

On Mercy, by Malcolm Bull. Princeton, NJ: Princeton University Press, 2019. Pp. xii + 191.

Malcolm Bull's early work included *Seeing Things Hidden* (1999) and *The Mirror of the Gods* (2005), staging encounters with continental theory and the history of art. He supplemented this more scholarly writing with a series of essays for the *London Review of Books*, including a powerful piece on Michael Hardt and Antonio Negri's *Empire* (2001) that was published in that paper's post-September 11th issue, dated 4th October, whose notoriety owes to some loose remarks by the Classicist Mary Beard but which stands out in the memory not only in virtue of Bull's contribution but also because it contained a remarkable poem, 'Pelagius', by the late, great Glaswegian poet Edwin Morgan. It is a body of work that makes sense in light of his institutional entanglements, teaching at Oxford's Ruskin School of Art on the one hand and a longstanding member of the editorial board of the *New Left Review* on the other. Over the last dozen years or so, however, Bull has been intruding more and more onto the territory of mainstream Anglophone political philosophy. There has still been important scholarship on art—*Inventing Falsehood, Making Truth* (2013) was a study of early eighteenth-century Neapolitan painting through eyes illuminated by the contemporary philosophy of Giambattista Vico who held the chair of rhetoric at the local University—but this is now accompanied by more straightforwardly political-theoretical writing than has appeared previously. The publication of *Anti-Nietzsche* (2011a), both bracing and salutary, marks the turn; the same year saw the publication of an article on egalitarianism in the *New Left Review* (2011b); more recently there has been a stimulating and idiosyncratic piece on

‘slack’ in Katrina Forrester and Sophie Smith’s collection on *Nature, Action and the Future* (2018); and now we have a short book—or, as Bull refers to it, an essay—on the unfashionable subject of mercy.

We usually think that to act mercifully is to act virtuously. But for many philosophers that isn’t obviously the case. If justice requires a certain punishment that a merciful judge declines to impose, it can be hard to explain how virtue and injustice coincide. Diogenes Laertius, for example, reports that the Stoic wise man would ‘never relax the penalties fixed by the laws, since indulgence and pity and even equitable consideration are marks of a weak mind, which affects kindness in place of chastizing’ (1975, 7.123, vol. 2, p. 227). Some argue that sentencing codes have to be pitched on a fairly general level, and that sometimes the punishment they recommend just doesn’t fit the specificities of the crime in a way that opens up space for a reasonable leniency that we can call mercy. But they face the reply that this is just a matter of fine-tuning justice, and that on this account, as Alwynne Smart once wrote in an influential paper on the subject, ‘mercy is nothing more than a way of ensuring that the just penalty is imposed and injustice avoided’, that ‘most cases of mercy are of this sort and are simply misnamed’, and that what we ought to be paying our attention to instead were those cases where to show mercy really was ‘deciding not to inflict what is agreed to be the just penalty, all things considered’, such that the general tension between justice and mercy persists (Smart, 1968, p. 349). Certainly it is this tension that Christians inhabit when they pray to God for His mercy (that alone offers the hope of salvation) rather than for His justice (that would consign them to Hell as punishment for their sins).

Bull has things to say about the relationship between mercy and justice. But he prefers to start from an old tradition—which insofar as it goes back to Seneca is also a Stoic tradition—that holds that the antonym of mercy (*clementia*) is not so much justice but cruelty (*crudelitas*) and concerns itself with those occasions where one chooses to inflict less injury to another than one is capable of doing (p. 10). Seneca’s argument was that the practice of *clementia* gives subjects less reason to fear their rulers, and in turn less reason for rulers to fear their subjects, rendering them ‘not only more honoured, but safer...the glory of sovereign power and its surest protection’ (p. 21), and that it was this that could allow a distinction to be drawn between a legitimate, merciful prince and a tyrant. Niccolò Machiavelli disputed that conclusion, arguing that princes did need to know how to use cruelty effectively in order to safeguard their own interests and their rule, as when Cesare Borgia had his own lieutenant Remirro de Orco bisected in the piazza in Cesena (p. 23). Michel de Montaigne replied that there were enough reasons to be sceptical about just what it was that really lay in our interests such that it was still better to lean to the side of mercy (p. 29). If there were certainties in this world then the universal abhorrence of pain was one of them, and mercy meant that there would be less of it rather than more.

One of Montaigne’s contemporaries, the neo-Senecan Justus Lipsius, called justice the ‘sun’ and mercy the ‘moon’ of government in his *Politica* (p. 9). But on Bull’s account it was the moon that became more thoroughly eclipsed over the centuries that followed. As is so often the case in stories about the development of a distinctively

modern political thought, it is Thomas Hobbes who provides the pivot, his state of war precisely describing an intolerable condition in which all are vulnerable, subject to the power of others and therefore dependent on their mercy, and which is to be brought to an end through his famous covenant to institute sovereignty. On David Hume's account, 'gentle usage' might be appropriate in the face of 'creatures...of such inferior strength' that they 'could never, upon the highest provocation, make us feel the effects of their resentment' (p. 66). But he contended that modern society was not like that, and those who were tolerably the equals of one another should instead regulate their affairs with justice rather than mercy, and he celebrated restrictions on both the royal right to pardon and on the discretion of judges (p. 14). Other eighteenth-century writers like Cesare Beccaria, Gaetano Filangieri, and Jeremy Bentham all explicitly criticised mercy: for Beccaria, as punishment became milder, clemency became redundant (p. 14); for Filangieri mercy was 'an injustice committed against society... a manifest vice' (p. 15); for Bentham 'the power of pardoning...has cruelty for its cause... [and] cruelty for its effect' (p. 15). What are called Hume's 'circumstances of justice', furthermore, including the idea that distributive justice finds its point in conditions of moderate scarcity, help to mark out a pathway that can take us all the way down to the political philosophy of John Rawls, the twentieth century theorist of justice *par excellence*.

Bull, however, wants us to return to the road less travelled that was marked out by Montaigne's defence of mercy. It is not that it has been entirely ignored. Montaigne featured prominently in Judith Shklar's *Ordinary Vices* (p. 29), and what she called the 'liberalism of fear' was built around the injunction to 'put cruelty first'; and it's by way

of this somewhat unusual route that Bull is able to navigate his discussion onto the more familiar theoretical terrain of today's so-called political realism, for which Shklar is sometimes claimed as an inspiration. Much of the recent literature on realism is irritating, marked *inter alia* by the fetishism of Thucydides, an overinvestment in Friedrich Nietzsche, a smug insistence that realists really understand politics in a way that liberal philosophers never can, or wilful misreadings of Rawls, and its irritating character can get in the way of productive exchange between realists and adherents of the kind of political philosophy that they criticise. Bull, by contrast, is not irritating in any of these ways; and although his argument is offered as a contribution to political realism, it is also striking that he offers criticism of one of its most distinctive arguments.

Bernard Williams was regarded while he was alive as far more of a moral than a political philosopher. Since his death in 2003, however, and in particular since the posthumous publication of a collection of political writings, *In the Beginning was the Deed* (2005), he has become central to the emerging discourse of political realism, his Basic Legitimation Demand (BLD) offering a more fundamental, more parsimonious, and therefore potentially both more plausible foundation for political philosophy than the more elaborate theoretical systems of Rawls or of Ronald Dworkin. Bull's thought is that satisfying the BLD is neither necessary nor sufficient for politics, understood in terms of the distinction between peace and war: not necessary because history gives us examples of slave societies in which the institution is tolerated sufficiently broadly that it is reasonable to say they are at peace (pp. 38-9); and not sufficient, insofar as the question of whether oppressive social orders that fall short of being full slave societies are at peace

or not is not in the end going to turn on the justification that they offer in support of their oppressive institutions, but on other things (pp. 39-41). Mercy, Bull contends, may be able to do what an answer to the BLD cannot. If what Williams called the ‘first political question’ is that of how to secure ‘order, protection, safety, trust, and the conditions of cooperation’ (Williams, 2005, p. 3), the Senecan thought is that power becomes potentially acceptable in virtue of the fact that it is not exercised to the full, even in the absence of any justification that is offered in its support.

The blade that political realists wield is double-edged. On the one hand, part of the complaint against much contemporary liberal political philosophy is that it is far more parochial than it presents itself as being—in Marxist terms, the ideological reflex of a privileged intellectual stratum under conditions of developed capitalism. On the other hand, realists can sound pretty parochial themselves when they insist on the importance for politics of situatedness and contingency, with respect to what Williams referred to as how things are ‘now and around here’ (Williams, 2005, p. 8), or to what Karl Marx once called ‘the reality and power, the this-wordliness of...thinking in practice’ (Marx and Engels, 1975-2004, vol. 5, p. 3). This creates a potential awkwardness, insofar as the desire of realists to criticise liberalism then has to address the question of what alternative arrangements might plausibly be legitimated ‘now and around here’ at a time when the forces that are most obviously engaged in a successful assault on the norms of liberal politics, thereby demonstrating the this-sidedness of their thinking in practice, are coming from the authoritarian nationalist right, whether in India, Brazil, Israel, Hungary, the United States, or elsewhere, and barely at all from that part of the left-hand side of the

political spectrum where the majority of the realists appear to have pitched their tent. One question we can pose to Bull's argument, then, is to ask how it helps us to think about politics in the present. Even if the clemency shown by powerful rulers once played the role that he describes, is it plausible to think that mercy is still operative in any way, shape, or form today? What kind of critical perspective does the foregrounding of forbearance help us to generate with respect to contemporary political theories? Is there a vision of a politics of mercy that extends beyond present horizons?

Many argue that the point of liberal or republican institutions is to sustain the conditions in which no-one needs mercy from anybody else, because nobody has power over anybody else. Jean-Jacques Rousseau's argument about how one might be 'forced to be free' was not the sinister totalitarianism that has often been alleged but one about how the community could guarantee each citizen 'against all personal dependence' (Rousseau, 1997, p. 53). Shklar's liberalism of fear did not suppose that the human impulse towards cruelty could be overcome but did suggest that politics could nevertheless offer the vulnerable substantial protections against the predations of the powerful (Shklar, 1989). Philip Pettit's republicanism describes and defends a society in which no-one is subject to the arbitrary will of another (Pettit, 1999). The idea is usually that with the right institutions in place, citizens can then be free to pursue their own interests, confident in the knowledge that they won't be able to trample on the rights of their fellows, because these are secured by the social contract, or the laws, or the general will, or a bill of rights, or the basic structure, or whatever. Bull, however, is sceptical that any of these approaches are really adequate to the kind of societies in which we live. It's just not

plausible to think that individuals or institutions—he mentions ‘governments, boards of corporations, juries, local committees, electorates, consumers, collectives, etc.’ (p. 60)—will not ever have power over us, and therefore that we will never stand in need of their mercy. If we shift our attention to the international arena, it is palpable that our wills can be overridden and our fundamental interests sabotaged by those leaders of powerful states who can bully and blackmail and ultimately destroy with nuclear weapons (or by other means) those who stand in their way. Those who maintain that we have seen the complete and welcome displacement of mercy by justice remind me of those who criticise writers like Hobbes and Rousseau who denied the natural sociability of humankind. It’s true that sometimes modern societies look as if a more robust account of sociability is plausibly in play. But those who hold to a more attenuated account of human sociability charge that it may be other factors that explain why we see what we see, and commitment to a more extensive account of natural sociability will itself tend to obstruct that clearer-sighted view.

If part of Bull’s argument is that mercy subsists in modern societies, there are also crucial areas of public policy where mercy seems far more intuitively relevant and potent than any appeal we might make to a politics of justice. To the extent that justice is bound up with reciprocity, as so many philosophers maintain, it can be difficult to articulate with confidence the duties that we owe to either the natural world or to future generations, or, as in the case of attempts to mitigate the effects of climate change, to both at once. The perspective of mercy, however, does not involve reciprocity (p. 73)—far from it, it is a one-way street—and precisely speaks, and speaks powerfully, to those

situations where one agent is able unilaterally to act in such a way as to do less harm (to animals, to the environment, to the prospects of children, to the interests of those yet unborn, and so on) than they otherwise might, regardless of the schedule of duties that might be derived from a liberal political philosopher's attempt to wrestle with the question.

Bull makes a more far-reaching case, though, than merely to plead for the significance of mercy-considerations to the political arguments of our age. If mercy is prior to justice, whether following the logic of either Senecan *clementia* or both Hobbesian scenarios ('Common-wealth by Institution' and 'Common-wealth by Acquisition') (p. 129), we inhabit a world in which there are what Bull calls 'islands of justice' floating in the wider, deeper 'sea of mercy' (p. 93), where something like the Humean circumstances of justice obtain, and where a logic of reciprocity among equals can flourish. What is likely to happen to them? Martha C. Nussbaum's idea is that what she calls the 'frontiers of justice' will continue to expand and incorporate the claims of those who have been hitherto excluded (and therefore dependent on mercy) such as people with disabilities, non-human animals, and so on (Nussbaum, 2006). Bull's rival, intriguing suggestion is that the islands will instead tend to sink back into the sea, because if 'justice requires equity, and equity consistently errs on the side of mercy, this suggests not only that equity both embodies mercy relative to particular justice, but that it will incrementally move universal justice in a more merciful direction' (p. 103).

Where, ultimately, does the argument tend? Early on, Bull references Albert O. Hirschman's argument in *The Passions and the Interests* (1977) in order to suggest that 'the arguments for capitalism are the same as those against mercy' insofar as capitalism 'offers an account of the way the world is made based on the convergence of our interests rather than the mercy of the powerful' (p. 17), and he later juxtaposes the liberalism of fear to what he calls the 'communism of mercy' (p. 114). But it's striking that this communist prospect remains as hazy in Bull's account as it did in Marx's, who refused to write what he called 'receipts...for the cookshops of the future' (Marx and Engels, 1975-2004, vol. 35, p. 17), and that in the book's closing pages he turns away from utopia to consider a more dystopian scenario. Following Nick Bostrom (2014), this is one in which human beings have managed to create a 'superintelligent singleton' on whose mercy they become dependent, such that they would have reason to hope that some version of Isaac Asimov's 'three laws of robotics' that forbid robots to do harm to humans had been effectively programmed in at an earlier stage (pp. 160-2). This may remain only a thought experiment, to be sure, but the challenge posed by artificial intelligence is not really an entirely new one; in the words with which Bull concludes his fascinating essay, '[t]o be able to overpower the monstrous progeny of our own intelligence has always been the condition of human survival' (p. 163).

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