hand, and, on the other, the emerging sense at the camp of the moral wrong of the practices so carefully guarded at home. Beiner's language of a tragic conflict between political membership and political judgment offers a theoretical version of what this child-adult expressed:

Perhaps judgment in such situations inevitably opens the judging subject to the charge of betrayal, perhaps even the very act of judging amounts to an act of betrayal. Where judgment implicitly assumes a community of judgment for the sake of which judgment is delivered, the judging subject puts his own identity at risk in his determination to judge. The judging subject places in question his own subjectivity by

82 And there is an important issue that I cannot pursue here: the relation between judgment and action. It seems unlikely that the action of rescue simply follows from having the capacity to recognize the wrong. This goes to interesting issues surrounding Arendt's concept of the actor and spectator (which I will not discuss here) and to the relation between the prudence that guides action (in Aristotle's concept of *phronesis*) and Arendt's understanding of judgment.

83 Smith, *supra* note 74.

cutting himself off from the community to whom he would ordinarily appeal for criteria of shared judgment and possible confirmation of the validity of his judgment.⁸⁴

VII. JUDGMENT AND HUMAN RIGHTS

The above account of tragic conflict seems to fit many human rights dilemmas. Women all over the world are accused of betraying their communities when they invoke the language and institutions of human rights to challenge practices of their communities. In virtually all human rights disputes, there are competing communities claiming (in effect) that they provide the appropriate framework or context for judging.

I had originally thought the relevant questions were: how should we choose among communities; what equips us to make this choice; how does the theory of judgment help us to understand this problem. But I now think that the idea of choosing among communities is not the best way of capturing the optimal approach. We do face the question of how claims of validity are to be made across competing communities. But in most instances, a simple choice of one community over the other will not work well, either for the psychological integrity of the judge (assuming some real connection to the conflicting communities) or for the institutional efficacy of rights-enforcing organizations.

Let me begin with the judging person who is caught between two communities of judgment. There are probably times when a literal ripping away from one community is necessary, as in the case of refugees. But, of course, the sense of identity with that community does not simply dissolve upon escape. I am not sure it is ever possible to really "cut oneself off" from a formative community, in the sense of fully removing it as a community of judgment in one's imagination. Certainly, there are many anecdotes at the personal level of people's frustration with having to cope with internal voices of condemnation on the basis of values they have tried to reject. One way of thinking about the problem is to ask who constructs the act of judgment as betrayal. For example, did Willy Brandt betray Germany by fighting in the resistance against the Nazis, or did he act in accordance with the values and identity that Germans would want to claim for themselves as part of the true or best meaning of being German? What does it mean to

84 Beiner, *supra* note 77.

think of Brandt's action as a betrayal? With what values does such a view ally itself?

She who judges and acts against her community will surely struggle with a sense of betrayal and a violent disruption of identity. After all, Arendt tells us that judgments reveal who we are, and the fact that one of our central cognitive faculties relies on membership in a community reveals the centrality of relationship for selfhood. But, on my account, there had to have been some dimension of that community (or its sub-communities) that equipped the one judging to make this painful judgment. For example, on Lillian Smith's account of the American South, it took a great deal of concerted effort to teach children *not* to interpret the messages of Christian brotherly love and the rhetoric of democracy as including equality for "Blacks." Ultimately, these values were available to challenge the racial hierarchy. And if the challenge amounted to betrayal for some, it was justified as being true to the core values of the community by others. Similarly, while some women interpret the religious traditions they were born into as irredeemably sexist, others devote great energy to proving that the deepest values of their traditions call for a rejection of patriarchal interpretations, however well-entrenched in institutional practice.

Of course, these examples cover a wide variety of situations. Sometimes, as in Nazi Germany, the battle for shifting the common sense has been dramatically lost,⁸⁵ and one must leave and/or act against one's community. This is sometimes true for women whose lives are endangered by their efforts to challenge the prevailing common sense. But however violent the physical rupture with one's community, there is always the question of whether the judging actor interprets it as a wholesale rejection or a judgment grounded in some dimension of the community whose *current* judgments she challenges. If it is the latter, the conflict does not disappear, nor is it resolved by a stark choice between communities of judgment. Rather, the judging subject finds links between the communities that enable her to make a choice of action (even action that goes against the current actions and judgments of one's community) without doing the violence to her identity, to the constitution of herself, entailed in a choice that simply rejects a once-constitutive community.

Having said all this, the fact remains that the idea of the enlarged mentality becomes much more complicated once one envisions encountering more than one community of judgment when one considers different standpoints.

85 Or, one might say, the Nazi battle for shifting the common sense had decisively won.

When conflicting sets or communities of judgments emerge, it is not obvious how the enlarged mentality, as Arendt describes it, works. How will it help us make valid judgments? For whom will they be valid if both the judging subject and others experience themselves as part of more than one community? To anticipate my argument with respect to the institutionalization of human rights, let me just say for now that the greater the capacity to form links between the competing frameworks, the greater the possibility of claiming validity across communities.

We can now return to the debates surrounding international human rights and the ways in which those debates arise out of competing communities of judgment. The approach to judgment that I have been outlining here helps us to see that human rights will only constitute a truly significant advance if there is an ongoing, respectful effort to engage in both local and world-wide dialogue about what human rights mean. As long as human rights discourse can be perceived as a foreign imposition, its usefulness will be limited (as we have seen throughout the world with respect to women's rights). Or, to put it differently, as long as the language of human rights is successfully claimed by the powerful to sustain their sense of superiority (for example, in the way they adjudicate the cases of refugee claimants⁸⁶) and to justify their use of coercive force (which, some would argue, was the case with the NATO bombing of Kosovo), human rights will, rightly, be seen by many as a tool of power rather than an element of shared common sense.

It is necessary to participate in dialogue that seriously engages local perspectives, because the practical meaning of human rights as implemented in law and custom is still highly contested everywhere. Within every country where human rights are proclaimed and the abuses of "others" are condemned, there are groups who claim to have their rights routinely and systematically violated. (For example, during the Apartheid era when there was international condemnation of the South African Bantustans, the alleged homelands for Africans, Native leaders in Canada made a point of inviting visiting anti-Apartheid leaders to visit Indian reserves.)

Whatever the scope of the dispute and however the conflicting communities are constituted, whether as sub-communities within a Nation-State or as Nations whose practices are challenged by international bodies like the United Nations, there is a common challenge: to find ways to engage in debate sufficiently open to enable the distinct communities of

86 Shereen Razack, *Policing the Borders of Nation: The Imperial Gaze in Gender Persecution Cases*, in *Looking White People in the Eye: Gender, Race, and Culture in Courtroom and Classroom* 88 (1998).

judgment to hear each other enough to begin to include each other in their exercises of the enlarged mentality. If this does not happen, if the process of the enlarged mentality is exercised only in insular groups, it will only reinforce their collectively limited perspectives — which, for some, will entail a self-righteous rejection of human rights as the imposition of alien values and, for others, a self-righteous and superior accusation of abuse.

As I said early on, the theory of community-based judgment raises the challenging question of judgment by whom and valid for whom. It thus implicitly raises the question of power noted above (which I will do no more than identify here). Perhaps most importantly, it directs our attention to what is properly the political challenge of the creation of judgment communities. If judgments about abuses of rights are to be claimed as grounds for international condemnation or coercive intervention, then there is an implicit claim that those judgments are valid for those to whom they are being applied. But to do so consistently with (my version of) the Arendtian approach, the perspectives of those "accused" of abuse must be taken into account when the "judges" exercise their enlarged mentalities. One of the institutional issues then becomes how to foster the kinds of exchange which, as I said, will lead both groups to be willing to genuinely consider the perspective of the other. Annie Bunting offers compelling examples (including child marriage) of how local context can be thoughtfully taken into account in applying the language of universal rights.⁸⁷ In most instances, I think this will also entail taking into account the perspectives of those engaging in the local practices in dispute. And conversely, the effort to shift those practices will be most effective when local practitioners can see some value in taking into account, in their own judgments, the perspective of international human rights advocates.⁸⁸

Finally, I want to return to the question I began with in discussing Kant's transcendental version of community-based judgment: is there some kind of meaningful community of all mankind, some common sense that we all

87 Bunting, *supra* note 23.

88 Ayelet Shachar and Ran Hirschel also offer very interesting suggestions about how the structure of legal rights can give members of sub-communities leverage in trying to shift the norms and practices of their communities without simply giving the larger State the power to impose its values. The effect, I think, again, is to foster the engagement of different perspectives in the exercise of judgment. Ayelet Shachar & Ran Hirschel, *How Should Church and State Be Jointed at the Altar? Women's Rights and the Multicultural Dilemma*, in *Citizenship in Diverse Societies* 199 (Will Kymlicka & Wayne Norman eds., 2000). This argument will also appear in Chapter 6 of Shachar's book, *Multicultural Jurisdiction* (forthcoming).

share by virtue of being human, that can be invoked to solve these difficult problems of competing community perspectives — and their implications of power? In both contemporary human rights disputes and the Nuremberg Trials, the language of universal human rights or crimes against humanity has been invoked to deny that the imposition of power is involved. The tacit claim is that it is not simply the perspective of the victor or "the West" that is imposing its view, but that the common sense of all mankind is offended by the condemned actions. Can this make sense in terms of the theory outlined above?

I think the answer is both yes and no. No, in the sense that there is no direct access to the impartial perspective of all mankind, of the *Weltbetrachter*.⁸⁹ We human beings are situated in our multiple communities, and we can only exercise our capacity for the enlarged mentality through the concrete steps I have discussed: we strive to achieve a general standpoint that is informed by as expansive a set of perspectives as possible, the more expansive, the more truly general. But it remains in the end *our* general standpoint, not a timeless, universal standpoint. We aspire to the kind of impartiality made possible by the enlarged mentality; but we should not imagine it to be a universal impartiality.

The invocation of the common sense of mankind thus cannot lift us out of the complexities of multiple, conflicting communities (and their power relations) and the ways in which they vastly complicate the workings of the enlarged mentality. Those who invoke the common sense of humanity as the basis for their institutions bear the burden of examining and revealing the standpoints they have actually considered in arriving at this claim of a universal standpoint. And their institutions bear the responsibility of fostering ongoing open exchange between those from different standpoints.

What I think "the common sense of mankind" can do is serve as an aid to the imagination in difficult times. When one's most immediate community seems to have become an unreliable ground for exercising the enlarged mentality, one might call up in one's imagination not only perspectives one knows through past experience and books, but also possible perspectives of others around the world and even in the future. For example, as I read with shock of the stark disparities of well-being between the "Blacks" and "Whites" Lillian Smith described in her small Southern town of the

89 In discussing Kant, Arendt says, "You see that *impartiality* is obtained by taking the viewpoints of others into account; impartiality is not the result of some higher standpoint that would then settle the dispute by being altogether above the melee." Arendt, Lectures, *supra* note 9, at 42.

1940s, it was first easy to wonder how they could have been tolerated by a people steeped in the language of Christian brotherly love.⁹⁰ But I moved quickly to comparison with the disparities in the world I inhabit, both local and international, and the ease with which I and others accept them. It is then a short step to asking how unknown others in the future would regard the situation. This provides a helpful perspective for the enlarged mentality. But even here, there is not some future universal other whose perspective I try to imagine. On the contrary, I have the sense that that future perspective depends a great deal on how things develop. I can easily imagine a grim future in which vast economic disparities have become part of a common sense that rationalizes them as inevitable in a healthy global market. The pockets of unease would be marginalized sub-communities. I can also imagine a future in which the versions of rationalization that pass for common sense now are widely seen as incompatible with a commitment to the equal moral worth that underlies the language of human rights.⁹¹

The same is true of trying to imagine the perspectives of others elsewhere in the world. It depends on where. Of course, Arendt said that it was not the actual judgment of others, but their standpoints that one should consider. And the perspective of the *Weltbetrachter* is the perspective of one observing the world, the imagined perspective of one who can see all standpoints. In the real, social world such a perspective is, of course, not possible. The point must be that the project of trying (always unsuccessfully) to imagine this perspective can serve to enrich the scope available to one in exercising the enlarged mentality.

I think it can be an aid to good judgment to try to expand the scope of one's enlarged mentality by trying to access, through imagination, a common humanity that transcends our immediate experience. But our capacity to do so is empirically bounded by our knowledge and experience. And, at the same time, the underlying presumption of a shared common humanity is not empirical, but normative. At least for those of us steeped in the tradition of the liberal enlightenment (however much we contest parts of it), the idea of common humanity that provides the possibility of a useful perspective presupposes the equal moral worth of all human beings. It is this dimension of a widely, but not universally, shared common sense that must be invoked to try to work through the competing frames of reference available to

90 This, despite the fact that I, of course, know that Christian teachings have been interpreted to be compatible with all kinds of hierarchy and domination.

91 One then recognizes the political project of trying to affect the development of the relevant common sense.

judgment in the modern world. The invocation of universal thus serves a purpose. But this normative stance of universal equality will only work, as I have argued above, if it is approached with humility about our capacity to know how to translate it into practice. The inevitable judgments about its practical meaning are only possible with the kind of attention to the particular, and thus to context, that the Arendtian approach helps us to understand.

When we understand judgment as based in community, we are confronted with its complex implications in the modern world. Neither our identities nor our communities of judgment (since the two go together) are simply given to us. In crucial ways (more demanding at some times than others), we are called upon to create both identity and community, despite the fact that our scope for creation is limited. At the institutional level, we must form judgments that can claim validity across communities, and thus we face the challenge of forging a common sense where one does not exist. Common sense is both a starting point for judgment as well as the subject of change and contestation, for which judgment is required. In short, the modern world makes huge demands on our linked capacities for autonomy and judgment. And we can best meet these demands when we understand the ways in which judgment is community-based.