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**Decency and the market: the ILO's Decent Work Agenda as a moral market boundary**

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## 4 The Decent Society and the Prescriptive Negative

With the launch of the Decent Work agenda, the ILO has created a moral market boundary based on the notions of decency and dignity. In the previous chapter, the latter concept was explored by looking at how it was brought forward in various spheres as a countervailing force against market forces. Attempts to capture the concept of human dignity in positive terms (i.e. identifying foundational and shared traits among human beings) were found to be wanting. One alternative account that was also discussed and originates from Avishai Margalit (1996, 2007) is based on the idea that each human being stands in an iconic relationship with all others; we recognize the humanity in others and thereby their membership of the human commonwealth. And it is when dignity is not adhered to (i.e. violated by treating people as if they were not members of the human commonwealth) that we recognize human dignity. This idea is one of the basic underpinnings in his book *The Decent Society* wherein he outlines his requirements of how a society should function. This book has a specific focus on society's institutions and has in effect created an account of decent boundaries. Therefore, before turning to the ILO's International Labor Standards and its Decent Work Agenda we first take a look at this account of the notion of decency and how it can be operationalized in a societal setting.

For this discussion of Margalit's account of decency (which will zoom in on the issue of work), we look especially at the already mentioned *The Decent Society* (1996) as well as his more recent book *On Compromise and Rotten Compromises* (2009). In these works, the notions of decency and humiliation play a pivotal role.

This chapter is divided into two sections. In the first section, the focus is on the theoretical antecedence of *The Decent Society* together with the methodology deployed by Margalit. A key characteristic of the framework that he presents in *The Decent Society* is that it is constructed using a negative approach (*ex negativo*) for philosophical theorizing and policy making: the prescriptive negative. This method is also found in the works of the philosophers Karl Popper and Isaiah Berlin, and both served as inspiration for Margalit in the way he has approached the topic of decency. Therefore, in this section, we will also review their contributions insofar as these relate to the project at hand. A third philosopher who will be covered in this section is

the American John Rawls. His work was instrumental in devising the notion of the decent society that was framed as a response but also as an addition to the Rawlsian idea of a just society.

This discussion of the framework of *The Decent Society* and its theoretical antecedence and methodology will help us in the following chapters to assess the ILO's Decent Work Agenda. However, before turning to that specific case, we first take a closer look at the application of Margalit's framework to employment to see what—if any—the implications of this framework are for economic policy in this specific area.

## 4.1 Framing the Decent Society

Avishai Margalit's moral theory is grounded on the notion of decency. A decent society, Margalit argues, is one whose institutions do not humiliate, or to quote him: "A society is decent if its institutions do not act in ways that give the people under their authority sound reasons to consider themselves humiliated." (Margalit, 1996, p. 11). Margalit contrasts his idea of a decent society with what he calls a civilized society; a society is civilized when its members do not humiliate each other. As Margalit points out in the introduction of his book, it is quite possible for a society to be civilized but not decent and vice versa (1996, p. 1).<sup>70</sup> For instance, according to Margalit, the transition in Eastern Europe can be seen as a transition from a civil yet non-decent to a more decent society yet less civilized.<sup>71</sup>

Turning to the methodology of *The Decent Society* we see that its point of departure is a society whereby the adjective (or denotation) of "decent" is made dependent on the fulfillment of a specific criterion, namely the absence of humiliation on the part of that societies' institutions. This begs the question of what he means by humiliation and secondly what is meant by society, i.e. who is to be included and who not. Before we can discuss these issues we first need to deal with one key characteristic of Margalit's approach, namely that the answer he proposes is phrased *ex negativo*; it prescribes what the institutions in a society should *not* do.

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<sup>70</sup> Margalit accentuates the difference by declaring that a "civilized society is a microethical concept concerned with the relationships between individuals while the decent society is a macroethical concept concerned with the set-up of society as a whole." (1996, p. 2)

<sup>71</sup> It should also be noted that this view is contested, e.g. by the first Hungarian Ombudsman Gönczöl (2002); See also Leadbetter (1996);

### 4.1.1 The Prescriptive Negative

In *The Decent Society*, Margalit lists three reasons for this negative approach, what we shall call here the prescriptive negative. The first reason, what he calls the ‘moral’ reason, is that eradicating evil takes precedence over doing or promoting good. Secondly, he asserts that this approach will help to make a distinction between direct achievable goals and by-products. The third reason has to do with cognition: it is easier to detect and identify an illness (humiliation) than health (respectful behavior) (1996, pp. 4-5).

Of these three reasons, it is the third that is unquestionably true. In his 2002 book *The Ethics of Memory*, he revisits this argument to justify the negative approach: “Is it not injustice rather than justice that “hurts us into politics”? And tyranny rather than freedom, poverty rather than equality, humiliation rather than dignity? The situation is not unlike medicine as the art of curing and alleviating disease. It is disease that brings us to medicine, not health.” (Margalit, 2002, p. 112).

With regard to the second reason, Margalit cites the work of Jon Elster wherein he discusses various psychological and social states that “can never <...> be brought about intelligently and intentionally, because the attempt to do so precludes the very state one is trying to bring about.” (1981, p. 431). A famous example hereof is the injunction “Be spontaneous” that is internally inconsistent. Spontaneity, Margalit argues, is essentially a by-product and not a primary goal. To this he adds that respecting people may be “a by-product of one’s general behavior toward people, while this is not true for nonhumiliation.” (1996, p. 5). Margalit argues that even *if* it were true that offering someone respect is *always* a by-product of some other act, there are always acts identifiable wherein humiliation is the primary goal. Therefore, the act of specifically not humiliating someone requires that to be the goal of the act.

The validity of the first reason is a bit more complicated. At the end of the day, it has to be acknowledged that it constitutes a belief or as Margalit himself describes it a conviction. Margalit seeks out (just like Judith Shklar in her 1989 publication *The Liberalism of Fear*<sup>72</sup>) the *summum malum* instead of going on the quest for *summum bonum*. The importance of this premise becomes clear when viewed through the implications for theory as well as for

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<sup>72</sup> See Shklar and Hoffmann (1998); see also chapter two of Bader (2007) and Benhabib (1994)

policymaking or as Margalit notes in a 2001 article entitled “Privacy in the Decent Society”: “Negative politics, the politics that counters evil, should come before positive politics, which promotes good. There is more urgency, if not importance, in fighting evil than in furthering good. Moreover, there is greater clarity and agreement in identifying evil than in recognizing and agreeing on the good.” (2001, p. 255). This last assertion regarding the greater clarity and agreement in identifying evil does not mean that this is also done in practice.

In contemporary debates on justice, it is far more common to see efforts geared towards formulating how justice and just societies look rather than at how to reduce injustice.<sup>73</sup> In the aforementioned book, *The Ethics of Memory* he also cites the opening of Tolstoy’s *Anna Karenina*: “Happy families are all alike. Every unhappy family is unhappy in its own way.” (Margalit, 2002, p. 117).<sup>74</sup> It is an expression of the widespread belief that it is more ‘economical’ to focus on the positive ultimate outcome (e.g. “the one positive idea of justice”) than it is to deal with the various forms of injustice. Margalit stresses that in moral theory one should refrain from applying the rule of the excluded middle, whereby the negation of that what is considered wrong will automatically lead to that outcome that is considered right.<sup>75</sup>

With regard to this assertion that there is an asymmetry between good and wrong as well as the idea that the minimizing the wrong should have precedence over the promotion of good, Margalit acknowledges and references Karl Popper’s book *The Open Society and its Enemies*. This alone warrants a closer look at Popper’s work in this field. Reservations regarding unifying positive theories are found in Popper’s work as well as that of Isaiah Berlin. In the next section, the focus will be on the work of these two philosophers in order to obtain a clearer picture of the theoretical antecedence of *The Decent Society*. No such picture, however, would be complete without taking a closer look at the work of John Rawls (which was the driving force behind Margalit’s project), which we shall do in §4.1.3.

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<sup>73</sup> See also Amartya Sen’s *The Idea of Justice* (2009, p. ix)

<sup>74</sup> In his discussion of bureaucracy Margalit paraphrases this line stating that “All good regimes are alike, while every bad regime is bad in its own way.” (Margalit, 1996, p. 217). The quote can also be read — as he himself does in his homage to Isaiah Berlin — to convey that good values are not all alike, see Margalit (2003)

<sup>75</sup> See Margalit (2002, p. 113)

#### 4.1.2 Standing on Popper and Berlin

The approach whereby the prescriptive is phrased in the negative is similar with Popper's scientific method of falsification, which states that only through the falsification of propositions can we advance knowledge. Indeed in Popper's own work on political philosophy, *The Open Society and its Enemies* (1996a, first published in 1945), he acknowledges this: "There is some kind of analogy between this view of ethics and the view of scientific methodology which I have advocated in my *The Logic of Scientific Discovery*. It adds to clarity in the field of ethics if we formulate our demands negatively, i.e. if we demand the elimination of suffering rather than the promotion of happiness. Similarly, it is helpful to formulate the task of scientific method as the elimination of false theories (from the various theories tentatively proffered) rather than the attainment of established truths." (Popper, 1996a, p. 317). Note that he uses the adverb 'similarly' here and not the adjective 'identical' when discussing ethics and his scientific method. Popper did not see ethics as a science and asserted that it was impossible to argue in favor or "prove the rightness of any ethical principle" in the way this can be done with regard to a scientific statement. (Popper, 1996b, p. 263). He describes his own position as based on the humanitarian and equalitarian principles of tolerance, the moral urgency of suffering and pain, and thirdly the rejection of tyranny meaning that safeguarding these principles should be done by institutional means rather than rest with the benevolence of rulers (Popper, 1996a, pp. 255-256).

With the urgency of suffering, Popper assigns priority for the eradication of 'evil'. He states: "I believe that there is, from the ethical point of view, no symmetry between suffering and happiness, or between pain and pleasure. <...> human suffering makes a direct moral appeal, namely, the appeal for help, while there is no similar call to increase the happiness of a man who is doing well anyway. <..> from the moral point of view, pain cannot be outweighed by pleasure, and especially not one man's pain by another man's pleasure. Instead of the greatest happiness for the greatest number, one should demand, more modestly, the least amount of avoidable suffering for all." (Popper, 1996a, p. 317).<sup>76</sup>

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<sup>76</sup> With regard to the denotation "avoidable suffering" Popper refers presumably to the suffering that is man-made as opposed to those who are the result of natural occurrences (see Popper, 1996a, pp. 333-334). In addition, his position on the least amount of suffering indicates that when it comes to morality, Popper abandons the principle of the excluded middle, a notable aspect of scientific method; after all we cannot divide the state of human beings as either being happy or suffering. See also Griffin's article "Is Unhappiness Morally More Important Than Happiness?" for a discussion on this reversal of the utilitarian principle (1979) and Kieseewetter (1995) for a discussion of Popper's ethical foundations.

*The Open Society* was written as a critique of the way Hegelian and Marxist theory understands society with its collectivist and historicist approach; other ‘enemies’ of the open society, such as Plato, are also discussed. Popper’s undertaking constitutes his opposition against so-called “blue-print” societies. These blueprint or closed societies are considered static: all aspects of social and institutional life (e.g. its religion or system of law) are not susceptible to change. The defining element of a closed society is the collective, the membership of a group in the tribal sense of the word. Members of a closed society function against a background that itself is not allowed to be called into question. Submission to its institutional arrangements (including its moral system) is mandatory on the punishment of exclusion. In contrast, the open society is based on the rejection of absolute authority, individualistic and “sets free the critical powers of man.” (Popper, 1996a, p. xvii).

At the core of the political view of Popper lie rationality (which for him was to be seen as being open to criticism) and freedom (Gattei, 2009, p. 4). By ensuring that people are free to voice their criticism against existing institutional structures, totalitarianism can be averted; so what is needed is freedom from interference, i.e. negative freedom. Popper also points out that every action may have unintended consequences (and hence unintended results) and large-scale political change is especially prone to this. This leads him to the conclusion that a society is better off when it applies a political system whereby great transformations are avoided and where change should progress in small steps with continuous iteration so that when a mistake is made it can be easily corrected and without great costs; a process that he calls piecemeal engineering. For Popper, only a democratic society is able to fulfill this task as it is the only form of government that “provides an institutional framework that permits reform without violence, and so the use of reason in political matters” (Popper, 1996, p. 4 cited also cited in Shearmur, 1996, p. 114).

Some of the criticism levied against the way Popper constructed his opposition against totalitarianism is based on the assertion that the way Popper deals with the envisioned proponents of totalitarianism is incorrect. On the one hand, so the critique goes, he fails to put the statements of these ‘proponents’—which he cites—into the context (philosophical and otherwise) wherein they are made, for instance, in Popper’s discussion of Hegel. On the other hand, Popper’s method of presenting his argument (incl. the way he uses the various

quotations) opens up the question to what extent he is being selective in his quoting (Ball, 2004, p. 22).

An objection of being insensitive to the (historical) context of philosophical statement is one which will most likely not be leveled against the work of Isaiah Berlin given his preoccupation with the study of ideas with a special focus on their historical and philosophical context. In his work—most of which has come in the form of a history of ideas—a comparable position with the one held by Popper can be found, namely an opposition against grand theories.

In his study of the succession of philosophical analysis and commentary on topics such as equality and justice, he finds that it is incorrect—although understandable—to speak of development in moral theory as such. He is inclined to follow the ideas of Giambattista Vico (1668–1744) who contends that every society creates its own moral philosophy and that it is not possible to compare these without taking into account the other differences between the current and former society. Given that past societies had a completely different *Weltanschauung* or outlook (i.e. way of looking at the world); this renders it impossible to create a full and coherent comparison between the two. From this it is easy to see how this analysis by Berlin may lead to the conclusion that the approach entertains a relativist stance towards morality. However, this is not the case. Berlin is not denying the existence of morality or indeed of universal moral concepts; his concern is with the danger that might follow from a grand moral theory.

The title of a collection of his essays, *The Crooked Timber of Humanity* is taken from a quote by Kant from his work entitled “Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht” (published in 1784 in the *Berlinische Monatsschrift*). In the translation of Berlin, this reads: “Out of the crooked timber of humanity no straight thing was ever made.” (Berlin, 1991, p. 48).<sup>77</sup> Berlin takes this to be the admission of Kant that man ultimately is not perfect.

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<sup>77</sup> The original quote is as follows: “Das höchste Oberhaupt soll aber gerecht für sich selbst und doch ein Mensch sein. Diese Aufgabe ist daher die schwerste unter allen; ja ihre vollkommene Auflösung ist unmöglich; aus so krummem Holze, als woraus der Mensch gemacht ist, kann nichts ganz Gerades gezimmert werden. Nur die Annäherung zu dieser Idee ist uns von der Natur auferlegt.” (Kant, 1793a, p. 15). Note that in the original, Kant is presenting a regulative idea, stating that out of the crooked wood from which Man is made, nothing completely straight (or correct) can be made. Berlin’s translation, on the other hand, reads more like an assessment.

Berlin takes his cue from this to argue that the path towards one encompassing moral theory is at the end of the day the road to inhumanity<sup>78</sup> (1991, p. 19).

Isaiah Berlin states that the pursuit of a definitive form of a society based on singular important concepts such as justice or equality (what he calls ‘Great Goods’) is not only impracticable but also incoherent. Some ‘Great Goods’, or so Berlin argues, cannot live together, that is cannot be achieved at the same time (Berlin, 1991, p. 13). Another problem is that practical obstacles such as new problems are created by every solution—“unknown consequences of consequences of consequences” cannot be taken care of in advance. An ultimate or ‘final solution’ (Berlin uses this term notwithstanding its dark connotation given to it by the Nazi-era) is also incoherent. For such a solution, no cost would be too high to assist in its realization.<sup>79</sup> His answer is compromise between theories and the establishment of priorities creating a ‘list’ that should never be absolute or final. Topping his list of priorities is the avoidance of extremes of suffering.<sup>80</sup> He does leave open the possibility that extreme measures may be required but also reminds us that there is no guarantee that those acts will indeed lead to improvement or have the desired effect of improvement.

There are various similarities between the works of Popper and Berlin apart from the already mentioned opposition against grand theories.<sup>81</sup> Just like Popper, Berlin believes that a priority in policies exists and that the first focus should be on negative freedom over positive freedom. In his view, to be able to achieve the good life is second to the freedom from interference.

Let us now turn to Margalit, who was a close friend of Berlin.<sup>82</sup> Although he subscribes to Berlin’s analysis, Margalit adds that in his view negative freedom, i.e. freedom from interference should be seen as the freedom from humiliation. Freedom, he contends, has an intrinsic value in that it is good in and of itself, but that there are limitations on the idea of the

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<sup>78</sup> Interestingly, Roncaglia (2005, p. 125) notes that Adam Smith wrote in similar terms about the human condition in his *Theory of Moral Sentiments* first published in 1759: “The coarse clay of which the bulk of mankind are formed, cannot be wrought up to such perfection”; Roncaglia views both quotations as a reaction to the idea of benevolent human nature that in turn was a reaction to the idea of a substantially selfish human nature.

<sup>79</sup> This however is a point to which Margalit’s work has an interesting contribution, namely his assertion that the way justice is done has to be part of any deliberation (see also § 4.1.3 of this thesis)

<sup>80</sup> See Berlin (1991) but also Horton (2004)

<sup>81</sup> Similarities that were not always publicly acknowledged, see and compare, for instance, Berlin and Polanowska–Sygulska (2006, p. 123) and Berlin and Hardy (2004, p. 682)

<sup>82</sup> See Arian (2001) and Crowder (2004, p. 193) and Margalit, Williams, and Hampshire (1998) and Margalit (2003)

primacy of negative freedom. Margalit is above all concerned with humiliation and sees no problem in inhibiting this (i.e. negative) freedom provided that the limitation does not constitute humiliation. Therefore, it is possible for there to be restrictions of freedom in a decent society provided that these restrictions do not amount to humiliation. It is in this light that Margalit's assessment of the relation between positive and negative freedom should be interpreted when he asserts that ““freedom from” has priority over “freedom to”, and it is “freedom from” that is predominantly the sort of freedom required for a decent society.” (1997, p. 159).<sup>83</sup> However, when the lack of freedom, for instance, manifests itself in terms of coercion as “the subjection of the victim's will to that of the subjugator” (1997, p. 158)—something we shall revisit in the second section of this chapter—it constitutes humiliation and has no place in a decent society.

This concise overview of Popper and Berlin leaves us with three identifiable aspects that we can also find in the works of Avishai Margalit, namely the overall negative approach (or prescriptive negative as it is dubbed here), the idea that the eradication of evil takes precedence over the promotion of doing good, and lastly the idea of compromise. Seen as there are considerable similarities between Margalit's approach in *The Decent Society* and the work of Karl Popper and Berlin, it is striking that both only get a passing reference in this book.<sup>84</sup> The work of John Rawls, however, is discussed at length due to the fact that the work was the main inspiration for Margalit's work. Margalit states in the introduction that he got the term ‘decent society’ from Sidney Morgenbesser in the 1970s during a discussion of John Rawls' work on justice and the just society (1996, p. ix).

### 4.1.3 Building on Rawls

Rawls' magnum opus *A Theory of Justice* (Rawls, 1971) starts out with the observation that political theory is caught between two extremes, namely utilitarianism and that what Rawls calls ‘intuitionism’ (1971, p. 30). Under the header of intuitionism falls the manifold of approaches in political theory characterized by an absence of an overarching framework and that share in Rawls' opinion of two specific features. First, is the absence of a first principle, and they opt for a plurality of first principles whereby it is not impossible that these may be in

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<sup>83</sup> See also Riley (1997) and Gaus (2003)

<sup>84</sup> With respect to compromise Margalit attributes this explicitly to Berlin in his various publications on the topic. (Margalit, 2003, 2009)

conflict with each other. Secondly, he notes the absence of a coherent method by which these principles may be weighed against each other.<sup>85</sup>

In order to determine what justice is, Rawls put forward a thought experiment that underpins his conception of justice, namely the ‘veil of ignorance’. His conception, as will become clear, is predominantly focused on the distribution of justice and it is this focus that led Margalit to believe that the Rawlsian account is incomplete. The process of attaining justice, so argues Margalit should be as much part of moral deliberation as the outcome.

In the Rawlsian thought experiment, one is invited to envision a new society as well as the (social) institutions that will exist in it, but this is done behind a veil that precludes any information regarding what place one is going to have in this society. Given that one does not know if one is among the destitute or among the wealthy and powerful, Rawls argues that the logical outcome will be that this new society—a just society—will have a relatively equitable distribution of primary goods.

Margalit argues that this (Rawlsian) calculating of the just distribution of income and rights is not enough: apart from seeing *that* justice is delivered, one must also examine *how* justice is delivered. And here the concept of the decent society gains weight. A welfare state or a centrally planned economy might deliver a just distribution of income and benefits, thereby fulfilling at least some of the demands of Rawls (and others) when it comes to the concept of justice. However, as Margalit points out, the cost of such forms of justice is generally (especially in the case of a centrally planned economy) a de-humanizing bureaucracy, which humiliates people by turning them into little more than “numbers”. In *The Decent Society*, Margalit introduces a framework that addresses precisely this issue (among others) by introducing the demand to abstain from humiliation.<sup>86</sup>

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<sup>85</sup> See also chapter three in Kymlicka (1990) for a discussion of the Rawlsian project

<sup>86</sup> This includes another difference of interest between Rawls and Margalit and that relates to the question of who is to be included and who is not when the societal arrangements are to be made. John Rawls confines himself to the citizens of a society while Margalit expands this to include all those who fall under the jurisdiction or responsibility of a government. Hereby, Margalit explicitly includes all non-citizens in that he asserts that a decent society “<...> is a society whose institutions do not humiliate people who depend on them.”(1997, p. 147)

This demand raises the question of how one should view the place of the decent society vis-à-vis other societal classifications. There exist a number of other types of social notions that can be complementary to the decent society and not necessarily always rival. Margalit differentiates among others between a bridled, just, decent, and civilized society. He adds a lexicographical order of priorities starting with the bridled society (in which physical cruelty is ruled out) followed by the decent society and ending with the just society (1996, p. 148). This order is cumulative in that every just society must be a decent one but that the opposite does not always hold: not every decent society is necessarily a just society (1996, p. 3).

As already noted, Margalit was not the first to use the phrase “decent society”; there are numerous examples to be found.<sup>87</sup> Two of the three philosophers singled out in the text above for their influence on Margalit’s project (Isaiah Berlin and John Rawls) had in fact used the term before the 1996 publication of *the Decent Society*. In the case of Isaiah Berlin, it can be noted that he did not use the denotation of decent in a conceptual manner but rather in a casual form to formulate the best attainable society: “The best that can be done, as a general rule, is to maintain a precarious equilibrium that will prevent the occurrence of desperate situations of intolerable choices—that is the first requirement for a decent society; one that we can always strive for, in the light of the limited range of our knowledge, and even of our imperfect understanding of individuals and societies.” (Berlin, 1991, pp. 17-18).

Although Rawls was aware of Margalit’s work, he himself didn’t, at least not in his published writings, take it upon himself to write about the decent society as Margalit envisioned it. However, in his 1993 paper entitled “The Law of Peoples”, Rawls coins the term ‘a decent society of peoples’ to describe well-ordered political regimes that care about the well-being of all of its peoples. A modified version of this article was published in book form in 1999 under the same title. In this publication, Rawls uses the concept “to describe nonliberal societies whose basic institutions meet certain specified conditions of political right and justice (including the right of citizens to play a substantial role, say through associations and groups, in making political decisions) and lead their citizens to honour a reasonably just law for the Society of Peoples.”(p. 3, fn 2). As far as an explicit discussion of Margalit’s work in the 1999 publication, Rawls confines himself to the remark in a footnote stating that his usage of the

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<sup>87</sup> Since the publication of Margalit’s book, several interpretations have emerged with their own accounts of the decent society incl.: Arneson (2007); Blau, Santos, and Sessoms (2009) and Reich (2002); See also Muller (1993)

term ‘decent society’ differs from Margalit’s whereby the emphasis lies, according to Rawls, with “consideration of social welfare”. (p. 3, fn 2).

This treatment of Margalit by Rawls is striking in that it is incorrect. Margalit’s work draws attention to the process of getting to a just society (with the theme of humiliation at its core) as opposed to solely the outcome of a just society. To this we can add that the latter (i.e. the outcome of the just society) being the topic of Rawls’ own book *A Theory of Justice* has the “consideration of social welfare” playing a pivotal role. In this light, the claim that *The Decent Society* is preoccupied with social welfare only stands insofar that it was written as a response to *A Theory of Justice*. The description offered by Rawls can only be valid if we choose to ignore Margalit’s work on humiliation and the importance of the process apart from the outcomes of this process.

In his book on Rawls, Samuel Freeman notes that the main difference in the way the two philosophers use the concept of the decent society lies in the place each attaches to the concept of rights. These are essential in Rawls’ account but not deemed necessary *per se* in Margalit’s version (S. R. Freeman, 2007, p. 513). This assessment too misses the main point that Margalit argues in *the Decent Society*. The major difference between them is the importance of the *process* of achieving justice. Secondly, although Margalit talks at length as to whether or not rights are essential for a decent society and ultimately argues that this is not—at least theoretically—the case (pointing towards the possibility of a society based on duties, see §4.1.5 of this thesis), he does acknowledge their importance if only in the examples he gives of the practical application of his ideas.

Some have taken issue with the way Margalit puts the spotlight on the claimed omissions in Rawls’ work. Patten (2001), for instance, notes that the arguments provided by Margalit for his claim that a truly just society must *ipso facto* be a decent society together with the claim that a Rawlsian just society need not be a decent society, will not convince a ‘committed Rawlsian’. The main reason for this, according Patten is that Margalit is positioning his approach based on the omissions or blind spots in Rawls’ theory and the fact that Rawls has not written about a specific topic (e.g. on certain institutions and practices such as religion, on the method of distribution or on the status of non-members) is *not* the same as him having a divergent position.

Another claim that Patten (2001) takes issue with is the sequencing whereby achieving the decent society has a higher level of urgency than achieving a just society. Only the achievement of a bridled society supersedes the decent society. Patten states that he is unconvinced by this sequencing whereby social justice takes a back seat and the avoidance of humiliation is given priority: “If Margalit is right to think that it is often humiliating to accept charity (pp. 235–246), then his lexicographical priority claim seems to have the (arguably) counter-intuitive implication that charitable schemes aimed at promoting justice should, in general, be abandoned.” (Patten, 2001).

This assertion, however, is an incorrect representation of Margalit’s ideas on this topic in that charitable organizations are not prohibited under the framework; the point that Margalit makes is that the *government* should not provide assistance as a matter of charity but should pass it on as an *entitlement*. Patten lists another reason for doubting the hierarchy, namely that the determination of humiliation needs considerations of justice. In other words, Patten argues that one needs justice to assess whether there is a case of a “sound feeling” of humiliation.<sup>88</sup> However, this argument fails again to acknowledge that the decent society itself or in the sequence of societies (that is from bridled by way of decent to just) is not a binary affair. Concepts of justice are not absent in a decent society and need not be so.

In this section, we have discussed the theoretical antecedence of the decent society whereby some of the building blocks of the framework itself have already been touched upon. In the next section, we will explore these in greater detail, especially the concepts of decency and humiliation. The discussion of these concepts is particularly important given that Margalit has opted to use existing concepts instead of creating new ones to put forward his theory. In fact, this is one of the methodological differences between Margalit and other philosophers, including Rawls.

Rawls arrives at his conclusions by way of a selected set of basic assumptions and a deductive theory that is built around the concept of justice. He introduced new concepts such as the ‘veil of ignorance’ and ‘primary goods’ along the way. In contrast, Margalit does not use a grand deductive theory to develop his notion of the decent society. He also does not introduce new

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<sup>88</sup> “What I am suggesting is that the decent and the just society may be too closely intertwined for us to be able to say that one or other has clear priority as an ideal.” (Patten, 2001)

concepts to explain his account of the decent society. He utilizes concepts that have a history in their own right. Koenis (2001) notes that the approach Margalit deploys is more dependent on analytical depth and plausible descriptions of examples of—in his case—humiliation and humiliating situations instead of relying on the formulation of a testable hypothesis. This does not mean he presents no such hypothesis. As will become clear in the next section—he in fact confronts his notion of the decent society with ‘real life’ situations and issues to see whether it yields new insights; for example, he addresses the question of poverty and explains why and under what circumstances it might be deemed inappropriate.

Margalit describes his own approach as “e.g.” philosophy as opposed to an “i.e.”-philosophy.<sup>89</sup> This approach has not been well received all round. For instance, in his review of *The Decent Society*, Murmann (1999) laments the lack of clarity regarding the relationship between the decent society and the just society as envisioned by Rawls. He attributes this to what he calls the major deficit of the book, namely its hermeneutic method whereby the arguments are based on past experiences rather than “on normative criteria that would justify a universal perspective on decent institutions.”<sup>90</sup> This criticism is perhaps a bit too strong, as Margalit does in fact introduce (and applies) normative criteria for justification such as humiliation and especially his account of human dignity as the representation of self-respect (see §3.3 of this thesis), which are tied in with this as we shall see hereunder.

#### 4.1.4 Decency as the absence of humiliation

Having stated that a decent society is one of which the institutions do not humiliate people, the question becomes what precisely constitutes humiliation. Margalit defines humiliation (as was already touched upon in the previous chapter) as follows: “Humiliation is any sort of behaviour or condition that constitutes a *sound* reason for a person to consider his or her self-respect injured.” (Margalit, 1996, p. 9, emphasis added). To this we can add that injuring someone’s self-respect (i.e. humiliation) entails treating a human being as if he or she was not a member of the human commonwealth.<sup>91</sup>

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<sup>89</sup> Taken from Margalit (2002, p. ix); see also Bernstein (2004)

<sup>90</sup> For other reviews not covered in this section see for instance Landesman (1997), Allen (1998) and Krause (2004) as well as the contributions to a special edition of the journal *Social Research* (vol. 64, no. 1, 1997) including from: Harry Frankfurt, Axel Honneth, Steven Lakes, Philip Pettit, Anthony Quinton, Arthur Ripstein, Amélie Oksenberg Rorty, Frederic Schick.

<sup>91</sup> See also §3.3

The reason for the inclusion of the ‘sound reason’ condition is that Margalit is using ‘humiliation’ in the normative sense as opposed to the psychological sense. In the latter case one can have a situation wherein a person is feeling humiliated although there is no real grounding (i.e. *sound* reason) for this. In the former, the normative sense, humiliation includes those cases when a person does not feel humiliated but nevertheless has reason to feel in such a way. This reasoning puts a heavy burden on the concept of sound reason and its underlying conditions.

The key condition underpinning the *soundness* clause is that humiliation can only be brought about by humans. He adds that they need not have any humiliating intent or need to be aware of the fact that they are humiliating others. However, although awareness is not required, there has to be a humiliator, an agent who is the instigator of the humiliation.<sup>92</sup> Attached to this position is the notion that treating someone with respect may be viewed as the standard situation in social interactions, whereas for humiliation this is not the case. Moreover, in accordance with his argument in favor of the prescriptive negative, he argues that treating someone with respect is not linked to specific actions. Humiliation, on the other hand, does require an act/deed (of disrespect); there has to be an active party causing the humiliation.

Treating someone as though he or she was not part of the human commonwealth can thus occur along two lines of action. First, it is achieved in treating a person as an object or by denying the traits of humanity in a person, for instance in treating them like animals. Secondly, it can occur by treating someone as subhuman, that is as not fully human, for instance when treating adults as children. This Margalit argues is also a way of excluding a person as a full (!) member of the human commonwealth.<sup>93</sup> Failing to acknowledge that someone is a member of this commonwealth constitutes a violation of that someone’s human dignity, which as was noted previously is in Margalit’s framework closely tied with a person’s self-respect.

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<sup>92</sup> Margalit uses the example of Richard III who due to his deformity would have had every reason to feel humiliated. Yet, within the framework, this would not constitute humiliation given that its cause can be ascribed to nature. In this particular case it may be of interest to learn that a consensus has emerged that Richard III had in fact no physical deformity at all but that this was attributed to him by subsequent rulers. (see e.g. Jones, 1980; and Markham, 1891)

<sup>93</sup> The list of ways in which to treat human beings as not human is of course not exhaustive. Margalit has provided multiple examples in various publications, for instance: “I use ‘humiliation’ in a rather strong sense — in the sense not of lowering one’s social position in one’s own eyes, as well as in those of others, but of lowering one’s position of being human. Treating humans as machines or as “numbers,” treating them as beasts or sub-humans or permanent children, are some of the ways to injure their human dignity.” (Margalit, 2004a, p. 173)

The emphasis on acts or deeds in framing humiliation brings us back to the importance of process versus result. It is not just outcomes that should be our concern but our focus must also include the process by which these are achieved. Humiliation whether it is found in an outcome or in the process to achieving a particular outcome should be avoided as in either way it constitutes a violation of human dignity.

To sum up, Margalit utilizes normative concepts to come to his idea of the decent society. With the introduction of these concepts, including dignity, decency, and humiliation, he offers the tools by which to evaluate societal and institutional arrangements. However, before we can turn to such an assessment, one further element in his work needs to be discussed, namely the issue of rights.

#### 4.1.5 Rights and the Decent Society

The issue of rights as noted above is one of the ascribed differences between Rawls (for whom rights are essential in his theory of justice) and Margalit, who asserts rights are not essential per se in a decent society. This topic is not just a mere philosophical issue. The Decent Work Agenda of the ILO has a clear rights component, indeed the ILO's international labor standards are written in the language of (and exist in the realm of) rights. This makes it important to obtain a clear picture of the place of rights in the decent society framework before we can apply it to the ILO's Decent Work Agenda.

When Margalit writes about rights, he focuses on the question of whether the concept of rights is a necessary condition for a decent society. He contends that this is not the case and thinks that it is possible for a society that has no concept of rights to develop the concepts "appropriate for a decent society" (Margalit, 1996, p. 3). This has led to some confusion among commentators for whom the relation between rights and humiliation is obvious, especially when there is talk of a 'violation'. Margalit rejects this and, citing Wittgenstein, asserts that this is a case of "being held in the grip of a picture". By this he means that when people talk and think about society and its institutional arrangements nowadays we are by definition talking about rights because this is the way those issues are always approached. In order to clarify his own position he describes an alternative society, not based on rights but on duties. Such a society could have, for instance, a duty not to humiliate. However, in that case, the victims of humiliation are in fact deprived of having a sound reason for feeling humiliated.

To clarify this point, in such a society the elderly have no right to a seat in the bus yet young people have a duty to offer them their seat. If this does not occur, the violation is not against the elderly but against society's prohibitions.

Margalit acknowledges that it would seem that a system of morality based on duty needs the concept of rights, at the very least in some implicit way, in order for it to work. However, he challenges that it has a *mandatory* role when it comes to the justification of the duty to forgo the act of humiliation (1996, p. 33).<sup>94</sup>

Margalit uses the story of Uncle Tom's Cabin to clarify the importance of the sense of self-respect especially in relation to the notion of rights. The case is of interest in that it is an example of a situation whereby the notion of rights is absent. In addition, it is a case wherein the person of interest has no option to demand their rights. Therefore, it is a possible argument in favor of a close relationship between rights and self-respect that shows how not being able to demand your rights in turn constitutes humiliation. However, another reading of the Uncle Tom story is possible whereby one of the conclusions reached is that we are dealing with "issues that people *should* be concerned about but not necessarily issues that they actually *are* concerned about." (Margalit, 1996, p. 38). In conclusion, Margalit thinks that the concept of rights is not strictly necessary but it would seem that the absence of rights would require considerable demands of society on other fronts.

In the end it seems that too much is being made of Margalit's position on the necessity of rights but this is attributable to his own writings on the topic. When it comes to the practical interpretation of the framework as provided by himself we find that rights e.g. in the form of entitlements are very much part of the decent society. In the next section, we look at the application of the framework to the topic of employment.

## 4.2 Application: Employment in the Decent Society

In his book *the Decent Society* Margalit covers several topics as examples of practical application of his framework, including: snobbery, privacy, bureaucracy, the welfare state, and

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<sup>94</sup> Feinberg (1970) presents an argument against this position claiming that there can be no self-respect without it being closely connected to the notion of rights; rights constitute the self-respect. See also Davis (2009)

punishment. This section reviews his writings about work, i.e. employment. While discussing employment within the context of a decent society, Margalit's focus is on unemployment. The central question he tries to answer is whether a society can be considered decent if there is unemployment? Put in another way: can a society only be considered a decent one if it has full employment or at worst frictional (or other forms of temporary) unemployment?

In its most basic form, unemployment entails the absence of work that provides an income. From this, one could infer that it is not so much employment but income (in order to prevent poverty) that should be guaranteed by a decent society. However, employment is more than just about generating an income. Margalit concurs with the formulation in the Universal Declaration of Human Rights, in that social and economic rights are indispensable for human dignity (1996, p. 246). Work gives people autonomy and economic citizenship that preserve their human dignity. However, Margalit adds that this claim is time- and culture dependent. In ancient Rome, workers were thought of as undignified because their existence depended on getting paid by other people, but over time the attitude towards work has changed. In discussing the attitudes towards work, Margalit focuses on the dependence relationship that work entails. He identifies four different types of dependence that determine people's attitude toward work that he dubs the classic, capitalist, socialist, and Calvinist type.

The classic type of dependence refers to the dependence on getting paid. The opposite of this is having no dependence on anyone by way of being completely self-sufficient (i.e. autarchic production). The second type of dependence, the capitalist concept of dependence, can best be understood in its negation: unemployment creates dependence. Therefore, in the capitalist type of dependence, work has a liberating function. However, working in this setting is viewed as second best to having independence by way of owning property. Under the socialist type, work is seen as the source of all economic value. Anyone not working is dependent on the work of others in a parasitical kind of way. Only those who work can be said to be truly independent. The last type of dependence that determines people's attitude toward work is the Calvinist type. Here, the only acceptable form of dependence is the dependence on God, and idleness is viewed as the neglect of one's holy tasks. Margalit finds none of these concepts capable of justifying the value of work. He singles out the capitalist notion for having a resonance of a moral significance: the only way people (who do not own any property) can secure their human dignity is by working for pay (1996, p. 251).

Thinking in terms of dependence is however only one side of the story. In order to do justice to the importance of work, Margalit alters his initial query into whether a society must guarantee employment to whoever wants it in order to be considered a decent one. He completely underwrites the idea that everyone has the right to work stating that work is not merely a tool for acquiring an income (which constitutes ‘employment’) but that it is a right in and of itself.<sup>95</sup> He contrasts employment with what he calls a ‘meaningful occupation’ that is defined as “an occupation that confers meaning on the life of the one engaged in it.” (1996, p. 253). Given this very personal definition—after all it is the one who is engaged in it that determines whether it is meaningful or not—it cannot be up to society to guarantee a meaningful occupation for all. Margalit does, however, add that society (government) is obliged to make a serious attempt at securing its provision or at the very least assist those who seek such an occupation. The justification for this demand is that a meaningful occupation will give those who have it self-worth as well as self-esteem.<sup>96</sup> Therefore, Margalit concludes that: “A decent society is thus one that provides all its members with the opportunity to find at least one reasonably meaningful occupation.” (Margalit, 1996, p. 254).

This conclusion has led some commentators to believe that Margalit has lost sight of the practical. Amélie Oksenberg-Rorty (1997), for instance, argues that the global movement of labor to the cheapest sources of production and the resulting daily announcements of ‘downsizing’ poses problems for a decent society. She questions whether the priority of decency as described by Margalit, facing the rise of economic divisions, can be strong enough “to offset competition for the satisfaction of basic needs.” (Oksenberg Rorty, 1997, p. 116). The subtitle of her article indicates that she thinks not: “First let’s eat and then talk of right and wrong”.

A first objection against this line of reasoning can be raised by pointing out that Margalit develops his theory with an individual state/society in mind rather than a cosmopolitan idea of a world-state. If the outcomes of the internationalization of the economy are detrimental (i.e.

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<sup>95</sup> Again he refers to the declaration of human rights. Article 23 (1) of the declaration says: “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.” (United Nations, 1948)

<sup>96</sup> “There is no need for a metaphysical justification based on defining the essence of human nature for demanding that a decent society satisfy the difficult but just requirement of guaranteeing all adults an occupation they would consider meaningful — not only one that would grant them self-esteem but one that would give them self-worth” (Margalit, 1996, p. 253)

cause humiliation) they do not constitute an argument against the creation of a decent society (Margalit, 2004a, p. 175).

Secondly, by focusing on outcomes in her critique Oksenberg–Rorty ignores one of Margalit’s key points namely that it is not just about outcomes but that the underlying process is also need of our attention and by doing so she posits the wrong question. Therefore, for instance, one could argue that the real question at stake is not the loss of jobs due to the international relocation of production but rather *how* a society deals with this loss of employment.<sup>97</sup> A decent society has, according to Margalit, an obligation to assist those who lose their work in guaranteeing income but also in their search for a meaningful occupation.

Although the critique of Oksenberg–Rorty seems to be misguided, it does raise a question regarding the underlying relationship between the ideal type societies that Margalit has identified and where the order of priorities runs from a bridled to a decent and ultimately a just society. The question of interest is whether it is conceivable that a society moves downward instead of upward? Can a society for whatever reason slide back from being a decent society to being a bridled society? It may be theoretically possible but it is hard to imagine this happening without a society then also failing in being a bridled society.<sup>98</sup>

#### 4.2.1 Forced labor and exploitation

In dealing with employment, Margalit also looks into the issue of exploitation and forced labor. In particular, he reviews whether a decent society is one where there is no exploitation and/or forced labor. He starts out by making a distinction between different types of forced labor. First, there is forced labor that entails work performed under coercion. This type requires a person coercing someone else with intention. The second type is defined by Margalit as work performed under compulsion, which differs from coerced labor in that there does not have to be a person exercising the compulsion nor any intention to force someone to do something; i.e. there is no threat involved. For example, we are compelled to work because we have to support ourselves and our family.

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<sup>97</sup> To this may be added that the relocation of production abroad is more likely to lead to a shift in employment opportunities instead of increased structural unemployment; see e.g. Biermans and van Leeuwen (2006).

<sup>98</sup> A theoretical more likely possibility is the scenario wherein a non-decent society increases the instances of humiliation by its institutions, e.g. by widening the groups it fails to acknowledge as full members of the human commonwealth.

Due to the loss of autonomy of the victim, work under coercion is a clear example of humiliation. Although work under coercion is the prime example of exploitation, Margalit argues that exploiting workers does not by definition mean coercing them to work. Therefore, while there can be no work under coercion in a decent society this does not mean that a decent society is one where there is no exploitation (1996, p. 255).

Margalit subscribes to the idea that for exploitation to be possible in a capitalist society it must be of a hidden nature, otherwise the victims would revolt.<sup>99</sup> Here, he follows Gerald Allan Cohen's interpretation of Karl Marx's writings. Cohen discussed this topic at length in his book *Karl Marx's Theory of History: a Defence*—cited by Margalit—wherein he writes: “If the exploited were to see that they are exploited, they would resent their subjection and threaten social stability. And if the exploiters were to see that they exploit, the composure they need to rule confidently would be disturbed. Being social animals, exploiters want to feel that their social behavior is justifiable.” However, it must be noted that regarding this interpretation of Marx on the hidden nature of exploitation, Cohen adds the following: “Marx never states this explicitly psychological thesis, but it must be attributed to him if we are to make sense of a great deal of his theory of ideology.” (Cohen, 1978, p. 400). Whether this interpretation is correct or not, the idea that exploitation can also be hidden from the exploiter has a clear fit with Margalit's own assertion that humiliation can occur without the active knowledge or intent on the part of the humiliator.

Margalit sidesteps the question of whether exploitation is unfair and focuses strictly on the question whether exploitation is humiliating. If it is, it would mean that no society where exploitation was present would be a decent society. As for what constitutes exploitation, Margalit states that: “I am of the opinion put forward by Gerald Cohen that there is no exploitation without the assumption that on some level or another the means of production which constitutes the capital owner's contribution has been stolen. <...> [Stolen] in the sense of taking something without the permission of the person who is morally the owner of the property.” (Margalit, 1996, p. 257).

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<sup>99</sup> Margalit notes that his discussion on exploitation is based mainly on Gerald Cohen (1978), John Roemer (1982) and Jon Elster (1985)

Using a thought experiment, Margalit tries to determine whether if you feel exploited you also have a sound reason to feel humiliated. He invites the reader to take on the role of a weaver who has his loom taken away by someone who has done the same to many others and who has thereby acquired a great number of looms. Margalit then asks us to imagine that this person after having acquired all these looms has “with great ingenuity <...> organized the production of textiles so that she is able to pay you a salary much higher than the profit you would make from the loom if you were working on it as its owner.” (Margalit, 1996, p. 257). The key question Margalit now asks is whether we, in the role of the weaver, are justified in feeling exploited keeping in mind that we now have more money than we would have had if the loom was still in our possession.

Margalit lists three possible responses to this question. The first possible response is an affirmative; we are justified in feeling exploited. The rationale for this first possible answer is that exploitation is a comparative concept and that an actual situation is compared with a counterfactual one. In this case, we are invited to compare our new (higher) earnings with the earnings we would have had if the loom still had been ours, which in this example would have been lower. However, this comparison is under this rationale not the correct comparison, for the right question to ask is how much *we would have earned* had *we* been the ones organizing all the looms in an efficient manner instead of this other person.

The second possible response is based on the idea that we understand exploitation as not receiving a fair recompense in terms of produced value. If we were to accept this idea, then the answer would have to be that we have no right to feel exploited after all the compensation is more than what we would have made out of it. However, even though we do not have the right to feel exploited we are—as Margalit argues—entitled to feel bad as we are now an employee working on a loom that should rightfully be ours.

The third response centers on the acknowledgement that we are the injured party and that the loom was stolen from us. In this case, the only relevant issue is to determine whether the received remuneration is sufficient “to compensate for the damages.” Margalit adds that as part of the compensation it is important that it must be recognized for what it is, namely compensation. In the thought experiment, the compensation is in fact more than what we could have earned, which leads Margalit to conclude that in this case there can be no talk of

exploitation and we should in fact consider ourselves fortunate: “Our case involves ownership and theft hidden from the actors, and acquires historical and “scientific” detective work to discover that the loom actually belongs to you. Meanwhile you realize that the reparation you have received in virtue of the fact that the loom was not in your possession is actually more than what you could have received on your own. In this case, then, you do not have a good reason for feeling exploited. Only bitterness based on envy could lead you to feel exploited. Not only do you have no right to consider yourself deprived, you should even consider yourself lucky.” (1996, p. 258/259). Nevertheless, it is still possible for us to feel exploited because of the loss of autonomy suffered. However, Margalit argues (in accordance with Mill) that the concept of autonomy includes the right to make wrong decisions, or in this case to work for less money than you would receive if you would work for someone else. Margalit expands on this last point on autonomy by applying it to describe the consequences of exploitation for collectives using the example of colonial regimes.

Margalit asks if we were to assume that the way production was organized under colonial rule resulted in a higher output than would have been achieved under strict autonomy, can we then still speak of exploitation? Margalit does not think that this is the case from the outset and that the answer depends partly on whether the colonial regime exploited irreplaceable raw materials—thereby leaving them structurally worse off—in the particular country. However, although the colonial rule may not have been exploitative, it was humiliating. This humiliation as pointed out above may not have been the result of exploitation, but it is still there because of the impairing of the autonomy of the peoples in the colony (Margalit, 1996, p. 261).

Overall, Margalit's conclusion is that exploitation even though it is not just nor fair, it does not necessarily imply a lack of decency. The side effects can potentially be humiliating but the act of exploitation itself does not constitute humiliation as such: “The connection between exploitation and humiliation is causal rather than conceptual. Therefore a society may be decent even though it is exploitative.” (1996, p. 261).

#### 4.2.2 Trade-offs and Compromise

With *the Decent Society*, Margalit offers a framework by which one can judge societal arrangements, but on the question of how to attain a decent society he is less outspoken. Apart from stating that the eradication of physical cruelty takes precedence over the elimination of humiliation, there is little guidance in, for instance, the optimal sequencing of implementing policies aimed at becoming a (less in-)decent society; how are we to judge the various policies vis-à-vis each other? Which if any (temporary) trade-offs are admissible?

Recently, Margalit has worked on the topic of compromise (e.g. Margalit, 2008, 2009), which can be said to be very much in the spirit of Isaiah Berlin.<sup>100</sup> The central idea in his 2009 book entitled *On Compromise and Rotten Compromises* is that in order to achieve peace we should be willing to compromise and that this should be done even if it is at the expense of justice. Although every compromise is to be judged on a case by case basis, there is one type of (political) compromise that should never be accepted: “rotten” compromises. An agreement is deemed rotten if it “establishes or maintains an inhuman political order based on systematic cruelty and humiliation” (2009, p. 54). In order to make the distinction clear, Margalit makes use of various historical examples among them being the making of the US Constitution and its compromise on the permissibility of slavery.

The creation of the Union by way of the US Constitution required many compromises among the delegates of the various states. Margalit focuses on the question of whether the inclusion of slavery constituted a “rotten” compromise. His answer starts out with the observation that slavery already existed before the Constitution. This, for him, is an important fact as the act of establishing slavery is much worse compared to the act of sustaining it. Therefore, the question of interest according to Margalit is whether the Constitution *helped maintain* slavery.

In answering this question, it is important to make a distinction between the beliefs *ex ante* rather than the beliefs *ex post*. When it comes to the latter, Margalit states that the Constitution did not help maintain slavery: “It seems that in the final analysis the *establishment* of the union did more to undermine slavery than to help maintain it. This verdict is an empirical historical

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<sup>100</sup> See also Margalit (2003)

judgement not a normative judgement. But what it is morally relevant however is the question could one at the time of making the agreement assess in good faith that forming the union was going to help the cause of abolishing slavery rather than to sustain it.” (Margalit, 2009, p. 57/58, emphasis added).

The assertion that the establishment of the Union did more to undermine slavery is debatable. The empirical fact that this did not take place and that the effective abolishment of slavery would take almost a hundred years and required a very bloody civil war, should be enough to doubt this judgment. On the other hand—and this is probably what Margalit is implying—if the Union would not have come to pass because the Constitution was not ratified, this would have led to the creation of several separate countries wherein slavery would be completely legal. It seems questionable that these countries would have been as likely to abolish slavery in the same timeframe as the US finally did after the Civil War. However, this is focusing on the *ex post* beliefs, whereas for the normative judgment, we need to look at the beliefs held during the making of the compromise.

With regard to these *ex ante* beliefs, Margalit notes that there were reasons to assume that slavery was on the way out by way of changing perspectives (note that the cotton gin had yet to be invented) and the assumption that the interaction between the slave states and free states would hasten the recognition of the immorality of slavery. However, merely believing that this will be the case is, as Margalit argues, not enough to engage in the compromise that they did. It is not enough to believe *ex ante* that slavery was on its way out, as there also had to be an assessment over which period of time the actual abolishment was to take place and the horizon that Margalit proposes is that of the living generation.

Any changes for the better, Margalit argues, should be seen by the generation that is suffering. In addition, staying with the Kantian idea that people should not be treated as a means to an end, this sacrifice for a greater good needs to be done with the consent of the generation itself. The compromise of the Constitution fails on two accounts with regard to this proposal. Firstly, the slaves were no party to the negotiations and, therefore, were not asked for their consent. Secondly, the Constitution included a provision that ensured that the importation of slaves would not be hindered and was thus authorized for a period of twenty years, i.e. until 1808. This period veers, as Margalit argues, towards the upper boundary of a generation span and thus a living generation. Based on the latter point, Margalit concludes albeit tentatively

that the example of the Constitution is to be considered as a rotten compromise for although there were signs that slavery was on the way out, this was not expected to happen within the span of one generation, give or take twenty years<sup>101</sup> (Margalit, 2009, pp. 59-60).

Margalit's analysis of compromises is primarily focused on the discussion of the extreme types of compromises, namely those wherein there is a risk of a rotten compromise. Nevertheless, there are insights from this discussion that can be helpful in devising and evaluating social and economic policies from a normative perspective, e.g. the moral asymmetry between establishing and maintaining humiliation, the importance of consent and the outlay of a time-path (including the living generation test) wherein the expected beneficial results are expected to occur. These insights fit squarely with the earlier discussed idea that the way in which changes are brought about, the process should be as much part of the deliberation as the intended outcomes. As such, the decent society framework can help in the devising, but also in the appraising, of moral market boundaries in general as well as specific manifestations thereof in the guise of labor standards and the ILO's Decent Work Agenda, which are the topics of interest of chapters five and six, respectively.

### 4.3 Chapter Summary

In his book *the Decent Society*, Avishai Margalit presented a moral framework based on the concepts of humiliation (the opposite of respecting human dignity) and decency. The definition of a decent society (a society whose institutions do not humiliate) is phrased in the negative; it tells us what should not be. This approach, the prescriptive negative is in part based on the belief that the eradication of evil takes precedence over the promotion of good but also follows from the idea that it is easier to recognize the wrongs than the good and that it is humiliation (i.e. the wrongs) rather than acts of respect (the good) that brings us to policy making.

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<sup>101</sup> There is another reason why the constitution should be seen as a rotten compromise and one that Margalit does not discuss, namely the inclusion of the rule that three-fifths of the number of slaves would be included when determining the size of the population. This in turn determined the political strength of a state in the newly formed government institutions benefitting slave holding states.

In applying his own work to the topic of employment, Margalit accentuates the importance of work not only as a means to gather income but also a source of self-respect. In a decent society, so argues Margalit, all members should be assisted in providing the opportunity to find at least one meaningful occupation. Margalit argues that neither compulsory work nor exploitation—although they may be unjust—constitute (by definition!) a sound reason for feeling humiliated meaning that either can be found in a decent society.

The work of Margalit provides us with an operationalization of the concepts of decency and dignity which in turn are central to the ILO's Decent Work Agenda. This discussion of the decent society framework will assist us in the evaluation of this agenda as a market boundary. Before turning our attention to the agenda, the next chapter takes a closer look at one of the key components of the Decent Work Agenda, namely international labor standards.