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Political Liberalism, Virtue, and Neutrality: The Limitations of Liberal Justice

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Thesis submitted for doctor of philosophy
2013
The University of Sydney
Abstract

*Political Liberalism, Virtue, and Neutrality: The Limitations of Liberal Justice*

Department of Philosophy, The University of Sydney

Submitted for the degree of Doctor of Philosophy

This essay critically explores the role of virtue within political liberalism. It argues that the viability of political liberalism depends upon the willingness of citizens to cultivate certain virtues. It also argues that, under in a political liberal society, this is unlikely to happen.

Political liberals require citizens to be virtuous for instrumental reasons. The attainability of key political liberal outcomes is dependent upon the presence of the virtuous of *empathy* and *benevolence*. Specifically, unless citizens are sufficiently empathetic, *public justification* cannot be accomplished. Also, unless citizens are sufficiently benevolent, standards of *liberal distributive justice* will not be realised.

This essay also argues, however, that in a political liberal society, the virtues of empathy and benevolence are unlikely to be present. It claims that, since neither empathy nor benevolence can be properly regarded as a *political virtue*, these virtues cannot be consistently promoted by a political liberal basic structure. Political liberals are therefore dependent upon certain forms of *social perfectionism*, that is, the cultivation of empathy and benevolence without any direction or support from the basic structure. It turns out, however, that political liberalism is an inhospitable environment for the fostering of social perfectionism. This is because it is committed to viewing reasonable people as morally entitled to pursue their chosen conception of the good life. Such a view, I argue, is hostile to social perfectionism. This means that political liberals are not only unable to demand the cultivation of the virtues they require; the very nature of political liberalism discourages citizens from viewing themselves as morally required to cultivate these virtues.

This essay concludes by asking whether this difficulty concerning the relationship between virtue and liberal outcomes can be extended to other forms of liberalism. It suggests that certain key liberal concepts, like the liberal theory of legitimacy, must be rejected if the outcomes of public justification and liberal distributive justice are to be preserved.
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Acknowledgments

I am very thankful for the comments and advice I have received from many people during the course of the completion of my dissertation. Most of all, I am indebted to my primary supervisor, Thomas Besch. His willingness to provide extremely detailed feedback and comments on multiple drafts of different chapters has consistently been inestimably helpful. I found our many conversations concerning the shortcomings of different liberal theories of legitimacy to be instructive and enjoyable. Perhaps most importantly, I am grateful for his persistent words of encouragement and support for my work in the face of the often demanding challenges of academic philosophy.

I am also greatly indebted to my secondary supervisor, Duncan Ivison. His advice early on, particularly concerning the role political liberals accord to the basic structure, helped me to clarify my own views and formulate the arguments I was trying to make. His comments on a chapter in the final stages of the completion of my dissertation also proved to be invaluable.

I am very thankful for the advice and assistance I have received from many other people in the department of philosophy at the University of Sydney. I am grateful to Rick Benitez for providing me with several teaching opportunities, as well as helpful and encouraging comments on more than one occasion. Kristie Miller was kind enough to review an early draft of one of a particularly important chapter; her advice helped me to clarify several ambiguities in my project as a whole. I have often found the postgraduate community to be a wonderful source of wisdom and support. In particular, I am grateful to Macintosh Stewart for helpful discussions about the foundations of contractualist theories, and to Andrew Donnelly for several conversations about the role of choice in the good life.

Finally, I am especially grateful for the support I have received from my family and friends. My parents, Wendy and Richard Cross, have provided me with educational opportunities I would never have had access to without their assistance, and, together with my brother and sister, James and Rebecca, ensured that I have always had a caring family to fall back on. From June 2012 on, Burwood-Croydon Uniting Church has provided me with cheap accommodation, as well as a circle of wonderful friends. Together with our sister community at Leichhardt, these people have been a constant source of strength, encouragement, and
humour, without whom I would not have been attempting to complete a PhD dissertation in the first place. What follows is dedicated to them.

*Sydney, June 2013*  
*Ben Cross*
List of Abbreviated Titles

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Chapter 1

Introduction

This is an essay about the relationship between liberalism and virtue. It claims that there are certain virtues, not rightly understood as part of the liberal tradition, which liberalism must nonetheless regard as indispensable.

This essay thus challenges the view, popular in the early-modern period, that the advent of the liberal state signifies the redundancy of individual virtue. For example, Bernard de Mandeville famously claimed that ‘Private Vices by the dextrous Management of a skilful Politician may be turned into Publick Benefits.’ Immanuel Kant, best known as an unflinching defender of the virtue of devotion to one’s moral duty, nonetheless held that such concepts are only of minimal relevance to political philosophy. ‘The problem of organising a state, however hard it may seem, can be solved even for a race of devils, if only they are intelligent.’ The great strength of liberalism was therefore considered to be this ability to generate public virtue in spite of, or even by means of, private vice. If this essay is correct, however, such claims about the redundancy of virtue are deeply mistaken. Unless the citizens of a liberal society are sufficiently virtuous, the ends of the liberal state cannot be achieved.

This claim might seem rather innocuous. In contrast to the likes of Mandeville and Kant, there is a growing consensus among today’s liberals that liberalism is likely to prove untenable, unless liberal citizens turn out to be sufficiently virtuous. There are at least some virtues, whether identical or different to pre-liberal conceptions of virtue or vice, which liberalism cannot do without. This essay is in agreement with this consensus in this respect.


A liberal state cannot achieve its ends in a society where the citizens are insufficiently virtuous. However, unlike these theorists of liberal virtue, who often hold up this newfound relationship between liberalism and virtue as an effective answer to liberalism’s perfectionist and communitarian critics, I shall argue that this is actually a symptom of a kind of incoherence within liberalism. This incoherence stems from the fact that a liberal political ethos requires certain virtues from its citizens which it can neither command, nor promote, nor reasonably expect to be present in a liberal society. Liberalism, in short, needs a conception of virtue that it cannot get.

Why is this the case? How can it be that liberalism is unable to supply the very virtues which liberalism itself identifies as necessary? The answer, I claim, is grounded in liberalism’s own identity as a restricted form of political morality. The liberal state is unable to encourage its citizens to cultivate certain virtues, if these virtues are sufficiently substantial or controversial. It is just such virtues, however, which are necessary for the attainment of liberal ends. Furthermore, the distinctive status which liberalism accords to its citizens means that it is unlikely that virtues of this particular type will be widely cultivated in a liberal society. It is on this basis that I consider liberalism to be incoherent.

The argument of this essay can therefore be seen as consisting of three essential premises:

1) Liberalism requires certain outcomes.
2) These outcomes are unattainable without the presence of certain virtues.
3) These virtues are unlikely to be present in a liberal society.

One might point out, however, that not all liberals are committed to a view of liberalism as a restricted form of political morality. Modern liberals have a series of divergent views on this matter. Perhaps the most dominant view is represented by the school of thought known as political liberalism. Political liberals hold that liberalism need not be grounded in any one


See for example Macedo’s claim that liberalism’s distinct conception of virtue demonstrates that it “stands for ideals of character far nobler than MacIntyre’s unhappy and purportedly liberal trio, ‘the Rich Aesthete . . . the Manager . . . and the Therapist’.” LV, 285; Alasdair MacIntyre, After Virtue, 3rd edition (Notre Dame, Indiana: University of Notre Dame Press, 2007), 29
comprehensive view of the good life for a human being. Rather, the state’s activities ought to be regulated in accordance with a political conception of justice. They also hold that the liberal state ought not to promote any one conception of the good life; it ought instead to be, in some sense, ‘neutral’ with respect to such claims. John Rawls is generally regarded as the most notable exponent of this view. Other political liberals include Charles Larmore, Stephen Macedo, Bruce Ackerman, and Jonathan Quong.

Other liberals regard this viewpoint as unduly narrow and restrictive. Many philosophers hold that liberalism is in fact grounded in a particularly thick and substantive conception of the good life, and, as such, the liberal state ought to promote a distinctly liberal ideal of individual perfection. This viewpoint is commonly known as liberal perfectionism. Its defenders include Joseph Raz, William Galston, Joseph Chan, Thomas Hurka, and

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10 Note that this excludes a separate form of liberalism, called comprehensive anti-perfectionism. This holds that liberalism is grounded in a substantive ideal of the good life, but retains the view that the liberal state ought to remain neutral with respect to different conceptions of the good. Ronald Dworkin and Will Kymlicka are two well-known exponents of this view. See Dworkin, Sovereign Virtue: The Theory and Practice of Equality (Cambridge: Harvard University Press, 2000); Kymlicka, Liberalism, Community, and Culture (Oxford: Clarendon Press, 1989)


12 Galston, Liberal Purposes
George Sher\textsuperscript{15}. It seems plausible that one might concede that political liberalism is unable to demand the conception of virtue which it requires, but deny that the same claim can be made about liberal perfectionism, which need not have any anxieties about asking citizens to become virtuous.\textsuperscript{16}

The main focus of this essay is political liberalism. My claim about liberalism’s incoherence is thus restricted to this particular form of liberalism. In my concluding chapter, I will test whether the particular line of critique I advance against political liberalism can be extended also to liberal perfectionism. Other than this, however, political liberalism remains my main target.

1.1 Liberalism and virtue: Which virtues? Which liberalism? And so what?

I have said that my argument will be that political liberalism depends upon a conception of virtue that it cannot attain. I refer specifically to the virtue of empathy, and the virtue of benevolence. Both, I claim, are necessary for certain outcomes which, I claim, are common to any theory that can be accurately described as liberal. Without the virtue of empathy, the liberal outcome of public justification cannot be attained. Without the virtue of benevolence, certain outcomes that form part of any liberal theory of distributive justice cannot be attained. Furthermore, the nature of the virtues of empathy and benevolence is such that they can neither be included within the scope of a state governed by political liberalism, nor reasonably expected to be independently cultivated by the citizens of such a state. Hence, I argue that political liberalism is plagued by incoherence: it requires the presence of certain virtues, despite the fact that such virtues are likely to be absent from a liberal society.

We can therefore revise the three premises above into the following form:

\begin{itemize}
  \item[16] In making this contrast between political liberalism and liberal perfectionism, I have, by and large, followed Jonathan Quong. See \textit{LWP}, 15-22
\end{itemize}
1) Political liberalism requires certain outcomes (public justification and liberal distributive justice).

2) These outcomes cannot be attained without the presence of certain virtues (empathy and benevolence).

3) It is likely that these virtues will not be present in a society governed by political liberalism.

A brief comment on 3). This is not identical to the claim that political liberalism relies on a particular conception of virtue which it cannot promote. Although I hold that this is true, I make a stronger claim than this. Not only is political liberalism unable to promote the virtues it needs; the implementation of political liberalism will, I argue, serve as a hindrance to the cultivation of these virtues. Hence, I claim that these virtues will be largely absent from a political liberal society.

My claim that political liberalism suffers from incoherence has a limited scope in at least four ways. The first of these has already been noted: my claim strictly applies only to political liberalism. Although I will tentatively suggest that my argument has troubling implications for all forms of liberalism, including both political and perfectionist forms, I am only committed to the view that this form of incoherence holds for the former.

Secondly, my argument has, at least to some extent, a limited scope within political liberalism. It is specifically aimed against the form of political liberalism advocated by John Rawls. Although I will frequently refer to the views of other prominent political liberals, my argument relates most clearly to the political liberal framework as Rawls establishes it. Most significantly, I rely heavily on Rawls’s understanding of the reasonable person. I do not try to demonstrate that this conception of reasonableness is the most appropriate one for political liberals to use; rather, I accept that if certain political liberals should prefer a radically different conception of reasonableness, it may be that certain aspects of my critique do not apply. On the other hand, there are other aspects of Rawls’s theory, such as the ideas of fair

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17 The difference between Rawls’s conception of the reasonable person, and different conceptions endorsed by other political liberals, ought not to be overstated. Consider Larmore’s conception. He sees reasonableness as signifying a potentially thinner ideal, denoting nothing more than ‘the free and open exercise of the basic capacities of reason.’ Note, however, that a commitment to reason-giving seems to imply respect for those who share this commitment. Furthermore, Larmore suggests that Rawls’s conception is derivable from his own, so
equality of opportunity and an overlapping consensus, which I will draw on substantially, but
will also present arguments in favour of their status as part of a more convincing and
charitable interpretation of political liberalism.

Thirdly, my claim that the virtues of empathy and benevolence are necessary for political
liberalism does not imply that political liberals must regard them as true values that have
intrinsic value. I only claim that political liberals must at least regard them as instrumentally
valuable for the attainment of liberal outcomes. This does not mean, however, that any who
value the outcomes of public justification and liberal distributive justice ought to be
indifferent to citizens who cultivate the virtues of empathy and benevolence for intrinsic
reasons. We can draw a distinction between the reasons why a virtue is valuable, and the
reasons why people come to cultivate this virtue. If a person thinks that benevolence, for
example, is an intrinsically good virtue, she incorporates this virtue into her daily life and
actions. Her life and actions, in turn, contribute instrumentally towards the attainment of
these liberal outcomes. Hence, even if it turns out that empathy and benevolence are only
instrumentally valuable, it is nonetheless a desirable thing for citizens to cultivate these
virtues, whether for intrinsic or instrumental reasons.

Finally, one may be tempted to ask what the significance of my argument against political
liberalism is. Should political liberalism prove to be incoherent, what does this mean for
liberalism, and for political philosophy generally? This essay deliberately avoids making
extensive prescriptive claims; it is, after all, an essay about political liberalism, not an essay
about another form of liberalism, or a non-liberal alternative. My main reason for refusing to
engage such a project in any depth here is that I want to make my particular criticism of
political liberalism a form of internal criticism. This means I will begin from and assume
only those premises that I understand political liberalism (at least, in its distinctly Rawlsian
form) to be committed to also. For example, I do not attempt to argue that the liberal
outcomes of public justification and distributive justice, which I identify as contingent upon
the presence of the virtues of empathy or benevolence respectively, are necessarily aspects of

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18 Galston offers a clear distinction between liberal virtues that are intrinsically valuable, and those that are
instrumentally valuable. He presents his own distinct form of liberal perfectionism as including both forms.
See Liberal Purposes, 224-232.
any *true* or *correct* form of political philosophy generally. Rather, I simply seek to show that these are outcomes that *any* form of liberal theory requires; and that these virtues are necessary for these outcomes.

In the concluding chapter, I will also sketch some conditions that *any* viable approach to political philosophy must satisfy, in light of this criticism of political liberalism. My claim here, in short, is that, insofar as something like public justification and something like liberal distributive justice are important aspects of political philosophy and desirable outcomes for any just society, it follows that *justice cannot be regarded solely as a matter for the domain of the political*. The key agents of justice are not coercive political institutions, even those that exercise their power in a way that is justifiable to their citizens; rather, the key agents of justice are people and communities capable of sustaining a shared commitment to cultivating and practicing those virtues which are necessary for the realisation of justice. This, however, is the sole extent to which I offer any form of alternative theory.

### 1.2 What is political liberalism?

Political liberalism can be understood as a way of answering the requirements of the liberal principle of legitimacy. Rawls describes this principle as follows:

> . . . our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.\[19\]

For Rawls, the essential focus of this principle of legitimacy is the ‘constitutional essentials’ of a well-ordered society. Some political liberals prefer an interpretation of this principle that instead utilises a broader scope, seeking to include all kinds of exercises of state power.\[20\]

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\[19\] *PL*, 137

\[20\] See for example *LWP*, 256-289; Micah Schwartzman, “The Completeness of Public Reason”, *Politics, Philosophy and Economics* 3 (2004): 201-203. I will henceforth use the phrase ‘political justification’ to refer to the justification of the constitutional essentials *as a minimum* for the legitimacy of the liberal state.
However, we may understand the principle to refer to the general idea that the legitimacy of the state is derived from the extent to which it is acceptable to its citizens. 21

What is it about this principle that differentiates political liberals from their perfectionist counterparts? This principle of legitimacy is, after all, a liberal principle of legitimacy, as opposed to a political liberal principle of legitimacy. It may be that many liberal perfectionists may also share allegiance to this principle. As an example, let us briefly turn to the form of liberal perfectionism advocated by Joseph Raz. A comparison between political liberalism and Raz’s liberal perfectionism will enable us to identify two distinctive aspects of the political liberal interpretation of the liberal principle of legitimacy.

Raz’s idea of the legitimate state is expressed in what he refers to as the Normal Justification Thesis. It may, at first glance, appear to offer theory of legitimacy that is an alternative to the liberal principle:

. . . the normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him...if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly.22

The Normal Justification Thesis seems to appeal to the idea of expertise, rather than consent or justifiability, as a way of grounding the legitimacy of the liberal state. Understood this way, liberal institutions are justified by means of their ability to lead individuals toward the most rational courses of action. This might be contrasted with the idea of public justification, according to which liberal institutions are justified insofar as they are justifiable to those who are subject to them.23 However, there is a way in which the Normal Justification Thesis can be understood as one variation of the liberal principle of legitimacy, if we consider precisely what kind of person it is that liberalism regards as the object of justification. Suppose we say

22 Raz, The Morality of Freedom, 53
23 Quong, for instance, suggests that liberal perfectionists generally reject the idea that liberalism is based around the idea of public justification. LWP, 3
that public justification is addressed to people who are fully knowledgeable experts, capable of determining what the best choices are for them to make. Insofar as the liberal perfectionist state also has the same expertise, then people will regard it as justified. In other words, the state is justified if and only if people who are fully competent reasoners consent to its authority.

How does political liberalism differ from this? Does it simply assume that people are less intelligent, or less capable of distinguishing good choices from bad ones? Political liberals will deny that any such assumptions of scepticism or epistemic incompetence are in any way built into their approach. But they do generally concede that public justification is not addressed – primarily, at least – to all people. Rather, public justification is addressed to all reasonable people. If the liberal state’s institutions are justifiable to all reasonable people, then the liberal state is legitimate. But a reasonable person, for political liberals, is not the same thing as a fully competent reasoner. The reasonable, for political liberals, is as much a moral concept as it is an epistemic concept, altogether distinct from the concept of the rational. For Rawls, a reasonable person possesses two essential characteristics: a willingness to propose fair terms of cooperation, and a willingness to abide by the 'burdens of judgment' – an account of how reasonable disagreement is possible. This, then, points us towards a first distinctive feature of the political liberal idea of legitimacy that distinguishes it from liberal perfectionism: whereas the latter seeks to address political justification to all people in their capacity as fully competent reasoners, the former addresses political justification to all reasonable people.

One might still ask whether this difference is of any practical significance. Even if we adopt the political liberal standpoint and say that political justification should be addressed to all reasonable people, is it not still the case that the state should organise itself in such a way as to provide the best possible justification within this limited scope? Shouldn’t political liberals seek the most completely rational political justification that assumes that people who accept the values of reasonableness are also fully competent reasoners, whose rational powers

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24 See LWP, 221-255
25 LV, 71; LWP, 8
26 PL, 51-54
27 PL, 48-54. Larmore endorses an alternative conception of reasonableness based around ‘the free and open exercise of reason.’ Larmore, “The Moral Basis of Political Liberalism”, 602
ought to produce a fully rational agreement? The answer to these questions provides us with a second key difference between the political liberal and the liberal perfectionist ideals of legitimacy. Political liberals deny that the push towards a comprehensive rational agreement on all matters is the correct one, on account of the fact of reasonable pluralism. Reasonable people disagree on many fundamental questions, without actually impugning their reasonableness. While it is true that Raz’s liberal perfectionism has its own conception of ‘value pluralism’, such a form of pluralism has a considerably different nature. According to Raz’s value pluralism, there are a variety of different values, such that reason may turn out to offer only limited guidance in choosing between them. Yet reason does establish that these values are good values, and requires some measure of unanimity among the citizenry of experts concerning this claim. Personal preferences become relevant only ‘once reasons have run their course.’ There is no reasonable disagreement here; only different preferences once the directives of reason have been identified and followed through.

For political liberals, on the other hand, reasonable citizens cannot be counted on to reach agreement on such matters. The different views held by reasonable people need not be regarded as mere expressions of preference; rather, they can still each represent fully reasoned views, but views where disagreement is reasonable. Reasonableness does not therefore exhaust the limits of reason. Two people may be reasonable, and disagree over a particular moral matter, while holding that reason may still play a role in deciding between each view. But this does not prevent each view from remaining a reasonable one.

We have, in this way, seen how the political liberal interpretation of the liberal principle of legitimacy differs from any liberal perfectionist version in at least two ways. We may summarise each of these differences in the following two theses:

**Scope of Political Justification (SPJ):** The justification of political power ought to be acceptable to all reasonable people.

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29 Raz, *Engaging Reason*, 48
**Fact of Reasonable Pluralism (FRP):** reasonable people can disagree with each other on many matters without impugning their reasonableness.

From SPJ and FRP, we arrive at a third thesis that summarises the political liberal idea of legitimacy; call it the Shareable Justification Thesis (SJT):

**SJT:** The justification of political power ought to be acceptable to all reasonable people, who may reasonably disagree with each other.

Contrast this with a possible representation of a Raz-type version of the liberal principle of legitimacy; call it the Perfectionist Justification Thesis (PJT):

**PJT:** The justification of political power ought to be acceptable to all competent reasoners, who can be expected to reach rational agreement insofar as they reason competently.

Political liberalism, then, can be seen as distinguishable from other forms of liberalism by a commitment to SJT. But this places it in something of a conundrum: if reasonable people disagree, to what extent can the exercise of political power (or anything else, for that matter) be justifiable to all reasonable people? This means that an essential task for political liberals is to identify the limits of reasonable disagreement. Is there anything that reasonable people can be expected to reach a consensus on? And at what point does disagreement become unreasonable? These are questions that will be taken up in the early part of the following chapter.

**1.3 Preview**

The body of this essay is divided into three parts. Part I (chapters 2-4) is concerned with establishing the necessity of empathy for the purposes of political liberalism. Part II (chapter 5) seeks to do likewise for the virtue of benevolence. Part III (chapters 6-7) assess the extent to which these virtues can be accommodated within the framework of political liberalism.
‘Public reasoning’, according to Rawls, ‘aims for public justification.’ Chapters 2 and 3 argue that political liberals need to cultivate two separate duties, in addition to the duty of public reason, in order to meet this aim of public justification. In Chapter 2, I argue that political liberals need to practice a ‘duty of engagement’, where citizens familiarise themselves with the comprehensive doctrines held by other citizens, in order to test their ability to translate into political values. Without such a duty, political liberals will find themselves excluding the views of certain citizens, whose views they must later come to regard as unjustifiably excluded. In Chapter 3, I argue that, since political liberals are seldom justified in dismissing a particular view because it can be deemed ‘unreasonable’, a ‘duty of conjecture’ must be adopted. Citizens fulfil this duty when they offer dissenters reasons for opting into the political consensus, which are acceptable from the point of view of the dissenter.

In chapter 4, I show how both of these duties – engagement, and conjecture – require the exercise of the virtue of empathy. I distinguish two aspects of the virtue of empathy, namely, emotional infection, and cognitive simulation. I argue that both of these aspects are necessary in order for citizens to successfully meet the requirements of these duties. Political liberals must therefore view the virtue of empathy as necessary for public justification.

In Chapter 5, I turn to the virtue of benevolence, and its indispensable role in achieving the requirements of liberal distributive justice. Drawing on the arguments of G.A. Cohen, I argue that a society that is sufficiently deprived of the virtue of benevolence will be unable to eliminate absolute poverty in its citizens, nor, most likely, will it be able to guarantee fair equality of opportunity. Given, as I claim, that these are two outcomes which are intolerable for any liberal idea of distributive justice, it follows that political liberals must also regard the virtue of benevolence as a necessary virtue.

Given that political liberals require the cultivation of both empathy and benevolence, the question now becomes: to what extent can political liberals find space for them within the confines of political liberalism? Can the state promote these virtues in a way that is consistent with a commitment to political liberalism? Chapter 6 denies that this is possible. Political liberals may consistently incorporate a particular virtue into a conception of justice

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only if it can be regarded as a political virtue. I argue that a virtue can be a political virtue only if it satisfies what Rawls refers to as the publicity condition. Since, however, the virtues of empathy and benevolence are incapable of meeting the requirements of the publicity condition, they cannot be regarded as political virtues, and hence, cannot be consistently promoted by a political liberal state.

Since political liberals cannot actively command, or even encourage citizens to practice the virtues of empathy and benevolence, they must hope that a political liberal society, where citizens are left free to pursue different conceptions of the good life, will be conducive to their cultivation. In Chapter 7, I argue that this hope is misguided. Citizens can be regarded as free to pursue their own conception of the good life in one of two different ways. Firstly, it may mean that they can pursue their chosen conception of the good life without coercive interference, either from the state or from others. I call this the coercion interpretation. Secondly, it may mean that they can regard themselves as morally entitled to pursue their chosen conception, safe in the assurance that there exist no ethical duties that can require them to do otherwise. I call this the moral interpretation. If, as I argue, political liberals are committed to the moral interpretation, then it follows that a political liberal society will not be conducive to the flourishing of any particular doctrine which holds that particular virtues or ideas of the good life are important, true, or valuable, regardless of whether they are chosen or not. Citizens of a political liberal society will therefore be reluctant to view themselves as required to cultivate the virtues of empathy or benevolence. Hence, it is likely that a political liberal society will effectively deprive itself of the virtues that it needs.

Chapter 8 brings this essay to a conclusion. In addition to providing a summary of the arguments provided in previous chapters, it also includes three other aspects: firstly, some speculation on what shape a society governed by political liberalism might take, in light of its inability to generate the virtues it requires for its necessary outcomes; secondly, a brief argument in favour of the view that liberal perfectionism is hardly any better suited to cultivating the virtues liberalism is in need of; thirdly, given that liberal perfectionism is therefore not a more attractive alternative, I propose some basic features which any alternative approach to questions of justice and political philosophy must include if it is to be viable. The arguments of this essay, I suggest, point towards the limits of liberal justice: we cannot maintain that the creation of a just society is something that can be left to coercive political institutions; nor can we maintain that it is something that can be attained through
reasonably shareable means. Justice is therefore inescapably ‘demanding’: it burdens citizens with unavoidable and exacting duties and responsibilities that are likely to be the subject of disagreement and controversy.
Part I
Public Justification and Empathy
Chapter 2

Political Liberalism, Temporality and the Boundaries of Public Reason

One of the most pressing challenges for contemporary liberal political philosophy is the formulation of a theory of political deliberation. How can citizens with deep and irreconcilable views find ways of engaging in the forum of political debate, in such a way as to meet the requirements of the liberal principle of legitimacy and the ideal of public justification? The key device used by political liberals in service of this end is the concept of public reason. ‘Public reason’, as Rawls stresses, ‘aims for public justification.’ Political liberals place citizens under a moral duty of public reason, which requires them to conduct their political deliberations only on the basis of those reasons which are shareable by all reasonable citizens. Non-public reasons, on the other hand, are reserved for the background culture of civil society. In this chapter, however, I will argue that the commitments of political liberalism also entail a willingness to engage with the comprehensive doctrines that lie outside this domain. Without this broader view of public reason, political liberals may find themselves engaging in a systematic process of exclusion, which they themselves must necessarily regard as unjust.

In making this claim, I do not deny that Rawls and others have also tried to allow for a limited space for comprehensive doctrines in the business of political debate. For example, Rawls’s ‘proviso’ allows for citizens to introduce comprehensive doctrines at any time, provided that they offer public reasons in due course. The role for non-public reasons in political debate which I am arguing for here can be further clarified by distinguishing between a justificatory role on the one hand, and a duty of engagement on the other. According to the former, a non-public reason can provide an appropriate justification for an exercise of state power in more or less the same way as a public reason. According to the latter, public justification is still conducted in accordance with the premise that only

31 This chapter was presented as a paper at the 2012 New Zealand Australasian Association of Philosophy Conference in Wellington. I am grateful for the comments and feedback I received at this presentation. I am also especially grateful to Kristie Miller for her extremely valuable comments and advice on an earlier version.
33 PL, 453. This marked a change to the more strictly exclusive idea of public reason elaborated in earlier publications of political liberalism, which did not include the proviso. See PL, 212-254.
reasonably shareable values are genuinely justificatory; however, the demands of public justification also require citizens to engage with the various comprehensive doctrines and non-public reasons that their fellow citizens might happen to hold. It is this latter view which I wish to argue for here; a coherent political liberalism must simultaneously engage with both public and non-public reasons, all the while holding that it is only the former that can play a justificatory role. I do not claim that this position is a Rawlsian one; questions of Rawlsian exegesis on this matter have tended to focus on whether Rawls allows for an actual justificatory role for non-public forms of reason, or a mere explanatory role. I assume that political liberalism is committed to the latter form, where non-public reasons do not in themselves justify key political positions. However, I will argue that a society that makes public reason the sole focus for political debate will most likely involve itself in the political propagation of actions and policies which it must eventually come to regard as unjust.

This chapter is in five parts. I begin with a brief interpretation of what I understand to be the basic features of political liberalism’s conception of public reason. It emerges that political liberals hold that the political values, and only the political values, provide appropriate justificatory material for public reason. In the second section, I engage in a more detailed reconstruction of Rawls’s idea of a political value. I arrive at the conclusion that Rawlsian political liberals are more or less committed to the view that only the existing set of liberal political values, such as liberty and equality, can be counted as political values. In the third section, I introduce an argument in support of the claim that if political debate and discourse engages only with this limited set of values, then political liberalism will find itself committed to rejecting the claims of people, whose grievances it will often later come to recognize as legitimate. Call this ‘the argument from temporal exclusion’. The best solution available to political liberals, I claim, is to balance the exclusionary side-effects of the duty of public reason with what I call a duty of engagement, which requires citizens to pay close attention to each other’s comprehensive doctrines, in such a way that enables them to expand their existing understanding of the content of political justice. In the fourth section, I will place my argument in the context of contemporary debates over liberal theory by comparing and contrasting the duty of engagement with three different positions, namely: radical democracy, feminism, and Rawls’s own revised conception of public reason. In the final

section, I will conclude with some brief remarks on the options available to political liberals who wish to resist the claims that I make here.

2.1 Political liberalism, public justification and public reason: foundations

Let us return to the principles which we found to be at the heart of political liberalism in 1.2. We said that political liberals begin with a version of the liberal principle of legitimacy, which, we found, is distinguished from other versions by means of its composition of two distinctive elements:

**SPJ:** The justification of political power ought to be acceptable to all reasonable people.

**FRP:** reasonable people can disagree with each other on many matters without impugning their reasonableness.

From these two claims, we arrived at the Shareable Justification Thesis, which effectively constitutes the most complete statement of the political liberal interpretation of the liberal principle of legitimacy:

**SJT:** The constitutional essentials and matters of basic justice ought to have a justification that can be shared by all reasonable citizens who may reasonably disagree on many matters.

I will briefly discuss two potential difficulties that arise from this understanding of the liberal principle of legitimacy, and how political liberalism is capable of responding to each. The first is as follows. SJT stipulates that reasonable people are the authoritative judges of the exercise of political power. The legitimacy of a government stands or falls according to the extent that it proves to be acceptable to reasonable people. But what if SJT is itself not acceptable to reasonable people? If reasonable people can reject either one of SPJ or FRP, then they can also reject SJT. If this were possible, it would seem to present a potentially devastating blow to political liberalism.

This difficulty is only troubling, however, if it is conceptually possible for reasonable people to reject SPJ or FRP. Rawls's conception of reasonableness denies that this is possible. It
includes two fundamental ideas: the importance of fair terms of cooperation; and the burdens of judgment:

Persons are reasonable in one basic aspect when, among equals say, they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so.\(^{36}\)

The second basic aspect . . . is the willingness to recognise the burdens of judgment and to accept their consequences for the use of public reason in directing the legitimate exercise of political power in a constitutional regime.\(^{37}\)

The first of these aspects of the reasonable person supplies the need for shareable political justification, while the second is part of what shapes the form this justification must take. If many of our most deeply held normative considerations are the subject of reasonable disagreement, then a shareable political justification can only be arrived at by means of those values which can be accepted across the wide spectrum of views that exist in a democratic society.\(^{38}\) As it turns out, these two features of the reasonable person largely parallel SPJ and FRP respectively. Or at least, they are similar enough to also entail a clear commitment to SJT. Hence, political liberals can avoid this difficulty by pointing out that reasonable people are, by definition, committed to SJT.\(^{39}\)

The second problem, alluded to in 1.2, is that SJT only directs political liberals to look for those values which can be accepted by all reasonable people. But what if it turns out that

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\(^{36}\) PL, 49.

\(^{37}\) PL, 54

\(^{38}\) Here I follow Leif Wenar’s claim that the multitude of ways in which Rawls uses the idea of reasonableness can be best understood with reference to his conception of the reasonable person. However, I disagree with his claim that the burdens of judgment play no significant role in the formation of this conception. Without them, we are offered no assurance that the shared justification required by the idea of fair terms of cooperation will respect reasonable disagreement. See “Political Liberalism: An Internal Critique”, Ethics 106 (1995): 38

\(^{39}\) I acknowledge that this does not completely avoid the problem. It may, indeed, seem to push the question back one step further: if reasonable people are, by definition, committed to accepting SJT, then why should the idea of the reasonable person itself be acceptable? However, in this case the problem becomes one of hermeticality, rather than incoherence. See Thomas Besch, On Practical Constructivism and Reasonableness, PhD Diss., University of Oxford 2004
there are no such values? Political liberals hope to dispel these fears by pointing to *political*
values, such as liberty and equality, as reasonably shareable values. Accordingly, the great
hope of political liberals is that people who disagree on all manner of different issues might
nonetheless agree that these political values are extremely important. Hence, political liberals
are also committed to a claim about the beliefs of reasonable citizens in a democratic society;
call it the Acceptance of Political Values Thesis (AT):

**AT:** Political values, and only political values, can be accepted as very important values by
people in a democratic society who may reasonably disagree on comprehensive matters.

If AT is true, then we may seem to have a good reason to impose a negative discipline on
political discourse concerning matters of basic justice, where reasons that are not based on
political values are excised from justification. From SJT and AT, political liberals derive a
third claim. Since the political values are the only values that can be shared by citizens who
reasonably disagree on other matters, then they are to become the basis for a shareable
justification of any conception of justice which is to govern the exercise of political power.\(^{40}\)
They thus provide a language for *public reason*, understood as the kind of reasoning citizens
are to practice in political justification. We may therefore call this third claim the Values of
Public Reason Thesis (VT):

**VT:** The values that play a role in public reason, understood as those reasons that can be used
in political justification, consist of the political values, and no other values.

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\(^{40}\) Much of the literature on political liberalism seems to reflect a confusion over what kind of acceptance is
required by SJT. For example, consider the following passage from Micah Schwartzman: ‘A political
justification must be public in two senses. First, it must be based on *shared* or public reasons. It must appeal to
considerations that citizens *can accept* as free and equal members of a liberal society.’ “The Sincerity of Public
rather than ‘shared’, as I do throughout this essay, is to interpret the requirements of public justification in a way
that is simultaneously stronger and weaker than the alternative: stronger, because it includes any possible kind
of reasonable person, not just those who may be found in one particular liberal society; weaker, because it seems
to require that political values be only compatible with the doctrines of reasonable citizens, rather than actually
accepted by them. For reasons which will become clear in the following section, I believe that ‘shareable’ is the
correct interpretation because it is most consistent with a more rigorously anti-perfectionist position.
This much, I take it, is orthodox Rawlsian exegesis. If one is not committed to VT as formulated above, then one is not a political liberal. In the following section, however, I acknowledge that much of what I will argue may seem to be at odds with the expressed or implied views of Rawls and other political liberals. I will, however, try to provide a critical interpretation which, I believe, draws out what Rawls is actually committed to saying, on the assumption that his political liberalism can be made internally coherent.

2.2 Politicality

What makes a value count as political? For Rawls, a political conception of justice is a product of three factors: a scope of application directed towards the basic structure of society; shareability among reasonable people; and a relationship to the historical democratic tradition. The role of each of these factors in determining the politicality of values is not always clear. Permissible conceptions of the good, for example, are said to be constituted by two strangely similar criteria: shareability among reasonable people, and independence from comprehensive doctrines. A good place to start might be to suppose that the three factors that define a political conception of justice are all necessary conditions for the politicality of a value, and that all three conditions, when taken together, are sufficient. If this is the case, then the list of contemporary political values identified by Rawls as ‘liberal political values’ is a permanently exhaustive list, given the assumption of a politically liberal society. This is because of the fact that in such a society, where VT is accepted and the moral duty of public reason observed, only those values that are currently applied to the basic structure, and part of the democratic tradition as hitherto understood, can figure in the domain of public reason. A new value, that may be shareable, but not yet political in scope or tradition, cannot become political in scope or tradition, because the duty of public reason forbids it from doing so. This would then entail a stronger claim about the nature of shareable values in a political liberal society. Recall, from SJT, that political liberals believe that political justification must be done on the basis of reasonably shareable values. From this, we may plausibly infer that political liberals believe that any reasonably shareable values are eligible for usage in political justification. But since political liberals believe that political justification must be

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41 See PL, 11f.
42 PL, 175
43 PL, 224
done on the basis of political values, and only political values, and that our current list of political values is exhaustive, it follows that there are no other shareable values. Hence, this particular understanding of politicality would prompt a revision of our initial renditions of AT and VT:

**AT**$_1$: The existing set of liberal political values, and only these values, can be accepted as very important values by actual people in a democratic society who may reasonably disagree on comprehensive matters.

**VT**$_1$: The values that play a role in public reason consist of the existing set of liberal political values, and no other values.

Note that all I have claimed so far is that if we take all three of Rawls’s criteria for a political conception of justice as necessary and, when taken together, sufficient conditions for the politicality of a value, then we are led to the revised versions of AT and VT. There may seem to be something intuitively unappealing about these revisions. Let us imagine that a more or less well-ordered society has been formed and citizens generally abide by the duty of public reason, offering only political values as a basis for political justification. Now suppose Amy is a rather clever citizen who proposes something like the following: ‘our political deliberations have so far failed to take value X into account. And X is the kind of value that can be shared by reasonable people. Therefore, we ought to take X into account in our political deliberations from now on.’$^{44}$ Call this the ‘clever citizen objection’. According to the clever citizen objection, Amy’s intuitively plausible proposal is rendered unintelligible by AT$_1$ and VT$_1$. A more accurate and charitable representation of political liberalism, according to the objection, would be to understand the politicality of values solely in terms of reasonable shareability: a value ought to be considered political if and only if it is shareable among reasonable people. I will now try to defend AT$_1$ and VT$_1$ from this particular objection.

Let us begin by calling our attention to two particular features of political liberalism that seem to lend at least some support to the revised versions of AT and VT. The first of these is the fact of reasonable pluralism. Political liberals hold that reasonable people may disagree

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$^{44}$ I owe this important point to an anonymous reviewer.
on many matters without impugning their reasonableness. There seems to be a certain degree of tension between the fact of reasonable pluralism on the one hand, and the possibility that virtually any reasonable idea might one day become shareable between reasonable people. This tension is further heightened by the fact that Rawls claims that the current state of reasonable pluralism ‘is not a mere historical condition that may soon pass away; it is a permanent feature of the public culture of democracy.’45 The permanence of reasonable pluralism seems to strongly count against the possibility that any reasonable value might come to be shareable one day. In response to the ‘rationalist believer’ who claims that her views can pass the requirements of public justification, Rawls reluctantly concedes that political liberalism must insist that this is a denial of reasonable pluralism, and is therefore mistaken.46 Political liberals therefore cannot consider the possibility that just any reasonable value can become shareable among reasonable people; this is possible only for those values that cannot be the subject of reasonable disagreement.

Now at this point, we may ask where political liberals seek to set the limits of reasonable pluralism. Presumably, disagreements over issues in philosophy of mind, for example, are reasonable, whereas disagreements over matters like the permissibility of genocide are not. We may plausibly add judgments on comprehensive matters to this list – political liberalism presumes that disagreement on comprehensive matters is permanent reasonable disagreement. But what else? Does the scope of reasonable pluralism extend no further than comprehensive issues, so that Amy need only assure herself that her proposed new political value is not comprehensive? The second feature of political liberalism which I refer to here helps us begin to formulate an answer to this question. Political liberals, as I have earlier suggested, seek reasonable shareability. A political justification must be acceptable to, rather than accepted by, all reasonable people. The key difference here is that the former option requires that justification is addressed to all kinds of reasonable people, holding a vast variety of comprehensive doctrines. Otherwise, if we consider a society in which all reasonable people happen to hold the same perfectionist doctrine P, then P could form a determining basis for political justification.47 At the risk of offering a merely formalistic account, we can therefore surmise that political liberals are committed to saying that reasonable disagreement ends only

45 PL, 36. Italics are mine.
46 PL, 152f.
where the requirements of reasonableness begin. This is a very demanding criterion for Amy’s proposed new political value to meet. Even if she could persuade all reasonable people that her proposed value is an important one, this is insufficient grounds for it to be considered a political value. What she needs to do is to demonstrate that it is impossible for her value not to be at least compatible with the views of any conceivable reasonable person. While political liberals think that the existing liberal political values, such as liberty and equality, can pass this demanding test, it is perhaps doubtful that any other such values could do so.

These two features of political liberalism, I take it, give us a plausible, if not decisive case, for thinking that political liberals are committed to the revised versions of AT and VT, which exclude all values from political justification other than the existing set of liberal political values. If Amy’s value is comprehensive in character, then political liberals cannot regard it as a political value. Furthermore, even if Amy’s value is not comprehensive, it must pass the test of reasonable *shareability* – an extremely demanding test, to say the least. Yet advocates of the clever citizen objection still seem to have several responses available to them. One such response is that it is not clear why the permanence of the fact of reasonable pluralism, together with the requirement of reasonable shareability, should lead us towards the revised versions of AT and VT, which stipulate that the *existing set of political values* are able to meet the demands of SJT. It is unclear why Rawlsian political liberals ought to prefer any existing set of political values to the value which Amy proposes; it may well turn out that Amy’s proposed value cannot meet the requirements of politicality, but what features of values like liberty and equality make them so different?

We can, however, point to at least one important difference between existing political values, and Amy’s proposed value. The former have been part of the democratic tradition, and applied to the basic structure; the latter has not. This is one of Rawls’s fundamental assumptions: that traditional democratic values like fairness, equality, and so on, are reasonably shareable. It may well be that Rawls most likely views the Western democratic tradition as a starting point, rather than a complete set of political values. We are told that justice as fairness, for instance, ‘starts from within a certain political tradition and takes as its fundamental idea that of society as a fair system of cooperation over time, from one
generation to the next. This tradition may only be a starting point, but it is nonetheless a starting point. Hence, political liberals can distinguish between the existing set of political values on the one hand, and Amy’s proposed new value on the other.

There is, however, at least one other response available to the proponent of the clever citizen objection. It might well be granted that the existing set of political values is reasonably shareable, and that it is very difficult for any new value to become so. But since the democratic tradition is only a starting point, it should not be a criterion for any new political value. In short, if a value is reasonably shareable, then it ought to be considered a political value and embedded in the democratic tradition. Let us therefore consider the plausibility of viewing reasonable shareability as the sole criterion for the politicality of a new value. When we do this, we find that this leads us to an understanding of the requirements of public justification that hardly differs at all from AT\(_1\) and VT\(_1\). It is true that permanence of the fact of reasonable pluralism, taken together with the requirements of compatibility with any possible reasonable person, do not show that reasonable shareability is not a sufficient condition for politicality; rather, they provide an indication of just how demanding the requirements of reasonable shareability are, such that it is extremely difficult (though perhaps not technically impossible) for a new value to become shareable among reasonable people. The strength of these demands thus leads us towards a position essentially identical to AT\(_1\) and VT\(_1\). Hence, we have good reason to believe that, whichever criterion we choose for the politicality of values, we are more or less committed to the view that the existing crop of political values are the only kind of values that can be used in political justification.

It may be that the intuitive force of the clever citizen objection still persists. Even though it appears to push towards a conclusion that is inconsistent with political liberalism, we may still feel that Amy’s proposal has a fair measure of appeal to it. If the political values are fixed permanently, so that they cannot be altered or added to, then political liberalism does seem captive to a rather unattractive form of conservatism. If this were the case, this would seem to confirm the line of criticism advanced by some of Rawls’s most prominent radical democratic and feminist critics: that political liberalism attempts to fix the content of the political once and for all, and in so doing legitimates the exclusion of antagonistic

\[48 PL, 14\]
viewpoints. Rawls, after all, stresses that the content of public reason is specified ‘by a family of political conceptions of justice, and not by a single one.’ If political liberals themselves acknowledge that the content of political justice isn’t fixed for eternity, how can the revised versions of AT and VT be correct? In response to this, we can point out that, while political liberals must hold that the status of the existing political values as important values may be beyond reasonable disagreement, their meaning, and their ordering in relation to each other, is not. The existing political values can be interpreted in many different ways, and may be found to have a broader scope of application than previously thought. Consider, for example, the way the application of value of equality has been progressively expanded to remove distinctions of class, of race, and gender. If Amy is proposing that a particular issue is not given proper consideration by the existing formulation of the political values, then it may be that a reformulation can do proper justice to her concerns. The political values can also be ordered in different ways, so that different values are given different weightings when considered against rival values. It may be that an alternative ordering of the political values may also suffice to accommodate the point Amy is trying to make. Hence, the revised versions of AT and VT are still able to allow for revisions to the content of public reason.

Let us take stock of what we have found thus far. Political liberals hold that political justification must be done only on the basis of values that can be shared by all reasonable people. And insofar as Rawls’s three criteria for politcality of a conception of justice – application to the basic structure, reasonable shareability, and linkage to the democratic tradition – are also indicative of the politcality of a value, political liberals are committed to holding that the existing liberal political values are the only values that can be shared by all reasonable people (AT₁), and as such, are the only values that can be used in political justification (VT₁). Against this interpretation of political liberalism, we have considered the clever citizen objection, which argues that citizens ought to be able to add to the list of political values. In reply to this objection, we saw how two features of political liberalism – the permanence of the fact of reasonable pluralism, and the requirement of reasonable


50 PL, 450

51 This fits with Wenar’s interpretation of political liberalism not as a liberal theory of justice as such, but more as a liberal theory of legitimacy, positing a series of requirements which any reasonable liberal theory of justice must meet. See Leif Wenar, “The Unity of Rawls’s Work”, The Journal of Moral Philosophy 1 (2004): 267
shareability – create an extremely demanding threshold test for any new value to meet, such that it is unlikely (though not impossible) that any new value is capable of meeting this standard. We then considered three separate responses on behalf of this objection. First, in reply to the claim that the criterion of reasonable shareability does not discriminate between the existing political values and any potential new ones, we pointed out that the democratic tradition provides a starting point for Rawlsian political liberals, allowing them to assume that the importance of the existing political values is not subject to reasonable disagreement. Second, in reply to the suggestion that reasonable shareability ought to be the sole criterion for any potential new political value, we saw that demands of this criterion for any potential new political value, we saw that demands of this criterion are such that they allow very little space, if any at all, for new political values. Finally, in reply to the point that political liberalism does not seek to fix the content of political justice once and for all, we pointed out that this degree of openness can be accounted for within different understandings or orderings of the existing political values, without introducing any new ones.

It is true, however, that demandingness is not the same as impossibility. The case for AT₁ and VT₁ is not completely decisive. What we can do, at this point, is identify two conclusions:

1) It is very difficult, to say the least, for a citizen to try to introduce a new political value into the content of public reason.

2) Political liberalism contains a kind of bias towards the existing political values, because they are assumed, in advance, to be reasonably shareable on account of their participation in the democratic tradition.

In the following section, however, I will introduce an argument that suggests that this bias towards the existing political values is internally problematic for political liberalism, since its understanding of these values is self-correcting. This problematic aspect, I claim, is exacerbated by a fully exclusive conception of the duty of public reason. According to such a conception, citizens refuse to engage with non-political values in political discourse and deliberation. Such citizens adopt the duty of public reason, without also following what I describe as a duty of engagement. In such a society, any consensus on a political conception of justice is likely to ignore what it must later come to recognize as serious forms of injustice. Since the legitimate interests of some people may not be properly represented by the ordering or understanding of the political values at a particular point in time, a conception of political
deliberation that relies exclusively on political values cannot provide a proper public justification of a political conception of justice.

2.3 The Argument from Temporal Exclusion

We have acknowledged that the content of public reason is not fixed, but allows for a changing and variable understanding of political justice. Let us explore the full significance of this claim.

What are the factors that may change the accepted political conception(s) of justice? Insofar as public reason is an approach to political communication and debate, rather than a political policy, accepted conceptions of justice are naturally altered by the viewpoints that can be communicated through public reason. Contentious issues such as abortion become matters for political justice only insofar as they can be articulated in terms of political values. Issues that may have only found expression in comprehensive doctrines at a particular point in history may, in the fullness of time, come to be expressed in terms of the political values. Hence, certain aspects of societal life, previously considered outside of the range of the public reason, may, in time, come to be included within its scope; what was once regarded as a private matter may, in time, be regarded as a matter for political justice. The important point here is that prior to the moment when the issue in question is explained and argued for in terms of political values, it is excluded from the jurisdiction of public reason and from political recognition. Yet after this moment, this exclusion will be considered unjust in hindsight.

Political liberals may complain that this suggestion is overly hasty. Of course political liberalism allows that not all concerns about political justice will be met by public reason. Political liberals make no secret of the fact that racists, bigots, fundamentalists and the like will face exclusion from public justification; their exclusion is typically seen as unproblematic, if not necessary. What makes these particular exclusions legitimate is that it is only unreasonable views that are being excluded. Reasonable views, on the other hand, have faced, and will continue to face, no such exclusion. The historical paths of modern liberal societies, however, seem to suggest that this is not so. The history of constitutional

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52 Quong, *Liberalism Without Perfection*, 290-314
democracy is littered with instances of groups who, finding themselves marginalized from public reason, take part in a struggle to conceptualize their viewpoints in the language of political values, after which the democratic consensus has recognized their claims as legitimate from the political point of view, involving what Miranda Fricker describes as ‘exceptional interpretations of some of their formerly occluded experiences.’\(^5\) Concentrating on the progression of women’s issues in the 20th century, Fricker cites Susan Brownmiller’s documentation of the collective efforts of a group of women trying to find a way to make sense of their experiences in the workplace:

> The ‘this’ they were going to break the silence about had no name. ‘Eight of us were sitting in an office of Human Affairs,’ Sauvigne remembers, ‘brainstorming about what we were going to write on the posters for our speak-out. We were referring to it as “sexual intimidation,” “sexual coercion,” “sexual exploitation on the job.” None of those names seemed quite right. We wanted something that embraced a whole range of subtle and unsubtle persistent behaviors. Somebody came up with “harassment.” Sexual harassment! Instantly we agreed. That’s what it was.’\(^4\)

It is plausible to refer to this as an instance of hermeneutical injustice; a part of society, whose interests were hitherto excluded from the political consensus, were required to develop the vocabulary necessary to interpret their experiences and gain recognition for their viewpoint within the framework of public reason. Let us refer to this point in time when the group in question finds a way of articulating their claims in terms of political values as the ‘hermeneutical moment’. These moments involve a dual reinterpretation of a group’s experiences on the one hand, and the public political culture on the other hand. In this way, the group is led to the conclusion that the political values can, after all, offer an account of their sense of injustice. Hermeneutical moments are thus a primary instance of the dynamism of public reason: what was once excluded, unrecognized, or dismissed as unreasonable comes to be recognized as a central component of political justice. Because of this aspect of public reason, we can see how it has the capacity to exclude people who may not fit so comfortably into the category of the unreasonable.

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Note that, given that we have seen in 2.2 that it is extremely difficult, and perhaps impossible, for political liberals to accommodate new political values, they are required to interpret the concept of ‘sexual harassment’ not as a new political value, but rather, as an exegesis of an already recognized political value, such as freedom or equality of opportunity. This should not, however, be misunderstood as a suggestion that political liberalism cannot account for, say, the injustice of sexism in the workplace. Rather, it is precisely because it can account for such injustices that an internal problem for public reason arises. All reasonable formulations or interpretations of the political values, I take it, now recognize that sexism in the workplace is an unacceptable injustice, which any reasonable political conception of justice ought to be equipped to deal with. The political values of freedom and equality seem to be able to effectively explain this injustice. But since there was a time when existing formulations or interpretations of the political values such as freedom and equality did not effectively recognize this as a matter for political justice, political liberals are required to acknowledge that public reason has excluded reasonable people from public justification in the past. According to the way I have interpreted Brownmiller’s account here, it is not the case that sexism in the workplace went unchallenged because not enough people accepted the values of freedom and equality; rather, it was because not enough people perceived that these values had something to say about such forms of injustice.

One might wonder exactly why this is a problem for political liberalism. Political liberals may protest that ‘exclusion’, as a description of the one-time relationship between public reason and some reasonable views, is too harsh a term. It could be claimed, for instance, that these were clear forms of political injustice, simply waiting to be recognized. But this seems to give public reason a false appearance of neutrality towards non-political reasons. SJT stipulates that a form of reasoning ought to be actively excluded from public justification insofar as it is not based on political values. Public reason can only account of only those political values and expressions that are known and accepted as political values at any one single time. Why is this the case? It might be argued that the duty of public reason includes a willingness to engage with non-political values, since it requires citizens to test out and examine a broader range of doctrines, in order to uncover the best possible arrangement of the political values. The duty of public reason does not stipulate that we should dismiss without consideration any political claim that does not seem to be based on a political value; rather, it simply states that we should not allow it to be part of any political justification. But
this plays down the capacity of public reason to exclude views and ideas in such a way that is not common to less demanding models of political justification.

To illustrate this, suppose that a citizen makes a particular political claim C, which is dependent on reason R. Now R is not currently understood as a public reason, but will, in the fullness of time, come to be seen as a reason that references various liberal political values. But until this hermeneutical moment takes place, C will be rejected, and will have no role in political justification. Suppose also that, in this in-between time, R is discussed and debated by many, perhaps even most citizens. However, throughout this period of time, they do not perceive its political character. The point is that, throughout this period, C was excluded from political justification, even though it was not completely excluded from political conversation. And since it was excluded from political justification not necessarily because it did not have enough support, but rather, because it did not have strong enough political values, it follows that the duty of public reason was at least in part responsible for its exclusion from political justification. This seems to point towards an inconspicuously conservative dimension of political liberalism: its propensity to favour established and popularized terminology, whilst tending to regard other views as mere idiosyncrasies, until such a time when these views might prove more acceptable to the collective consciousness of society.\footnote{When I refer to political liberalism as ‘conservative’, I have a different idea in mind to that of Bruce Ackerman. Ackerman suggests that Rawls’s liberalism is a kind of conservatism insofar as it relies on the political tradition of the relevant state. Ackerman therefore charges Rawls with making liberalism captive to the imperfections of modern liberal states. ‘The fact that the sacred texts of American “political culture” deny citizens their fundamental right to a decent minimum income is part of the problem, not the solution. Similarly, Germany’s recent decision to limit the right of political asylum represents a fundamental breach with liberal ideals-no matter how good the Germans turn out to be in producing public documents that propel their “political culture” in illiberal directions’ (Ackerman, “Political Liberalisms”, 377). I think Ackerman misunderstands the purpose of Rawls’s appeal to the democratic tradition; it is not designed as a nationalistic affirmation of a particular state’s tradition, but rather, as an affirmation of the importance of those values which we have found to be embedded in the modern idea of democracy. My diagnosis of political liberalism as conservative stems rather from what I perceive to be its bias towards the existing understanding of these values, in spite of the fact that this understanding is frequently found to be in need of correction and adaptation.}
Doesn’t this seem to undermine the value of the duty of engagement? If it cannot prevent the duty of public reason from unjustly excluding certain ideas, how does it address this problem? The answer is that the duty of engagement addresses this problem of temporal exclusion imperfectly. It certainly does not provide any guarantee that the duty of public reason will cease to have a problematic exclusionary dimension. But it is designed to mitigate it. It is possible that a considerable amount of time may pass between the moment when C is introduced in political conversation, and the moment when the political character of R is understood. The duty of engagement is designed to reduce this time between these two moments. The assumption here is that open and free discussion and debate of seemingly non-political reasons like R will enable citizens to better understand their nature, and more effectively assess their relationship to the existing liberal political values.

In this way, we can see that, for the duration of the time between the introduction of R into debate, and the hermeneutical moment, the duty of reason will ensure that C-type claims are excluded from political justification. Furthermore, it will incline its citizens to regard appeals to R-type reasons as revealing the unreasonableness of their proponents, since such appeals are based on reasons which people will see as failing the requirements of reasonable shareability, as specified by SJT. As Hartley and Watson put it, the role of the political values in political liberalism is such that they claim to be the sole arbiter in matters of basic justice: ‘when it comes to the justification of political principles, the benefits of unfettered expression are not consistent with the project of finding mutually acceptable reasons for persons divided over fundamental values. The boundary erected by political liberals between the reasonably shareable and the non-reasonably shareable is therefore such that it generates a kind of prejudice against those on the outside; its past exclusion of women and others cannot be dismissed as purely incidental.

We can surmise, then, that the problem for political liberalism’s conception of public reason is a consequence of two premises. The first premise is VT$_1$: political liberalism claims that justification of matters of basic justice must take place on the basis of the existing political values, which are the values shareable among reasonable people. We found that citizens who accept this premise will exclude from political justification any claim that is dependent on a reason which they believe to be unable to meet this test, even if they should later be proven to

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be mistaken in this belief. The second premise relates to the self-modifying nature of public reason and the changeability of the content of the political values. We may call this the Dynamism of Public Reason Thesis (DT):

**DT**: Our understanding of the meaning and proper ordering of the political values has changed over time, and is likely to continue to change.

From these two premises, we can infer a new claim that may be called the Exclusion Thesis (ET):

**ET**: Political liberalism has excluded from political justification people whose claims it retrospectively acknowledges as legitimate, and is likely to do so again.

This leaves political liberalism with a rather paradoxical narrative: it is in the habit contradicting itself by declaring as unjust certain phenomena which it had previously considered quite permissible. Yet perhaps, it might be objected, it is not necessarily an incoherent one. Political liberals could attempt to claim that political justice is more fundamentally determined by political discourse, and that a particular form of political oppression only becomes unjust at that point in time when it can be articulated through political values. This would seem to push political liberalism into a very unattractive position. Of course, political liberals may plausibly claim that questions of hermeneutical injustice should not be addressed through constitutional recognition or coercive legislation until such a time, in keeping with their commitment to public reason as the arbiter of political justice. But this is perfectly consistent with the more intuitively appealing position that, even prior to the hermeneutical moment, there is something fundamentally wrong with the form of injustice that is taking place. While the moment itself is undoubtedly of crucial importance as far as the legitimacy of political legislation is concerned, having genuine consequences for the rightness or wrongness of policy making, it need not be the determining factor for the rightness or wrongness of a social phenomenon in itself.

I am arguing that the duty of engagement represents a necessary solution to this impasse, albeit an imperfect one. To be sure, the normative commitments of political liberalism necessarily afford the existing political values a privileged place in political discourse. VT₁ says that these values, and no other values, are to form the basis for political justification. Let
me grant that the reasons political liberalism offers in favour of VT may be very good reasons which cannot be easily challenged. But it seems that the problems discussed here give political liberals reason to blend their commitment to the political values with an equally strong commitment to hearing and examining the comprehensive doctrines of citizens. If the argument offered thus far is accepted, then no comprehensive doctrine can be dismissed as a non-political expression that cannot be shared by all reasonable people, at least, until it has been tested for its openness to a hermeneutical moment. Unless a duty of engagement is adopted, where comprehensive doctrines are afforded a space within public political discourse for the full weight of democratic accountability to test them for their capacity to translate into political values, political liberals risk alienating from the political process the very people whom sectarian and illiberal regimes are often faulted with excluding.57

To illustrate this further, suppose that we are in a well-ordered society in which the duty of public reason is followed, but this duty is understood in such a way that excludes non-public reasons not only from justification, but from general deliberation about political matters as well. Citizens make little effort to familiarise themselves with each other’s comprehensive doctrines, while any who are seen as advocating for their comprehensive doctrine as a basis for political justification are dismissed for not respecting the duty of public reason. If it is true that certain issues and policies, which liberals now recognize as based on important political values, were once perceived to based on nothing more than the claims of sectarian interest groups, then in such a society as this, political liberalism will not only exclude the views of people who suffer very real and serious injustices; its ability to detect, address, and rectify these injustices is severely reduced. If citizens are not encouraged to actively engage with each other’s comprehensive doctrines, then the kind of injustice depicted in Brownmiller’s account of the experiences of Carmita Wood will prove to be quite typical of a political liberal society58:

57 On the importance of democratic accountability, see Schwartzman, “The Sincerity of Public Reason”, 381
58 I do not mean to say that specifically sexist policies and practices will be typical of any political liberal society; rather, I claim that, if the duty of public reason is followed without a corresponding duty to engage with comprehensive doctrines, we can plausibly expect the society in question to be characterized by forms of injustice which are not accounted for by the contemporary consensus on the meaning and ordering of the political values. In such a time and place where the connection between liberal political values and women’s emancipation has not yet been made, we may reasonably expect sexist policies and practices to be prevalent.
When the claims investigator asked why she had left her job after eight years, Wood was at a loss to describe the hateful episodes. She was ashamed and embarrassed. Under prodding—the blank on the form needed to be filled in—she answered that her reasons had been personal. Her claim for unemployment benefits was denied.\footnote{Brownmiller, \textit{In Our Time: Memoir of a Revolution}, 280f.}

### 2.4 The Duty of Engagement and contemporary liberal theory

The problem for political liberalism, therefore, is as follows: if ET is true, then political liberalism has a predisposition to neglect certain kinds of injustice. These include the kinds of injustices that a full and proper exegesis of the political values ought to account for, yet may nonetheless be unaccounted for by our \textit{existing understanding} of the political values. If citizens abide by the duty of public reason, without also practicing the duty of engagement, then the severity of ET increases; the ability of a political liberal society to detect weaknesses in existing formulations of the political values will be significantly weakened, such that certain kinds of injustices may continually go unrecognized and unaddressed. The duty of engagement, which I propose as a remedy for ET, requires citizens to consider each other’s comprehensive doctrines, not as a ground for political justification in themselves, but so that they can be inspected, and tested for their capacity to point towards a wiser, more informed interpretation or ordering of the political values.

Those familiar with the immensity of the literature that has been written on Rawlsian political liberalism may feel that this is a conclusion which has more or less already been argued for by more than one author. In this section, I will try to distinguish the duty of engagement from three other perspectives: radical democracy, feminism, and Rawls’s revised version of public reason.

Firstly, consider the school of thought commonly known as radical democracy. I will single out two theorists whose work is perhaps most significant for our purposes here: William Connolly\footnote{See especially William E. Connolly, \textit{The Ethos of Pluralization} (Minneapolis: University of Minnesota Press, 1995); “Rethinking the Ethos of Pluralization”, \textit{Philosophy and Social Criticism} 24 (1998): 93-102}, and Chantal Mouffe.\footnote{Some of Mouffe’s more significant works include, (with Ernesto Laclau) \textit{Hegemony and Socialist Strategy: Towards a Radical Democratic Politics} (London, New York: Verso, 1985); \textit{The Democratic Paradox} (London: Verso, 1996).} Both use the term ‘agonism’ to describe the politics of
democracy, where people recognise their disagreements as adversarial, and governed by relational contingencies, rather than fixed moral certitudes.\textsuperscript{62} Connolly is most explicit about the kind of political recommendations he has in mind, calling for an ‘ethos of critical responsiveness’ designed to provide mediation ‘between the injuries suffered by particular constituencies and the barriers to their rectification posed by cultural codes of morality and normality’.\textsuperscript{63} Now this may seem to sound rather similar to the duty of engagement that I have argued for here.\textsuperscript{64} Both, it seems, require greater familiarity and consideration for those doctrines and viewpoints that find themselves on the margins of any political consensus. However, there is at least one way in which they differ significantly. The duty of engagement, as I have characterised it, is designed to best serve the political liberal ideal of public justification, by encouraging us to rethink our existing understanding of the political values, in light of the experiences of those for whom the existing political values seem to offer little. The status of these values as constituting a legitimate political conception of justice is not called into question – only their meaning and interpretation. Contrast this with Connolly’s ethos, which ‘is neither entirely reducible to a pre-existing moral code nor (uncontestably) derivable from a transcendental command or contract’.\textsuperscript{65} To place the ethos of critical responsiveness at the service of a higher moral ideal would be to reject the very essence of agonistic politics: the refusal to subordinate the political to the moral.

We can therefore characterise the difference between the duty of engagement and the project of radical democracy, as represented by Connolly and Mouffe, in the following way: while the need for the duty of engagement follows from the political liberal ideal of public justification based on the best ordering of the political values, radical democracy does not value engagement with the different viewpoints of people in society for the purposes of some other moral end; rather, it sees this as the most effective way of facilitating adversarial
conflicts within a politics of agonism. This also points towards one advantage of the former over the latter: the argument for the duty of engagement is better able to function as an *internal criticism* of political liberalism. It is drawn from premises which political liberals already accept, rather than alien claims which they may be likely to reject.

Secondly, consider feminist critiques of political liberalism. Let us again focus on two prominent individuals in this area of thought: Susan Okin and Martha Nussbaum. Although both identify with the liberal tradition in at least some senses, their stance towards political liberalism is not identical. Okin rejects Rawls’s political liberalism for over-privileging the freedom of certain comprehensive doctrines at the expense of the freedoms of women; Nussbaum, on the other hand, is convinced that political liberalism is the best way of satisfying the liberal ideal of equal respect for personhood. Both are in agreement, however, that a serious dilemma for political liberalism concerns the status of the family. On the one hand, Rawls has insisted that the family is part of the basic structure of society, and thus ought to be governed by a political conception of justice. On the other hand, the political conception governs the family only in the same way in which it governs institutions like churches and universities; while it imposes certain external constraints, such as the right of a woman to divorce without fear of unacceptable financial repercussions, it does not directly regulate the internal life of a family. Hence, certain forms of injustice may continue to persist; for example, insofar as families are, as Okin puts it, ‘poor schools of

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68 Okin, “Political Liberalism, Justice, and Gender”, 35-39; “Forty acres and a mule’ for women”, 241-242
69 Nussbaum, “Perfectionist Liberalism and Political Liberalism”
71 *PL*, 468
72 *PL*, 473; Okin, “Forty acres and a mule’ for women”, 245
73 *PL*, 469
justice’, children, and particularly female children, will continue to be raised to accept sexist norms and practices which hinder their development and unduly restrict their life choices.  

What the example of the family points towards is the way in which the implementation of a political conception of justice can nonetheless be compatible with the persistence of certain forms of injustice. This is a concern which I share. However, the kind of injustices that Okin and Nussbaum have in mind differ significantly from the kind which the duty of engagement is designed to address. The main task for the duty of engagement is the identification of injustices that might otherwise go unnoticed. For Okin and Nussbaum, the problem is not so much the identification of injustice, as it is how to address it within the scope allowed for by a political conception. Consider the case of the family. The political values of liberty, freedom, and equality allow liberals to identify sexism within the family as unjust. The challenge which Okin and Nussbaum pose to Rawlsian liberals is how to address this injustice without violating what Rawls identifies as the first feature of a political conception of justice: a restricted scope of application.  

Contrast this with the kinds of injustice faced by women in the workplace discussed in 2.3, where the essential challenge to a political conception of justice is not how it can address such injustices, but how it can possibly hope to identify them at such times when the existing political vocabulary is not up to the task. Hence, the duty of engagement is directed towards problems for political liberalism that differ from those identified by contemporary feminist critics such as Okin and Nussbaum. 

Finally, consider Rawls’s revised version of public reason, a central feature of which is his introduction of a ‘proviso’ of public reason. According to Rawls, citizens are permitted, and are at times encouraged, to introduce their own comprehensive doctrine into political debate, provided that we give proper public reasons to support the claims of our comprehensive doctrine ‘in due course’. As I understand Rawls, there are at least two

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75 PL, 11. Note that political liberals can at least partly meet these kind of concerns by stressing the role of principles of justice in creating certain kinds of conditions more likely to lead to just practices. See Miriam Ronzoni, “What Makes a Basic Structure Just?” Res Publica 14 (2008): 203-218
76 PL, If.; 440-490
77 PL, 453
reasons for adopting this proviso in the context of a well-ordered society.\textsuperscript{78} Firstly, when citizens disclose their comprehensive doctrines to each other and demonstrate how each one respectively supports a constitutional regime, they draw confidence in each other’s commitment to honouring fair terms of cooperation. ‘In this way citizens’ allegiance to the democratic ideal of public reason is strengthened for the right reasons.’\textsuperscript{79} A second reason is that it enables citizens to demonstrate their sincerity: it is not permissible, for instance, for citizens to argue for a certain exercise of state power, X, unless they believe that X is actually justified. If a citizen explains precisely how her comprehensive doctrine supports the political values that she deploys in favour of X, then it is far less likely that she is merely utilizing political values in an insincere manner.\textsuperscript{80}

Neither of these reasons for introducing comprehensive doctrines is designed to produce an altered conception of justice. The purpose of the proviso, within a well-ordered society, is to assist the facilitation of stability for the right reasons.\textsuperscript{81} Compare this to the duty of engagement. Although it is consistent with political liberalism’s commitment to viewing only political values as appropriate material for political justification, it is expected that a well-ordered society that observes this duty will have a political conception of justice that differs from one that does not. This is because the duty of engagement is designed to challenge, and on occasions bring about a revision of our understanding of the political values, and the best way for them to be ordered. Whereas the proviso is designed to assure us of each other’s commitment to the fundamentals of public justification, the duty of engagement is driven by a search for the best possible public justification, where injustices that might otherwise go unnoticed are identified and dealt with.

\textsuperscript{78} It seems that a strong motivation for Rawls’s adoption of the proviso was to accommodate for the religious arguments of the Abolitionists and the Civil Rights movement. See \textit{PL}, lif. Although they did aim to change the content of the conception of justice held and practiced by American society, they did not do so within the context of a well-ordered society governed by a reasonable liberal political conception of justice. Hence, Rawls’s intention to include the Abolitionists and the Civil Rights movement within the duty of public reason does not count as a reason for introducing the proviso \textit{in a well-ordered society}.

\textsuperscript{79} \textit{PL}, 463

\textsuperscript{80} \textit{PL}, 479; see Schwartzman’s principle of Sincere Public Justification (SJP). “The Sincerity of Public Reason”, 385

\textsuperscript{81} \textit{PL}, 463
2.5 Conclusion

In this chapter, I have argued that political liberals ought to view the practice of the duty of public reason as unjustly exclusionary. I have also argued that this problem can be at least partly addressed by the adoption of a duty of engagement, which would require citizens to familiarise themselves with the comprehensive doctrines in their respective societies. This duty is fully consistent with the duty of public reason, where only political values are seen as appropriate material for political justification. It is, in fact, plausible to claim that the duty of engagement reflects a more thoroughgoing commitment to public reason, since it reflects the actions of citizens who are determined to find the best possible public political justification, taking into consideration the possibility that what counts today as ‘acceptable’ might tomorrow count as ‘unreasonable’. Citizens who follow the duty of engagement thus engage in a radical form of political criticism: they are always on the lookout for the possibility that the present political consensus, despite its appearances to the contrary, may nonetheless codify serious kinds of injustice. Committed political liberals, therefore, ought to adopt the duty of engagement alongside of the duty of public reason.

Are there any options available to the political liberal who does not wish to endorse this duty? Perhaps the most likely response is to reject the criteria for the politicality of a value which I offered in 2.2. On these criteria, recall, it became clear that only the existing liberal political values can function as political values. This follows if we adopt Rawls’s three criteria for a political conception of justice as appropriate criteria for determining the politicality of a value. However, we also saw that a more minimalist criterion, based only around the idea of reasonable shareability, would effectively lead to a similar conclusion, given the permanence of the fact of reasonable pluralism, and the requirement that the value in question be shareable by all possible kinds of reasonable people. Suppose, however, that we put these arguments to one side, and allow for the possibility that there may be new political values that come to be shareable by all reasonable people. If this is the case, the exclusionary character of public reason is certainly diminished somewhat; if new political values can be formulated, and the political vocabulary of a society expanded, then hermeneutical moments will generally prove easier to come by. However, the exclusionary character of public reason is far from removed altogether. In 2.3, we saw that SJT implies a bias towards the existing formulation of the political values, which leads political liberal citizens to hold that those who reject the existing formulation are unreasonable until proven otherwise. Hence, even if
the criteria for politicality offered in 2.2 are rejected in favour of a more inclusive criteria, the argument from temporal exclusion still applies to a considerable degree.

A second option that political liberals might consider is to insist that the time when a duty of engagement might have been necessary has long-since passed. The rights of women and indigenous peoples were once unrecognised, but have since been given proper acknowledgment in democratic political culture (though a proper and full redress of these injustices is undoubtedly still to be completed). This claim, however, seems unduly optimistic. Even if some forms of hermeneutical exclusion have been partially addressed in the public political culture of modern democracies, it is not clear that existing interpretations address them fully. Nor is it necessarily clear that there are no other cases of injustice that are not yet accounted for. This is because the prejudice of political liberalism against those whom it excludes leaves it poorly positioned to make such judgments. If history is anything to go by, then subsequent generations may well uncover various forms of injustice that will lead to current conceptions being judged as nothing less than unreasonable. As Peter Singer puts it,

One should always be wary of talking of “the last remaining form of discrimination.” If we have learnt anything from the liberation movements, we should have learnt how difficult it is to be aware of latent prejudice in our attitudes to particular groups until this prejudice is forcefully pointed out.⁸²

I have argued that without a duty of engagement, such prejudices will be more difficult to identify, and more likely to persist without any form of political redress. Without this duty, political liberals lend strength to a view common among opponents of liberalism: that a liberal political ethic is hardly less restrictive in its political verdicts than any more explicitly autocratic form of government that preceded it. Insofar as political liberals wish to avoid such a position, then the case for going beyond the boundaries of public reason has been made.

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Chapter 3
The Case for Reasonable Dissent: The Importance of Conjecture

If arguments from conjecture fail, then political liberalism cannot achieve public justification. In this chapter, I intend to provide a cautious defence of this seemingly counter-intuitive claim. If political liberals struggle to justify liberal principles to those who would reject them, then the requirements of liberal legitimacy seem incapable of being met.

This might seem rather counter-intuitive: why does liberalism need to be justifiable to everyone? Such a widening of the constituency of justification not only seems to be asking too much of a political theory; it seems morally pernicious. Surely, it might be pointed out, liberal principles should not stand or fall with their ability to find acceptance among the likes of Nazis, racists, and fundamentalists? While this objection is certainly not altogether without force, its main difficulty lies in the essential premise of my argument: the link between the fact of reasonableness on the one hand, and acceptance of liberalism on the other, is not so watertight as political liberals are prone to assume. If public justification requires that the constitutional essentials and matters of basic justice be justified in a way that can be acceptable to all reasonable people, and reasonable people are capable of rejecting this justification, then this casts a shadow over the efficacy of the justification itself.

Political liberals have often acknowledged that there is an important role for arguments from conjecture within political discourse. However, they are rarely clear on exactly what kind of role this is. Rawls, for instance, introduces the idea of conjecture as a form of non-public reason, through which ‘the ideal of public reason is strengthened.’ It is not clear, however, how fundamental this end is to the process of public justification. One view, common among

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83 For Rawls’s thoughts on conjecture, see Rawls, “The Idea of Public Reason Revisited”, PL, 440-490. See also LV, 39-77; Micah Schwartzman presents a lucid account of conjecture as a viable strategy which political liberals may employ to address the problem of conflict between public and non-public reasons. However, he does not address the question of how much is at stake in the success of these arguments. Rather, he concludes only that, when faced with a conflict between a comprehensive doctrine and the political values of a political conception of justice, arguments from conjecture provide ‘a way of continuing the process of rational justification beyond the limits of public reason’. “The Ethics of Reasoning from Conjecture”, Journal of Moral Philosophy 9 (2012): 521-544 at 543-544

84 PL, 465
political liberals, is that while arguments from conjecture are valuable for purposes such as strengthening the stability of a liberal regime or as a way of offering all persons, reasonable or otherwise, some minimal threshold level of respect, their success or failure does not in any way threaten the justification of a reasonable liberal political conception of justice.\footnote{Macedo, Libera} Rejection of a reasonable political conception of justice, it is often claimed, necessarily counts against one’s own reasonableness. It is this particular view which I take issue with in this chapter. I identify three different ways in which a citizen of a liberal society might dissent from a political consensus: firstly, she may reject the particular political conception of justice adopted by her society on the basis that it represents an inadequately just ordering of the political values; secondly, she may reject the value political liberals attach to the political values as basic justificatory material in political justification; thirdly, she may lack or reject political liberal requirements of a reasonable person. I argue that in the first two of these cases, it is difficult, and perhaps impossible, for political liberals to identify such dissent as unreasonable. As such, these kinds of dissent clearly undermine the claims of a political conception of justice to be justifiable to all reasonable people. In the third case, although political liberals will naturally view such dissent as unreasonable, I argue that an absence of a consensus around an idea of reasonableness in a well-ordered society nonetheless poses something of a threat to the legitimacy of a liberal regime. It therefore follows that arguments from conjecture, which directly engage such dissenters, are vital to a political liberal understanding of public justification.

This chapter is in five parts. I begin with an overview of Rawls’s idea of an ‘overlapping consensus’ as the ‘second stage’ of justification in political liberalism – the first stage being the \textit{pro tanto} justification of a political conception of justice with reference only to the political values. If this multi-stage model of justification is an accurate indication of what political liberalism is committed to, then it follows that reasonable people exercise a kind of veto-right over principles of political justice. It is not the case, for instance, that the construction of a political conception of justice based on a reasonable ordering of the political values, without addressing \textit{actual reasonable people} in a well-ordered society, is sufficient for public justification. It is, rather, from the standpoint of such actual reasonable people that political liberalism must ultimately be assessed. The following three sections are devoted to discussing the three different kinds of dissent as noted above. The final section concludes

\footnote{Macedo, \textit{Liberal Virtues}, 61-62; Quong, \textit{Liberalism Without Perfection}, 8, 161-191, 290-314}
with some brief thoughts on the range of manoeuvres available to political liberals who are keen to resist the idea that arguments from conjecture have the kind of importance I have argued for here.

### 3.1 The stages of justification

Let us begin here with Rawls’s idea of an overlapping consensus. Its role in Rawls’s political liberalism is discussed most clearly in his “Reply to Habermas”, where he responds to Habermas’s query over the justificatory role of the idea of an overlapping consensus in political liberalism. If public reason, consisting of the political values, is the sole source of justification for matters of basic justice, to what extent can a Rawlsian overlapping consensus between comprehensive doctrines have any relevance to this process of justification? Or is an overlapping consensus merely a feature of a well-ordered society only insofar as it is necessary for its stability?

Rawls addresses this concern by distinguishing three kinds of justification, all of which, he claims, are integral to the justification of a political conception of justice. First, justification begins with *pro tanto* justification, where only the political values are taken into account:

> That is, the political values specified by it can be suitably ordered, or balanced, so that those values alone give a reasonable answer by public reason to all or nearly all questions concerning constitutional essentials and basic justice. This is the meaning of *pro tanto* justification.\(^{86}\)

In the second stage, described as ‘full justification’, citizens are to fill out the justification of a political conception by ‘embedding it in some way into the citizen’s comprehensive doctrine as either true or reasonable, depending on what that doctrine allows.’\(^{87}\)

The final stage, that of public justification, reflects a shared consciousness of the emergence of an overlapping consensus in the context of a well-ordered society, where citizens become

\(^{86}\) John Rawls, “Reply to Habermas”, *PL*, 386; see also *PL*, 64, 134

\(^{87}\) *PL*, 386
aware of the reasonableness of each other’s respective doctrines and are thus assured of their support for the political conception of justice.88

Now it is important to see the sharp boundary Rawls attempts to draw between the first and second stages. At the first stage, that of pro tanto justification, public reason reigns supreme, and comprehensive doctrines have no role whatsoever. The political values are considered and weighed up without reference to the realities of any existing comprehensive doctrines in society. Only after the political conception of justice has been established on this basis alone are citizens given the opportunity to test it for its compatibility with their own comprehensive doctrines. Rawls contrasts this approach to public justification with a more empirical method, typical of the activities of the politician who tries to identify existing areas of consensus that can be used to cultivate the support of a majority.89

This is what I take to be Rawls’s complete model of public justification. Familiarising ourselves with this model points us towards the importance of arguments of conjecture in political liberalism. At the stage which Rawls calls “full justification”, citizens do not just accept the freestanding justification presented in the previous stage; they take the political conception and embed it in their respective comprehensive doctrines. This means that a citizen’s comprehensive doctrine must provide support, on its own terms, for the political conception.90 If full justification is to be achieved, then the political conception of justice must be, in Gerald Gaus’s terms, ‘robust’ – that is, its content must be unchallenged even after the comprehensive doctrines of reasonable people have been taken into account.91 Arguments from conjecture, we may reasonably expect, will frequently be necessary to ensure such support.

However, we might plausibly ask whether Rawls has any good reason for seeing this as a necessary aspect of justification. Why can’t political liberals simply expect that citizens will

88 PL, 387
89 PL, 389; compare this to George Klosko’s idea of convergence. See Klosko, “Political Constructivism in Rawls’ Political Liberalism”, The American Political Science Review 91 (1997): 635-646
90 This seems to me to be what Rawls has in mind. Consider, for example, his claim that support for the political conception from perfectionists, Kantians, utilitarians, and value pluralists is necessary for public justification. PL, 100 10n, 168-170
accept the political conception based on its freestanding justification? Quong, for instance, pushes an objection against Rawls’s idea of an overlapping consensus on the basis that it is either superfluous or illiberal:

This objection can be put in the form of a dilemma: (a) either the overlapping consensus is superfluous within political liberalism, since reasonable people will by definition endorse the (correct) political conception of justice, or (b) or the overlapping consensus is not superfluous, and people could (in the second justificatory stage) reject the political conception without being unreasonable. But if we embrace the second horn of this dilemma, this leads right back to the initial worry that people could veto the liberal conception of justice by claiming that it is not congruent with their illiberal comprehensive views.  

I think there are good reasons to think that an overlapping consensus is not superfluous. Reasonable citizens are characterised not only by the mere fact of their reasonableness, but by a broader set of ethical and moral commitments. A reasonable comprehensive doctrine is not simply identical to the political conception of justice; it will contain, amongst other things, a wider set of values, which apply to the citizen’s idea of the good life as a whole. It is not at all clear, therefore, that reasonable people endorse a liberal political conception of justice ‘by definition’ (least of all the single ‘correct’ political conception). If a political conception of justice is to be acceptable to reasonable people, then it must be acceptable to the comprehensive doctrines which reasonable people hold. The importance of acceptability to actual reasonable people, therefore, is not ‘a spare wheel’, as Quong puts it, which plays no significant role in the justification of a political conception of justice. If political liberals wish to respect reasonable people, then an overlapping consensus of reasonable comprehensive doctrines is nothing less than a necessary part of public justification.

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92 Quong, Liberalism Without Perfection, 167
93 PL, p xviii, 12, 38, 135, 140
94 Quong, Liberalism Without Perfection, 146
95 Note also that if Quong wishes to reply that political liberalism does not seek to respect reasonable people as such, but only reasonableness in the abstract, this is in clear tension with Rawls’s view that political liberalism seeks justification first and foremost from the point of view of ‘you and me’, to be understood as ‘we the reasonable people’. PL, 19; Thomas Besch, “Political Liberalism, the Internal Conception, and the Problem of Public Dogma”, Philosophy and Public Issues 2 (2012): 161
If this is the case, then we may seem to be forced into the other horn of Quong’s dilemma. Political liberals certainly hope that the comprehensive doctrines held by reasonable people will require, or at least be compatible with, a citizen’s support for a liberal political conception of justice. But there is no guarantee that this will be the case. As Schwartzman puts it, political liberals treat the possibility of an overlapping consensus of reasonable comprehensive doctrines as ‘an article of liberal faith.’ If reasonable people can reject a political conception of justice on the basis of their illiberal comprehensive views, are we then led to the possibility that illiberal views may come to shape political justice? This seems to be Quong’s main concern, and I think it is far from groundless. However, whereas Quong’s solution is to abandon Rawls’s idea of an overlapping consensus and seek instead a consensus on a conception of reasonableness which guarantees acceptance of liberal principles, I suggest that political liberalism can be faithful to its dual commitments of public justification to reasonable people on the one hand, and liberal principles of justice on the other, insofar as arguments from conjecture succeed.

It might be objected that Quong’s dilemma is non-exhaustive in its characterisation of the significance of Rawls’s overlapping consensus. Even in this three-tiered view of justification, it is only the political values that can shape the content of the political conception of justice. At the most, comprehensive doctrines are given an opportunity to accept or reject the political conception of justice; they are not, at any stage, given the opportunity to directly shape its content, which is formed independently of their influence. This particular objection, however, seems to falter when we consider the following question: what happens when a comprehensive doctrine rejects the formulation of the political conception that has emerged from the first stage of justification? Does this simply mean that the citizen and the comprehensive doctrine in question are exposed as unreasonable? Or is it the political conception of justice, or indeed, the whole approach of political liberalism, that might stand in need of revision?

96 Schwartzman, “The Ethics of Reasoning from Conjecture”, 544; PL, 15
97 Quong, Liberalism Without Perfection, 169: ‘The only way of ensuring such citizens cannot shape the content of political justice appears to be by defining reasonable citizens in a manner which guarantees they will accept the political conception of justice and give its principles the appropriate priority’.
Some political liberals are quick to opt for the former answer. Macedo, for instance, seems to imply that it is often a good thing if those who reject liberalism can be ‘re-engaged’ after the political conception of justice has already been laid out. Yet if this is to be consistent with his view of public justification as addressed only to reasonable people, it follows that the authority of the political conception of justice is not itself called into question. Rather, if this process of re-engagement fails, and certain people continue to reject liberal principles, then this simply confirms the unreasonableness of these people. In Rawlsian terminology, the success or failure of arguments from conjecture has no bearing on the status of the political conception laid out in pro tanto justification. We may try to win over citizens to the political conception and the idea of public reason as the arbiter of key aspects of political decision-making, but should we fail in this endeavour, the reasonableness of the political conception is not thereby threatened.

The problem with this view, however, is that it assumes what needs to be argued for: namely, that one’s rejection of a liberal political conception of justice is necessarily a symptom of one’s unreasonableness. Political liberals are certainly not all committed to such a view. Some consider the possibility that reasonable rejection of a political conception of justice, like Rawls’s theory of justice as fairness for instance, might require certain modifications to the original theory. If it turns out that it is possible for reasonable people to reject the political conception laid out pro tanto, then the liberal principle of legitimacy is left unsatisfied:

. . . our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal

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98 LV, 61-62
may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.\textsuperscript{101}

There is ambiguity over the meaning of ‘reasonably’ here. Rawls may be interpreted as suggesting ‘plausible likelihood’, for example, in the same way that we may reasonably expect heads to turn up at least once if a coin is tossed five times. I will interpret the above principle, however, in terms that I believe are most fully consistent with Rawls’s frequent use of the idea of the reasonable throughout his work on political liberalism, in that the concept singles out a particular view of the moral person. The liberal principle of legitimacy, I take it, stipulates that the exercise of political power must be consistent with a consensus on constitutional essentials and ideals of basic justice on which all \textit{reasonable} people can agree. This means that, whenever a reasonable person happens to reject the content of an overlapping consensus, its legitimacy is threatened. If arguments from conjecture directed at such people do not succeed, then the integrity of a liberal political conception of justice, and indeed, the very fundamentals of political liberalism are at stake.\textsuperscript{102}

The important question before us, then, is whether this is possible or not. Can citizens reject a liberal political conception of justice in such a way that does not impugn their reasonableness? Unless we prefer to follow Quong’s rather dogmatic solution of defining reasonableness in such a way that, by definition, forces reasonable people to accept the political conception of justice, we are required to test this as a hypothesis.\textsuperscript{103} As before, I shall use Rawls’s conception of the reasonable person. Although it has been accused by some of being little more than a circular justificatory device, it is not \textit{explicitly} obvious, to say the least, that Rawlsian reasonable people are, by definition, committed to accepting the

\textsuperscript{101} PL, 137

\textsuperscript{102} This may seem an overstatement. Suppose, however, that reasonable people happen to reject the liberal principle of legitimacy – that state power must be acceptable to all reasonable people. If even the fundamental elements of political liberalism that establish the authority of reasonable acceptability can themselves be the subject of reasonable disagreement, then political liberalism would appear self-defeating.

\textsuperscript{103} On how Quong’s political liberalism is open to objections of dogmatism, see Besch, “Political Liberalism, the Internal Conception and the Problem of Public Dogma”, 163-164
political conception. Recall that the essential content of Rawls’s conception of the reasonable person is contained in the Shareable Justification Thesis (SJT):

**SJT**: The constitutional essentials and matters of basic justice ought to have a justification that can be shared by all citizens who may reasonably disagree on comprehensive matters.

In the following three sections, I will consider three different classes of reasons for which a citizen might reject a liberal political conception of justice. Firstly, people may dissent from the ordering of the political values that has been given by the *pro tanto* justification, and thus dissent from the constitutional essentials and ideals of basic justice into which this ordering has been transferred. Secondly, they may reject the view that the political values ought to provide the basis for public reason. I will try to show that both of these first two forms of dissent can be fully consistent with SJT. Thirdly, people may reject the values that make up the Rawlsian notion of the reasonable person, and hence dispute the need for a shared justification that respects reasonable disagreement. In this case, such a rejection of the political conception also involves a rejection of SJT, but I claim that it is nonetheless problematic for political liberals to swiftly label such dissent ‘unreasonable.’ If these claims are correct, then it follows that the legitimacy of a political conception of justice, and perhaps political liberalism itself, is threatened by any such rejections, in which case the success of arguments from conjecture is indispensable to political liberalism.

### 3.2 Reasonableness and rejection of the political conception

Let us consider the first form of dissent, where the citizen refuses to accept the formulation of the political conception that is the product of *pro tanto* justification.

We should first acknowledge here that Rawls allows for a kind of plurality within political justification. For Rawls, there may be different reasonable political conceptions of justice, since ‘the content of public reason is given by a family of political conceptions of justice, and

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not by a single one. Insofar as a disagreement about the correct political conception of justice is within the bounds of this family of conceptions, then the disagreement is reasonable. Hence, dissent from the political conception may well turn out to be reasonable. However, the fact that Rawls is so quick to acknowledge the possibility of such dissent gives us strong reason to believe that the presence of such dissent, however reasonable, is not quite the same thing as reasonable rejection of the political conception of justice. I will suggest two possible ways in which Rawls’s statements about the plurality of reasonable political conceptions might be interpreted. I will argue, however, that both of these interpretations leave a political conception of justice open to the possibility of reasonable rejection.

Firstly, it may be that the kind of reasonable dissent emerging from the plurality within political justification Rawls seems to have in mind appears to relate to the idea of a particular democratic constitution being accepted by all reasonable people, who may nonetheless disagree broadly and strongly over different aspects of legislation which the constitution does not clearly prohibit. For example, Rawls considers the question of the allegiance of Quakers, who refuse to cooperate with the decision of any democratic state to go to war, to a constitutional democracy. Rawls notes how the religious commitment to upholding the basic rights and interests of others may lead a religious doctrine to support a constitutional government. He claims that this example ‘illustrates how political values can be overriding in upholding the constitutional system itself, even if particular reasonable statutes and decisions may be rejected, and as necessary protested by civil disobedience or conscientious refusal.’

Rawls, then, may be taken as claiming that we may reasonably disagree over particular legislative aspects, but any dissent from a democratic constitution is not reasonable in the same way. As Gaus puts it, the constitutional essentials are thought to be ‘conclusively justified’, in such a way that makes them reasonably unrejectable. Everyday political

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105 _PL_, 450

106 Those conceptions that are part of this family, according to Rawls, meet three criteria: firstly, they include a list of basic rights, liberties and opportunities; secondly, they assign special priority to these rights, liberties, and opportunities; and thirdly, they include sufficient measures for all citizens to make effective use of their freedoms. _PL_, 450

107 _PL_, 394
decisions, however, can be expected to involve a ‘confrontation of undefeated, unvictorious judgements about the demands of basic principles’, such that these debates are between reasonable options, but options which are not reasonably unrejectable.\textsuperscript{108}

I do not see, however, how constitutional politics can be insulated from reasonable disagreement in the way Gaus’s interpretation of Rawls seems to imply. If the scope of application for the political values is supposed to be the constitutional essentials and matters of basic justice, and it is possible for the political values to be ordered in different ways, then doesn’t this mean that there can be several, different, reasonable forms a democratic constitution might take? Isn’t it therefore possible to reasonably disagree over whether a constitution that prioritises political value $x$ over political value $y$ is better than one that prioritises $y$ over $x$? If this is the case, then it seems very difficult for Rawls to regard dissent from a democratic constitution as necessarily unreasonable. One may reject the democratic constitution of their present society. It may be that Rawls acknowledges as much when he states that there are ‘many liberalisms and related views, and therefore many forms of public reason specified by a family of reasonable political conceptions.’\textsuperscript{109} In either case, we are led towards the conclusion that a reasonable constitution is not immune from reasonable dissent by virtue of its reasonableness alone; hence, reasonable dissent from a reasonable constitution is very much a possibility.

Perhaps a more charitable case for the reasonable unrejectability of a reasonable political conception of justice is possible. Let us consider a second defence of this view, based around a distinction, alluded to earlier, between dissent and rejection. Given the fact of reasonable pluralism, dissent from a political conception of justice is certainly to be expected. Reasonable citizens will advocate for different, yet reasonable views about the content not only of everyday political legislation, but also of fundamental aspects of the constitution, and matters of basic justice. But such dissent does not in and of itself threaten the legitimacy of the political conception. This is because it is to be expected that reasonable citizens may be willing to recognise the legitimacy of a reasonable political conception, even though it is not their preferred political conception. Hence, they may dissent from the political conception


\textsuperscript{109} PL, 450
without rejecting it. As long as the political conception is properly justified pro tanto on the basis of a reasonable ordering of the political values, reasonable people will recognise that they ought not to reject it.

I take it that something like this is Schwartzman’s view. He holds that pro tanto justification requires the selection of one of a set of reasonable liberal political conceptions. The legitimacy of a political conception, so it seems, is guaranteed by its membership of this set. But if this is to be consistent with the idea that legitimacy requires the political conception to be acceptable to all reasonable citizens, then it follows that Schwartzman must hold that reasonable citizens will recognise the features that are common to any member of this set (including ‘certain basic rights, liberties, and opportunities of individuals’), and accord them an appropriate priority in their political deliberations. On this account, then, reasonable citizens recognise that securing basic aspects of liberalism – for example, the right to free speech – is a matter that is of such great importance that it outweighs any potential scruples over other aspects of the political conception – for example, the extent to which the right to free speech extends to racists. Reasonable citizens, on this view, will recognise the authority of a constitution that recognises these basic aspects of liberalism, even if it does so in such a way that differs from their preferred form.

The problem with this response is that it leaves political liberalism highly vulnerable to what may be called the ‘priority problem’: political liberalism is unable to account for the special priority that certain key liberal political values are to hold in public justification. At best, political liberalism can provide an internally coherent case for the importance of some basic rights, liberties, and opportunities, but this does not mean that they are to take priority over other values. Political liberals typically respond to this problem by begging the question in

110 Schwartzman, “The Completeness of Public Reason”, 197
111 Schwartzman, “The Completeness of Public Reason”, 200. Note that although Schwartzman seems to endorse Gaus’s account of political liberalism’s idea of legitimacy as grounded in the reasonableness of the constitution, it seems to me that he holds this view not because he expects a reasonable constitution to be immune from reasonable dissent; rather, since a reasonable constitution will include certain basic liberal tenets (referring to basic rights, freedoms, opportunities etc) which are immune from reasonable dissent, the constitution as a whole will be reasonably unrejectable, even if certain aspects of it might be open to reasonable dissent.
112 LWP, 222; Schwartzman, “The Ethics of Reasoning from Conjecture”, 523 4n.
favour of basic liberal claims. Quong’s solution of ‘buck-passing’, for example, delegates to citizens the task of accounting for the priority of liberal values, rather than make this a requirement of public justification. However, should citizens be unable or unwilling to provide such an account, Quong’s political liberalism does not then supply them with one. Instead, Quong denies that ‘the problem we confront is a philosophical one.’ If people fail to accord sufficient priority to liberal values, then this counts against the reasonableness of people, rather than liberalism itself. The method of buck-passing, therefore, assumes an equivalence between reasonableness and basic claims of liberalism, without providing any real justification for this relationship.

Is it possible for political liberals to provide a satisfactory response to the priority problem? Two strategies seem to suggest themselves. One option is to devalue the significance of concerns that are not accounted for by essential liberal values. This might involve, for instance, stressing the relative insignificance of debates over the nuances of the right to free speech, such as the extent to which racists enjoy this right. Another option is to emphasise the value of these basic liberal values, and the pro tanto procedure that guarantees their protection. Rather than focus on the insignificance over the nuances of the right to free speech, this option focuses instead on the great significance of a constitution that does, in some way, guarantee some version of this right. I will consider each of these options in turn, and argue that both are at best unsatisfactory responses to the priority problem.

The first option, I believe, is rendered untenable by the exclusionary character of public reason, as demonstrated in chapter 2. We saw that a society that observes the duty of public reason may frequently order the political values in such a way so as to exclude some important ideals which may nonetheless have a political character. A formulation of the political conception, based purely on the existing political values at a given time, may be entirely consistent with the exclusion of the rights of indigenous peoples, or those of women in the workplace. Such people may fully agree with the duty of public reason, holding that the political values ought to be the source of political justification. Yet they may nonetheless reasonably reject a political conception if it has not given sufficient weight to the ideals

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113 LWP, 221-242
114 LWP, 8
115 See also Besch, “Political Liberalism, the Internal Conception, and the Problem of Public Dogma”, 165-167
which they wish to bring before the conscience of a hostile society. Now these unrecognised values may be very important values, reflecting a very serious conflict of views with the existing constitution, to such an extent that their lack of constitutional recognition may outweigh the considerations that would otherwise lead the sub-group in question to accept the constitution in their society. If we allow for this possibility, then we also allow for the possibility that reasonable dissent from an existing democratic constitution may be so deep and fundamental that it may threaten the allegiance of the dissenters to that constitution.

What about the second option? It will not do for political liberals to repeat Rawls’s claim that the political values are ‘very great values and hence not easily overridden’. This is because the nature of this particular conflict of values is not between political values and non-political values; rather, it is a conflict between the priority of some basic liberal rights and the importance of their being formulated in a particular way. To return to our earlier example, suppose a particular democratic constitution recognises the right to free speech, but does so in such a way that does not extend this right to racists and fundamentalists. Amy is a citizen who has very strong views about the broadness of free speech, insisting that all views, even those which we may rightly regard as morally repulsive, must be made safe from the perils of censorship. Now it will be quite unhelpful to tell Amy that the political value of free speech is a very great value. The conflict of values Amy experiences is not one that is between the political value of free speech and some other value; rather it is a conflict between securing a less-than-preferable way of recognising the right of free speech via constitutional recognition, or rejecting such a constitution in the hope of finding a better way of recognising this political value.

The question, therefore, is as follows: are there any reasons that will give Amy overriding grounds to support the incumbent constitution? One such reason might be that recognition of the constitution will help bring stability and order to society; although Amy’s preferred interpretation of the right to free speech will be unrecognised, she can take solace in the fact that at least some version of this right will be given legal protection, with the backing of coercive state power. But this does not seem to be the kind of justification that political liberals can appeal to. They do not seek stability *simpliciter*, but rather, stability *for the right*
If reasonable citizens accept a political conception of justice as nothing more than the lesser of two evils, then public justification has not been achieved. This depends on the political conception being reasonably acceptable for moral reasons; in other words, even if the political conception does not model Amy’s preferred ordering of the political values, she must nonetheless come to accept it as morally justified.

A different reason, and perhaps more plausible, may be found in the idea of pro tanto justification as a legitimate procedure. Since the political conception of justice has been constructed on the basis of a reasonable ordering of the political values, procedural justice has been followed to the letter. In a somewhat Kantian fashion, it may be that reasonable citizens will see themselves as authors of a procedure designed to model their own perspective, recalling Kant’s claim that moral agents are somehow self-legislators of moral principles.

Andrew Reath’s description of Kant’s thesis is helpful for our purposes here. By way of analogy, Reath describes a professor who sets policies for her course. The standards are demanding, but since she has taken time to explain her rationale to her students, they regard it as good policy, after going through a similar process of deliberation with her. Should the students disagree with any of the detail, they are nonetheless invited to consider it as valid, by reflecting on the legitimacy of the authority of the professor, and the ‘deliberative process’ through which the policies were arrived at. The key requirement is that the reasoning that would lead the professor to enact a policy must also be a generally persuasive and plausible reason for her students to comply with it. On this basis, Reath claims that as soon as the students have ‘ascertained that a policy is valid for their class, they need nothing further to conclude that they ought to accept it.’ In other words, the validity of the procedure is supposed to function as a kind of trump-card, which necessarily overrides all other considerations. Likewise, it might be claimed that once citizens have determined that the constitutional essentials have been constructed in accordance with the requirements of pro tanto justification, and that they have followed the reasoning that led to this particular form of constitution, there is nothing more to be considered.

117 PL, xlii, 388 21n, 390, 392
While I understand how Reath’s argument about self-legislation gives us some grounds for thinking of the validity of a procedure as an important reason for complying with its results, I do not see how it gives us the kind of overriding reason that he seems to have in mind – the kind of overriding reason which is necessary for the Rawlsian response here. It is one thing to acknowledge, for instance, that a law or principle is a legitimate principle, and that it ought to have some normative force independent of its actual content. It is another thing altogether to claim that this normative force is necessarily so overwhelming that all other normative considerations are irrelevant. Reasonable dissenters from the constitution who accept the duty of public reason may hold that there are some important procedural considerations that may tell in favour of affirming the constitution, despite its perceived weaknesses, but these considerations might still be outweighed by just how severe these perceived weaknesses might happen to be.

I conclude, therefore, that placing emphasis on the validity of the procedure of pro tanto justification will not necessarily provide Amy with sufficient reasons to suspend her rejection of the political conception that follows from the procedure. As such, it is doubtful that political liberals are capable of responding effectively to the kind of priority problem with which Amy is faced. As long as dissent from the political conception may be reasonable, then political conception is faced with the very real possibility of reasonable rejection, and the non-fulfilment of the liberal principle of legitimacy.

3.3 Reasonableness and rejection of the political values

So far, we have seen that a citizen may reject the content a political conception of justice without impugning her reasonableness. In arguing for this claim, it was assumed that reasonableness entailed some kind of commitment to certain basic liberal political values, such as liberty and equality. In this section, I will argue for the reasonableness of another kind of rejection of the political conception, where the citizen has no commitment to the liberal political values, on the basis of which pro tanto justification is carried out. In this case, the point of departure is at a much deeper level; however, I argue that even this position is consistent with the requirements of reasonableness.
Recall that Rawls’s account of reasonableness commits the reasonable citizen to nothing more or less than SJT: the claim that political justification must be carried out in such a way that it can be shared by people who reasonably disagree on other comprehensive matters. The importance of the political values, on the other hand, required a separate claim, which we referred to as the Acceptance of Political Values Thesis (AT):

**AT:** Political values, and only political values, can be accepted as very important values by people in a democratic society who may reasonably disagree on comprehensive matters.\(^{120}\)

It is certainly not clear that AT logically follows from SJT. Rather, its importance seems to stem from a separate claim about the values which reasonable people will happen to hold. Consider, for example, the following statement by Macedo:

> People who disagree about their highest ideals and their conceptions of the whole truth, might nevertheless agree that public aims such as peace, prosperity, and equal liberty are very important. That is political liberalism’s virtue: it focuses our attention on shared political values without requiring or expecting agreement on ultimate ends or a comprehensive set of moral values governing all of our lives.\(^{121}\)

Assuming we read ‘reasonable people who reasonably disagree’ into the above statement, Macedo here seems to be claiming something like the following: political values such as peace, prosperity, and equal liberty are shareable between reasonable people. This is a good representation of AT: reasonable people *might* find that they agree on the importance of the political values, but it is not clear that they are logically compelled to do so on account of their status as reasonable.

It seems, then, that AT is a claim that is altogether separate from SJT. Given that a citizen’s reasonableness entails only a commitment to SJT, this would then mean that a citizen’s commitment to accepting the importance of the political values is another matter altogether.

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\(^{120}\) Note that I here use the unmodified form of AT, rather than AT\(_1\). This is because the argument that I am offering in this chapter does not assume acceptance of the argument offered for the plausibility of AT\(_1\) in chapter 2.

If this is true, then the common trend among political liberals to identify citizens who reject the importance of the political values as unreasonable *ipso facto* is premature at best. The idea of the reasonable person who accepts the consequences of the burdens of judgment supports only the idea that political justification must be done on the basis of values that may claim the allegiance of people who disagree on other matters. The identification of the political values as those values that are shared by reasonable people with deeply conflicting comprehensive doctrines – the truth status of AT – is contingent on the ability of these values to be at least compatible with the doctrines of reasonable people in a democratic society. If reasonable people should happen to reject the importance of the political values, then political liberalism is essentially unviable.

This does not, however, settle the matter altogether. There are at least two options open to political liberals. One is to accept that there is no logical connection between SJT and AT, but nonetheless insist that such a position is practically inconceivable or untenable. Alternatively, political liberals might attempt to make some kind of argument for AT that draws upon SJT as a premise. Let us consider each of these options in turn.

Firstly, let us try to imagine what such position might look like. If people accept SJT, what grounds are available to them on which they can coherently reject AT? We know, from their acceptance of SJT, that they must think that a shared political justification is a good thing, and so must desire such a justification – if there is any acceptable basis on which it can be carried out. Given their acknowledgement of the fact of reasonable pluralism (contained in the acceptance of SJT), they will not expect to find any alternative set of values that may serve as a source of justification for all reasonable people. They may, however, hold that no such values exist. Hence, a person who simultaneously accepts SJT and rejects AT will hold that shared justification would be a good thing, but that it is also unfortunately unattainable. She may feel that a shareable justification really ought to take place on the basis of some other set of values (such as her own comprehensive doctrine). However, since these values are not shareable among all reasonable people, she may feel that, on balance, society is better off without an overlapping consensus of any kind. This does not strike me as a position that

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is either inconceivable or untenable (no matter how unattractive we may find it to be). It may, in fact, be quite typical of many fringe religious and perfectionist groups who refuse to lend their support to a democratic constitution, but in a seemingly anarchist fashion, refuse to propose an alternative justification for the use of state power instead. Rather than speculate on which contemporary groups, if any, might fit such a description, I think this response is satisfactory for the purposes of demonstrating that the idea of a citizen who accepts SJT but rejects AT is certainly not conceptually unimaginable.

Secondly, it might be possible for political liberals to make an argument that SJT somehow entails AT. Even if it is possible to conceive of a person who accepts SJT but rejects AT, it may be that a logical contradiction in such a position nonetheless lurks beneath the surface. Although Rawls never offers an explicit argument for the importance of the political values, a considerable variety of terms and ideas seem to accompany his idea of the reasonable person. Notable among these terms is the political conception of the person as free and equal. However, the role and meaning of this term is seldom clear. For example, it sometimes appears as if Rawls uses the terms ‘free and equal’ and ‘reasonable’ interchangeably. Let us nonetheless try to formulate an argument that SJT somehow presupposes the importance of certain political values. Consider the following:

1) Reasonable people seek a shareable political justification that respects reasonable disagreement. (SJT)
2) People who seek a shareable political justification are committed to viewing each other as free and equal.
3) If people are committed to viewing each other free and equal, then they accept the importance of the political values of freedom and equality.
4) Reasonable people are committed to the political values of freedom and equality.

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123 PL, 18-19; for an extensive list of concepts that seem to be identified by Rawls, at some points, as features of reasonable people, see Wenar, “Political Liberalism: An Internal Critique”, 37

124 Besch, On Practical Constructivism and Reasonableness, 26f.
Rawls’s statements concerning 2) are ambiguous, but there are some suggestions that he holds some such view.\textsuperscript{125} If this is his view, however, I believe it is mistaken. I will try to show here that one can accept SJT without viewing people as either free or equal.

Consider the idea of freedom. People are to be understood as free, according to Rawls, in the sense that they are understood as having the capacity for the two moral powers: a sense of justice, and a conception of the good.\textsuperscript{126} It might be argued that acceptance of SJT entails recognition of people as free, since it seems to confer moral value to the idea of people being able to develop the two moral powers, rather than be subject to the dictates of coercive intrusions which they do not consider justified. In a similar vein, consider the idea of equality. Rawls holds that people are to be understood as equal in the sense that they have the capacity to be ‘fully cooperating members of society’.\textsuperscript{127} It could be argued that accepting SJT entails the recognition of people as equal, since it requires a political justification to be acceptable from the perspective of reciprocity, rather than, say, an ‘inferior political or social position’.\textsuperscript{128} Both of these inferences, however, are misleading. As we saw from the example of the anarchist-perfectionist above, the person who accepts SJT must view a shareable political justification as a good thing only if there is an acceptable set of values available. If a citizen does not value the political values, then she is not logically required to hold that a shareable political justification is desirable. And if she does not hold that a shareable political justification is desirable, then she need not accept that people are free and equal. But this is all perfectly compatible with her holding that a shareable political justification would be desirable if an acceptable set of values is available. Hence, it is possible to accept SJT without accepting that people ought to be treated as free and equal.

These considerations give us a good reason to doubt 2). However, it is not clear that 3) is altogether plausible either. Even if we accept that people have the capacity for the two moral powers, it seems that we might coherently reject the value of freedom. Consider, for example, a particular society, Totalitaria, governed by a sole dictator. Suppose this dictator reflects on the moral powers of the citizens in Totalitaria, and says: ‘I see that my citizens are capable of forming their own views about what a just society should look like. I also see that

\textsuperscript{125} See \textit{PL}, 18-19
\textsuperscript{126} \textit{PL}, 19
\textsuperscript{127} \textit{PL}, 19
\textsuperscript{128} \textit{PL}, xliiv
they are inclined towards a variety of different conceptions of the good life. But many of these views about justice and the good are wrong. Therefore, I will suppress all those views about justice and the good which I disagree with.’ Now it is not clear that the dictator’s reflections here are in any kind of tension with each other as they so stand. It may be possible for the dictator to recognise that people have the capacities for a sense of justice and a conception of the good, without also holding that people ought to be freely allowed to develop these capacities. The liberal idea of freedom must be supplied by some other source.

The derivation of equality from Rawls’s conception of the person as ‘equal’ seems even more tenuous. The fact of people’s capacity to be fully cooperating members of society does not entail that people possess an equal capacity; yet even if it did, it does not follow from this that people ought to be treated as equals in any substantive way. If Rawls’s conception of the person as equal involved, for example, the claim that people are of equal moral value, then this would seem to support some kind of equal treatment. Without such a claim, however, I do not see how Rawls’s conception of the person as equal is unable to ground the political value of equality.

We have good reasons, then, to doubt both 2) and 3). If the argument above fails, then we are led towards the conclusion that the importance of the political values in political justification cannot be derived from the fact of reasonableness alone. This argument is, of course, contingent upon my formulation of SJT as the best way of understanding the political liberal conception of reasonableness. Throughout this argument, I have taken Rawls’s conception, understood as the willingness to propose fair terms of cooperation that respect reasonable disagreement, as the definitive conception. This assumption can be challenged. Otherwise, however, it seems that political liberals are required to acknowledge that a citizen who rejects the political values can still qualify as reasonable, and that the rejection of the political conception of justice by such a person is a threat to the legitimacy of a political liberal state.

3.4 Unreasonable dissent

Finally, let us consider the dissenter who not only rejects the importance of the political values, but also rejects the values embedded in Rawls’s notion of the reasonable person. This includes the ideas of fair terms of cooperation and the burdens of judgment. In this case, the
dissenter rejects not only AT, but SJT as well. Perhaps such a person does not believe in the need for fair terms of cooperation. Or perhaps she does not believe in the need to respect reasonable disagreement, and that people who fail to accept a particular illiberal comprehensive doctrine ought are unworthy of full inclusion in the scope of public justification. Now it goes without saying that such a person does not meet the standards of reasonableness embodied in Rawls’s conception. Hence, if the conception stands, then this form of dissent can be dismissed as unreasonable; this might render its exclusion from an overlapping consensus largely harmless, as far as political liberals are concerned. Yet even here there is a caveat. If political liberals wish to hold to the view that political liberalism is the best expression of the ideal of democratic deliberation, then it seems plausible to hold that their concept of reasonableness depends, at least to some extent, on its ability to find acceptance among citizens of a democratic society.\(^{129}\) If a sufficiently large percentage of the citizenry reject this conception of reasonableness, then its ability to have any real justificatory purchase starts to falter. For Rawlsian liberals, the concept of reasonableness is already embedded in the minds of democratic citizens. As Stephen de Wijze argues:

‘The reasonable’ is not a notion plucked from the rarefied intuitions of upper-class academics, but is an idea inherent in the public political culture of a functioning pluralist democracy. Reasonableness, along with its role in framing public reason, is uncovered through a hermeneutic process, as it is a fundamental value already shared by democratic citizens. \(\text{If one is a committed democrat, then the value of reasonableness is already integrated into one’s worldview, whatever that conception may be.}\)\(^{130}\)

But if a sizeable number of committed democrats do not have the value of reasonableness integrated into their worldview, then the project of political liberalism is in tatters. Its conception of reasonableness would then appear to be fundamentally arbitrary and viciously circular. Given the plethora of interpretations of democratic culture prevalent in democratic nations today, it is hard to believe that it is impossible to simultaneously reject Rawls’s

\(^{129}\) On why a conception of reasonableness might itself stand in need of justification, see Besch, \textit{On Practical Constructivism and Reasonableness}


Now it is not clear whether one can argue, on grounds internal to political liberalism, that a single democrat who rejects the conception of reasonableness is problematic for political liberalism in the same way that a single reasonable person who rejects the political conception of justice is. It may be that, in the case of the former, a greater weight of numbers is required. However, I take it that political liberals have sufficient reason to want to minimise such cases, however uncommon they may be. For every democrat who rejects the conception of reasonableness, the ability of political liberalism to win the free allegiance of democratic people is lessened.

\subsection*{3.5 Conclusion}

In this chapter, I have considered three possible ways in which citizens may dissent from a political liberal society. Firstly, they may reject the ordering of the political values used to form the political conception of justice. Secondly, they may reject the role of the political values as the basis for shared justification. Finally, they may reject the conception of reasonableness at the heart of Rawls’s project. In the first two instances of dissent, we have found that it is either very difficult or impossible for political liberals to dismiss this dissent as unreasonable. Although the third kind of dissent is inherently unreasonable on Rawlsian terms, we saw how this kind of dissent has the capacity to undermine the concept of reasonableness altogether, so that political liberalism is left without a leg to stand on.

Where does this leave us? We have said that an overlapping consensus requires the inclusion of all reasonable people and doctrines, so that each of them is able to accept and support the political conception of justice that emerges from \textit{pro tanto} justification. If we accept Rawls’s indication that an overlapping consensus is not merely a requirement for the sake of stability, but a stage of moral justification that is just as important as the construction of the political
conception of justice from political values alone, then we can see how reasonable dissent from an overlapping consensus can threaten the entire project of political liberalism. If, as I have argued, political liberals are seldom able to dismiss dissent from political liberalism as unreasonable, then their political scheme already seems in jeopardy. This means that political liberals actually owe such dissent a response. The assumption, prevalent in several versions of political liberalism, that dissent from the political conception of justice counts against the reasonableness of the dissenter, rather than the reasonableness of the political conception itself, has been shown to be misleading at best, and in many cases, plainly false. They therefore ought to view argument from conjecture as a vital task for political liberalism: it consists of the inclusion of people whose inclusion is necessary for political liberalism’s own coherence.

Are there any options available to the political liberal who wishes to reject this conclusion? Perhaps two alternatives suggest themselves. Firstly, political liberals might opt for a thicker conception of reasonableness that more clearly requires reasonable people to accept a reasonable liberal political conception of justice on pain of incoherence. Secondly, political liberals might reject the need for an overlapping consensus of comprehensive doctrines held by reasonable people. Yet both of these options would lend further weight to the charge that political liberalism is unacceptably dogmatic. A thicker conception of reasonableness, deployed as a foundational justificatory device, would increase the size of the class of people referred to as unreasonable. These people, we may recall, are excluded from the scope of public justification, without being provided with a reason for their exclusion which is acceptable from their point of view. Furthermore, if political liberals adopt something like Quong’s model of an overlapping consensus, as opposed to that of Rawls, then political liberals are no longer committed to respecting reasonable people. Insofar as political liberals wish to avoid both of these consequences, then they must accept that arguments from conjecture are indispensable to the project of public justification.
In the previous two chapters, I have argued that, in addition to the duty of public reason, political liberals need to practise two separate duties in public discourse: a duty of engagement, which requires citizens to familiarise themselves with the comprehensive doctrines held by others; and a duty of conjecture, which requires citizens to offer arguments to those citizens who dissent from political liberalism which are acceptable from the point of view of the dissenter. Each of these duties, I have claimed, is necessary if the political liberal ideal of public justification is to be attained.

In this chapter, I will argue that the successful exercise of each of these duties requires the virtue of empathy. I will begin by drawing upon Julinna Oxley’s conception of empathy as embodying two distinct features, namely, empathy as emotional infection and empathy as cognitive simulation (4.1). I will then argue that both the duty of engagement and the duty of conjecture draw upon the idea of empathy as cognitive simulation (4.2). Following this, I will consider whether there are any reasons to extend the idea of empathy required by these duties to include emotional contagion as well as cognitive simulation (4.3). 4.4 concludes.

4.1 Two features of empathy

Let us begin by clarifying what we mean by empathy. As a relatively modern term, we owe our inheritance of empathy as a concept to the writings of David Hume and Adam Smith. However, neither Hume nor Smith was equipped with the idea of empathy as a distinctive concept; instead, both wrote extensively about different forms of ‘sympathy’. The significance of Hume and Smith here lies not only in their pioneering role in articulating the concepts of modern moral psychology; in relation to the idea of empathy, they each stress contrasting different aspects. For Hume, one of the crucial aspects of sympathy (which is

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translated into the present-day idea of empathy) is that we are infected with the feelings and emotions of the person with whom we are sympathising:

When any affection is infused by sympathy, it is at first known only by its effects, and by those external signs in the countenance and conversation, which convey an idea of it. This idea is presently converted into an impression, and acquires such a degree of force and vivacity, as to become the very passion itself, and produce an equal emotion, as any original affection.\(^\text{133}\)

The essence of sympathy for Hume, therefore, is the reception of an emotion ‘conceived to belong to another person, as we conceive any other matter of fact.’\(^\text{134}\) It is Hume’s conception, therefore, that supplies the idea of *emotional infection*. This theme is translated into the modern idea of empathy, which involves the infection of one person with the emotions of another. If Jill perceives that Jack is upset and is empathetic, she becomes infected with Jack’s sadness, in such a way that she begins to feel some of Jack’s sadness herself.

Now it is important to be aware that Hume’s use of the word ‘sympathy’ differs significantly from its modern usage. By sympathy, we typically refer to the idea of emotionally motivated concern for another. However, this is not quite the same as Hume’s idea of reception of the same emotion felt by the other. It is this aspect of Hume’s version of sympathy that is translated into the modern concept of empathy. To illustrate, suppose that Jill perceives that Jack is upset. If Jill feels sorry for Jack, and feels emotionally motivated to comfort him, then she is experiencing sympathy in the modern sense of the term. On the other hand, if she finds herself infected by Jack’s sadness, so that she begins to feel some of Jack’s emotional anguish herself, then she is sympathetic in the Humean sense. It is this latter sense, however, that we now more properly ascribe to the concept of empathy, rather than sympathy.

Contrast this with Smith’s discussion of sympathy. This account provides us with a more cognitive understanding of the concept. As per Hume, his discussion of sympathy is widely believed to refer in fact to the modern idea of empathy. His account focuses not so much on

\(^\text{133}\) David Hume, *A Treatise of Human Nature*, volume 2 (Maryland: Wildside Press, 2007), 41

\(^\text{134}\) Hume, *A Treatise of Human Nature*, 43
an exchange of emotions as an exchange of perspectives. When we imagine our friend being tortured, we are unable to experience the kind of pain he is presently experiencing, since ‘our senses will never inform us of what he suffers’. What sympathy does involve, however, is some form of simulative exchange of perspective:

By imagination we place ourselves in his situation, we conceive ourselves enduring all the same torments, we enter as it were into his body, and become in some measure the same person with him, and thence form some idea of his sensations, and even feel something which, though weaker in degree, is not altogether unlike them.\(^{135}\)

Smith’s account of sympathy thus introduces the idea of *cognitive simulation*. If Jill is empathetic, she places herself in Jack’s shoes, and starts to understand something of his sadness. It is still possible, on Smith’s account, for Jill to feel something of Jack’s sadness. But as Oxley points out, this transfer of emotion ‘is a result of the imaginative experience of the other’s internal states’.\(^{136}\) Any emotional infection is thus secondary to the imaginative simulation that takes place. The cognitive reconstruction of the other’s perspective is prior to any emotional experience that may ensue. Compare this to Hume’s account, where the emotional transfer is primary, and is not contingent upon any cognition of the other’s internal state.\(^{137}\)

The accounts of both Hume and Smith can thus be seen as supplying alternative conceptions of the modern idea of empathy. The important question, though, is how this comes to bear on how we should properly understand the term. Oxley argues, correctly in my opinion, that we cannot rightly separate the emotional aspect from the simulative aspect of empathy, since doing so would commit us to acknowledging the simulative deliberations of the sadist as empathetic.\(^{138}\) Hence, we cannot hold onto Smith’s conception, whilst jettisoning Hume’s. Nor, however, can we rightly eliminate the importance of simulation from empathy, since the transmission of an empathetic emotion requires congruence between both parties: it is not enough that Jill is emotionally affected by Jack’s sadness; her emotions must, at least in some way, correlate to the state Jack is in. This means that empathy, properly understood, must

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\(^{136}\) Oxley, *The Moral Dimensions of Empathy*, 19

\(^{137}\) Oxley, *The Moral Dimensions of Empathy*, 19

\(^{138}\) Oxley, *The Moral Dimensions of Empathy*, 24-28
include both Humean and Smithian elements. Oxley’s ‘functional’ definition of empathy as ‘feeling a congruent emotion with another person, in virtue of perceiving her emotion with some mental process such as imitation, simulation, projection or imagination’ represents just such an attempt to combine both cognitive and non-cognitive aspects. But does this complete definition identify a virtue which political liberalism actually needs? In the following section, I will argue that political liberals have clear reasons to value at least the simulative dimension of empathy. Following this, I will suggest some reasons for thinking that the duties of engagement and conjecture can be most faithfully observed through the exercise of the full concept of empathy, involving both simulative and emotionally infective aspects.

4.2 Engagement, conjecture, and simulation

Consider the following argument:

1) If an agent deliberates or argues in such a way as to take into account the perspectives of others, then the agent engages in empathetic deliberation.

2) Contractual deliberation takes into account the perspectives of others.

3) Therefore, contractual deliberation is empathetic deliberation.

Oxley suggests that contractual devices like Rawls’s original position model empathetic deliberation because they require the giving of reasons which, we believe, will be acceptable from the viewpoints of others:

Contractual thinking requires imagining the responses of others by seeing things from their perspectives, and this is just what empathy enables us to do – represent the perspectives of others in a way that enables us to understand their reasons and values.140

I do not believe that the argument, as it stands, is altogether sound. The truth-status of 2) is contingent upon a contractual deliberation taking a particular form, such as the interpretation

139 Oxley, The Moral Dimensions of Empathy, 32
140 Oxley, The Moral Dimensions of Empathy, 127
of the veil of ignorance suggested by T.M. Scanlon. Rather than see the two principles of justice as justified because they can be accepted by people situated behind the veil of ignorance, we should think of them as justified because any reasonable person anywhere ought to see the veil of ignorance as an appropriate procedure for principle selection.\textsuperscript{141} In other words, the veil of ignorance models empathetic deliberation if and only if there is some kind of justificatory connection between the original position, and real reasonable people. I agree that this reading of justice as fairness gives it greater justificatory strength, and accords best with the ‘metatheoretical stand’ Rawls adopts in his political turn, identifying the standpoint of ‘you and me’ as the fundamental locus of justification.\textsuperscript{142} However, as an interpretation of the nature of justice as fairness, it is open to two main problems. Firstly, it is not clear whether Rawls offers a systematic argument as to why reasonable people ought to accept the original position as a device for selecting principles of justice. Rawls’s oft-repeated claim is that ‘the conditions embodied in the original position are ones that we do in fact accept. Or if we do not, then perhaps we can be persuaded to do so by philosophical reflection.’\textsuperscript{143} However, this claim generally seems to be asserted, rather than argued for. Suppose, however, that Rawls is interpreted as offering some general reasons in favour of the existence of a justificatory link between reasonableness and the original position.\textsuperscript{144} This would leave justice as fairness open to a second problem, where the question of justification is pushed back one step further – unless reasons are offered to create a further justificatory link between actual people and the idea of reasonableness, then justification does not engage on any fundamental level with the perspectives of real people.

We may therefore surmise that justice as fairness, certainly in its Rawlsian form after 1980, is pitched at a level of empathetic deliberation, but its essential stages of justification are not carried out empathetically. To be sure, the original position may be crafted with reasonable people in mind; however, justificatory focus is placed on forging a link between the original

\textsuperscript{141} T.M. Scanlon, “Contractualism and Utilitarianism”, in Utilitarianism and Beyond, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982), 282; cited in Oxley, The Moral Dimensions of Empathy, 106
\textsuperscript{143} TJ, 21
\textsuperscript{144} See TJ, 17-22
position and the principles of justice. Reasonable people are offered only a little more than speculation as to why they should accept the original position, and less still as to why they should value a certain conception of reasonableness in the first place.

The duties of engagement and conjecture, however, do not face this same problem. They are focused directly on engaging with the perspectives of real people, not abstractions. When a citizen tries to engage a particular comprehensive doctrine of a dissenter with an argument of conjecture, for example, she must try to understand, as far as possible, what the dissenter’s doctrine actually is. The more she tries to engage the doctrine in the abstract, distinct from the person, the more she runs the risk of actually failing to engage with a person’s own idiosyncratic doctrine, rather than merely what she takes it to be (or would like it to be). When she tries to hear the case of a particular comprehensive doctrine for its inclusion in the content of a political conception of justice, or tries to test the doctrine for its capacity to translate in political values, she is doing her very best to take the perspective of those who hold this doctrine, so that she can come to understand the reasoning that lies behind this doctrine, and the grievances against the existing political conception which those who hold this doctrine may have.

All this suggests that we should amend the argument offered above to the following:

1) If an agent deliberates or argues in such a way as to take into account the perspectives of others, then the agent engages in empathetic deliberation.

2) A form of deliberation which pitches and engages in justification to real people is a form of empathetic deliberation.

3) The duties of engagement and conjecture pitch and engage in justification to real people.

4) The duties of engagement and conjecture engage in empathetic deliberation.

A problem here arises. The revised version of 2) is more convincing because of its clear focus on real people, as opposed to abstract entities. But it might be objected that it nonetheless fails to capture fully what we mean by empathy. It seems that 2) only draws properly on the cognitive elements of empathy – that is, it involves attaining knowledge of the nature of the beliefs and values held by the relevant others. But this does not address the emotive aspects of empathy – its capacity to infect the empathiser with feelings corresponding to the internal state of the relevant others. In the following section, I will
address this problem. I will try to show that, in order for the duties of engagement and conjecture to be carried out effectively, the full virtue of empathy, involving both cognitive and emotional aspects, is valuable, and perhaps indispensable.

4.3 Do Engagement and Conjecture also involve infection?

So far, we have seen that, unlike some other forms of contractual deliberation, the duties of engagement and conjecture draw upon the simulative aspect of empathy. This makes the virtue of empathy a natural ally of political liberals, whose hopes for a just public justification hinge on the ability of citizens to effectively exercise these duties. But it is not clear, from this premise alone, that empathy has any kind of unique status that makes it necessary for the purposes of political liberalism. Empathy may aid the kind of perspective-exchange that is central to the needs of political liberals, but it may be the case that this exchange can also be achieved effectively without empathy, understood as containing the idea of emotional contagion as well as perspective-swapping and imaginative simulation. It may be that the picture of empathetic deliberation painted in 4.2 is, in fact, nothing more than a non-empathetic discernment of information. Are there any reasons, then, that single out the virtue of empathy, in its most complete sense, as having a more pivotal role in the project of political liberalism? I will begin by considering Oxley’s attempt to distinguish contractual deliberation from what she describes as ‘hypothetical deliberation’, the latter referring to non-empathetic forms of simulation. Although she argues that contractual deliberation essentially models empathetic deliberation, I will argue that the particular argument she offers is mistaken, largely because it is ill-equipped to address a particular ambiguity concerning the status of the moral insights gained from empathetic deliberation. I will, however, suggest that, whichever way this ambiguity is resolved, we have good reason to view the duties of engagement and conjecture as requiring properly empathetic deliberation, including both simulative and infective aspects.

4.3.1 Contractual deliberation: empathetic or hypothetical?

Oxley is careful to distinguish empathetic deliberation from hypothetical deliberation. The latter involves ‘simulating or imagining the other’s psychological state in order to generate
provisional choices based on that person’s psychology.145 Such forms of deliberation are typical of many forms of utilitarianism, which seeks to attain information about the nature and strengths of people’s desires or psychological facts. As I understand Oxley, this differs from empathetic deliberation in two ways. Firstly, empathetic deliberation involves an emotional transfer. Secondly, empathetic deliberation involves a certain kind of normative judgment, absent in hypothetical deliberation, where one comes to see others’ reasons as ‘valid concerns.’146 By this, she means prima facie approval of others’ emotional states.147 At times, it seems that Oxley intends to run these two differences together. Consider, for example, the suggestion that empathetic deliberation includes ‘feeling the other’s emotions and appreciating his situation in a way that enables one to be more sensitive to the moral values and principles that are at stake.’148 On this interpretation, the empathetic deliberator obtains new moral insights precisely by means of the emotional transfer that takes place. This means that Oxley is committed to the following biconditional – let’s call it the Empathetic Biconditional:

Mx = x receives new moral insights
Ex = x experiences a transfer of emotions

Mx iff Ex

This means that it is impossible to separate a fully empathetic moral appreciation of the other’s views from the transfer of emotions. It does not claim that all the moral insights that are obtained via empathetic deliberation happen via emotional transfer; it leaves open the possibility that cognitive aspects of empathy may convey moral insights of their own. What the empathetic biconditional does claim, however, is that at least some moral insights cannot be obtained without emotional transfer.

Now Oxley holds that contractual deliberation goes beyond hypothetical deliberation, in ways in which some forms of utilitarianism do not. The essential difference is that contractualism involves a normative appraisal of the importance of another’s moral views, whereas

145 Oxley, The Moral Dimensions of Empathy, 90
146 Oxley, The Moral Dimensions of Empathy, 95
147 Oxley, The Moral Dimensions of Empathy, 72
148 Oxley, The Moral Dimensions of Empathy, 93. Italics are mine.
utilitarianism, in the form presented by John Harsanyi, involves no more than a collection of data about these preferences, without any consideration of their moral status. If the empathetic biconditional is correct, then this implies that the contractualist deliberator is also emotionally infected, in ways which the utilitarian is not. If Oxley is correct about this, then the duties of engagement and conjecture, insofar as they are forms of contractual deliberation, necessarily require the virtue of empathy, understood in both simulative and infective terms.

I do not intend here to challenge the biconditional itself. What I do intend to do is consider its actual meaning. Specifically, I will inquire as to what is meant by ‘new moral insights’. A contractualist theory holds that the moral judgments made by people who fall within the relevant scope of application have a certain normative weight. A utilitarian, on the other hand, holds that it is not moral judgements that have normative weight, but rather, it is certain facts about what maximises happiness for a person that function as bearers of normative value. Now suppose that ‘new moral insights’ signifies recognition of the moral value of certain facts obtained through deliberation. If this is the case, then it is hard to see why Harsanyi’s utilitarianism does not involve empathetic deliberation. The moral deliberator gathers facts about what conditions will lead to another person’s happiness, knowing that, if utilitarianism is true, then these facts have moral weight in themselves. Likewise, think of the contractual deliberator who gathers information about the moral judgements held by the relevant others, knowing that these judgments are bearers of moral value. If this is what is meant by ‘new moral insights’, then the utilitarian seems no less committed to empathetic deliberation than the contractualist.

I think Oxley is right, however, to suggest that such deliberation is not necessarily empathetic. There doesn’t seem to be anything incoherent about the idea of gathering such information without any emotional transfer. Consider, for example, a person who engages in arguments from conjecture for pragmatic, Hobbesian reasons. This person does not believe their interlocutor merits any kind of moral respect qua person; her sole motivation for engaging in arguments from conjecture is to create a stable order upon which a sovereign body can impose itself. Such a form of deliberation does seem to involve a recognition of a certain kind of moral value; Hobbesian contractualism identifies social stability as the goal of any political morality. But such deliberation does not imply any kind of emotional connection to the particularities of the interlocutor’s state of mind. If this is correct, and it is also true that the moral insights gained from empathetic deliberation amount to recognition of
the moral value of certain facts, then the empathetic biconditional is false, since this would then entail that we can gain the same moral insights we get from empathetic deliberation without emotional transfer.

Let us suppose, then, that the ‘new moral insights’ involved in empathetic deliberation have a different, more demanding meaning. Suppose that it means something more substantial than recognition of the moral value with which certain facts or judgments are imbued. The moral insights which we gain from empathetic deliberation involve actual normative evaluation of these facts. Suppose that Jill empathises with Jack’s holding a view about a certain ethical issue. This means that Jill doesn’t simply accept that Jack’s state of mind is a source of normative value. Rather, she evaluates Jack’s state of mind in light of the relevant circumstantial facts and finds that his perspective is plausible. However, this is precisely the sort of thing that contractual deliberation does not engage in. This is because the very essence of contractualism involves a commitment to respecting the views of people who fall within the relevant scope; to ask about the plausibility of these views as measured against a non-intersubjective norm is to cease to be a contractualist. Consider, for instance, Rawls’s description of the original position as a device of pure procedural justice, as opposed to perfect procedural justice. ‘The essential feature of pure procedural justice, as opposed to perfect procedural justice, is that what is just is specified by the outcome of the procedure, whatever it may be. There is no prior and already given criterion against which the outcome is to be checked.’

Once the relevant parties to a contract have been identified and fairly situated, there are no further checks to be put in place. To rely on perfect procedural justice is to take the second, non-contractualist horn of what is effectively another version of the Euthyphro dilemma: if we say that the outcome of the procedure is justified because of some moral standard that is prior to the procedure, then we acknowledge that it is this particular moral standard, and not the contractual procedure, that is the real source of moral judgments. If this much is correct, then it is difficult to see how the deliberator can engage in moral evaluation of the other’s state of mind without abandoning a contractualist standpoint.

Of course, for political liberals, the contractual moment is not the original position itself, since this device is but one way of justifying a political conception of justice. The main

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149 *PL*, 73

150 *PL*, 437f.; 450
contractual moment in political liberalism takes place not in the original position, but in the
deliberations of reasonable people, concerning the most appropriate political conception of
justice (during which it is of course possible that something like the original position may be
chosen as an appropriate device for principle selection). However, just as the parties in the
original position do not choose principles in accordance with any antecedent standard, the
views of reasonable people are regarded by political liberals as constitutive for the purposes
of political justice. Political liberals do not ask reasonable people to give an account of why
the political values are important; rather, they are taken to be important precisely because all
reasonable people are expected to think so. Hence, political liberalism is still a kind of
contractualist theory, in which deliberations on fundamental matters involve discerning the
views of reasonable people, rather than evaluating them.

The dilemma for Oxley, then, is as follows: if the moral insights we gain from empathetic
deliberation are recognitions of the moral value of certain facts (i.e. facts about the causes of
a person’s happiness for utilitarians, or facts about the moral judgments held by a person for
contractualists), then Harsanyi’s information-gathering utilitarianism involves empathetic
deliberation no less than standard contractualist alternatives. If we are correct in thinking that
such forms of deliberation can be empathetic, then the empathetic biconditional is false (since
this would mean that the moral insights to be gained from empathetic deliberation can be
obtained without emotional transfer). On the other hand, if the moral insights we gain from
empathetic deliberation are moral evaluations of these facts, then empathetic contractual
deliberation seems to be an impossibility (since contractualism normally implies a
commitment to avoiding evaluation of the views of people who fall within the relevant
scope). If each of these options exhausts the list of possible interpretations, then there is no
logically necessary link between empathetic deliberation and any form of contractual
deliberation, even deliberations based on the duties of engagement or conjecture. Note,
however, that this does not mean that the presence of empathy is anything less than vital for
the successful exercise of the duties of engagement and conjecture. The first horn of the
dilemma stipulates that empathetic deliberation is not necessarily present in contractual
deliberation. The second horn, on the other hand, entails that empathetic contractual
deliberation is impossible. If we accept the first horn, then we should look for a reason which
demonstrates the importance of empathetic deliberation as the most effective form of
contractual deliberation. If we accept the second horn, then we should explore ways in which
the duties of engagement and conjecture go beyond contractual deliberation.
Rather than assume the superiority of one interpretation over another, I will argue that we have good reasons to believe that the duties of engagement and conjecture require the exercise of the virtue of empathy, regardless of the way in which we interpret the nature of the moral insights gained from empathetic deliberation. If this can be done, we will have seen that political liberals cannot hope to meet the requirements of public justification without the presence of the virtue of empathy. I will present an argument for this conclusion from the standpoint of each of these two positions in turn.

4.3.2 Empathetic deliberation as effective hypothetical deliberation

Suppose firstly that the moral insights received from empathetic deliberation are essentially recognitions of the moral value of certain facts. The empathetic deliberator becomes aware of the moral value of the facts obtained through hypothetical deliberation. In this case, the contractualist still ought to value empathetic deliberation, as opposed to non-empathetic hypothetical deliberation. This is because we have good reasons to think that the most effective form of hypothetical deliberation is empathetic deliberation. Recall the kind of pluralism that political liberals believe characterises modern democratic societies. We have seen how the burdens of judgment emphasise the fact of reasonable disagreement, in the sense that the multitude of conflicting doctrines in a society is not simply a result of, say, the inability of some people to grasp fundamental principles of reason; rather they hold that at least some of these forms of disagreement are such that people on both sides may be fully reasonable. We have also seen that political liberals believe that this kind of disagreement is permanent.  

Barring the oppressive use of political power to promote one doctrine and silence all others, reasonable pluralism is a natural feature, and indeed, an inevitable feature, of a modern society. The permanence of reasonable pluralism seems to imply that the kinds of reasonable disagreement that exist in modern democracies are very deep disagreements, which are not easily resolved by attempts to simulate the perspectives of others in a purely impersonal manner. Empathy, as a virtue that incorporates both rational simulation and emotional contagion can, as Oxley puts it, have a ‘salience-effect’, which, we may speculate, is not so easily matched by non-emotional reconstructions of the other’s perspective.  

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151 PL, 36
152 Oxley, The Moral Dimensions of Empathy, 16
Nancy Sherman, the emotive aspect, having a ‘transformative effect’, goes beyond mere
discernment of the ‘concrete particulars’, allowing a more meaningful exchange of
perspectives:

I say to my daughter, who is looking for counsel, “This is what I think I would do in
these circumstances.” But then I quickly step back and realize that I am not a sixteen-
year-old teenager, and so I adjust the mental states I draw from, trying to become her,
but only a little wiser.\footnote{Nancy Sherman, “Empathy and Imagination”, Midwest Studies in Philosophy 22 (1998): 111}

What empathy requires, unlike non-affective perspective reconstruction, is the exchange of
actual mental states. It is this aspect of empathy that gives empathy its more powerful
salience effect, revealing the reasons that count for the daughter in the way that they count for
the daughter. This emotional transfer involved in empathy does not only reveal the views
held by others; it also provides a more complete account of the reasons for which these views
are held. Empathy thus provides a deeper understanding of the nature of people’s beliefs. If
Jill understands the reasons why Jack holds belief X, then she is better able to perceive the
ways in which Jack’s allegiance to X might be contingent, as well as the nature of what X
actually involves. Without this transfer of mental states, it may be that even our best efforts
to uncover and understand the most fundamental aspects of doctrines that are not our own
may result in no more than inaccurate and uncharitable caricatures, which can do little more
than scratch the surface of the problems facing political liberalism.

Two points of clarification ought to be made. Firstly, in 3.1 I suggested that a distinction
could be drawn between empathetic deliberation, and Hobbesian contractual deliberation.
Yet if empathic deliberation is the most effective form of hypothetical deliberation, it would
seem that Hobbesian deliberators also have a strong reason to value empathy. This can be
granted without any contradiction because the claim of 3.1 was only that there is nothing
necessarily empathetic about Hobbesian deliberation, any more than there is anything
necessarily empathetic about contractual deliberation generally. Both rely essentially on
hypothetical deliberation. But if what I have argued here is correct, then the most effective
forms of hypothetical deliberation, including Hobbesian forms, will draw upon the virtue of
empathy in order to make the reasons of others salient by means of an exchange of mental
states. Hence, what I am offering here is a somewhat moderated form of the empathetic biconditional. It does not claim that the exchange of mental states is strictly necessary for the conveyance of moral insights; it does, however, claim that the most effective way to obtain these insights is through such an exchange. And it also suggests that, without this exchange, the high epistemic demands of the duties of engagement and conjecture will not be satisfied.

Secondly, it may seem that the salience effect of empathy is in tension with the interpretation of empathetic deliberation presented in 3.1, where the moral insights obtained from empathetic deliberation amount to nothing more than the recognition of certain facts. However, that is not the case. While the salience effect allows the empathiser to perceive the reasons another may have for holding a particular view, it does not require her to evaluate these reasons. Suppose Jack empathetically perceives that Jill is offended by his use of sexist language. According to the interpretation of empathetic deliberation I am working with here, Jack does not evaluate the reasons for Jill’s feelings; nor does he simply identify them as a fact, like any other feeling. Rather, he perceives that Jill’s feelings bear at least some normative value simply by virtue of the fact that they are Jill’s feelings. Hence, the salient effect still involves only recognition, as opposed to moral evaluation, of the moral importance of certain facts.

4.3.3 Engagement and conjecture as extra-contractual deliberation

Secondly, suppose that empathetic deliberation involves a kind of moral evaluation of a person’s feelings. On this interpretation, the idea of ‘prima-facie approval’ of another’s emotional state involves some form of rational deliberation, leading to the conclusion that this state is at least in some way morally plausible. On this interpretation, as we saw in 3.1, contractual deliberation cannot be empathetic deliberation, since contractualism requires that we take the views of contractual parties to be valuable precisely because they are held by the relevant parties, rather than on the basis of any independent criteria of value. However, the role of empathy in the duties of engagement and conjecture can still be established by pointing out that both duties are not in themselves contractualist duties. Rather, they are non-contractualist duties that have an important role within a contractualist theory. This is because they take place, in some sense, outside of the contractual moment in which the

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154 Oxley, The Moral Dimensions of Empathy, 36
parties come together to forge an agreement. The duty of engagement, for instance, takes place prior to the contractual moment. It involves going beyond those already designated as constituent members of the contract, to those who are excluded, and testing whether their exclusion might be unjustified. It involves evaluation of a person’s viewpoint to determine whether they ought to be treated as a contractual participant. Once this person is included, however, they are accorded the kind of status where their view does not need to be evaluated in the same way. Once a person’s viewpoint is recognised as reasonable, and understandable in terms of political values, then political liberalism does not require them to provide any further justification. Consider also the duty of conjecture. This duty, too, is addressed to people who are not yet part of the contractual agreement – in this case, because they reject its conditions. Conjecture aims to engage with the idiosyncratic claims of individuals who dissent from the political consensus, and encourage them to accept its terms. Once they do so, and perceive the importance political liberals ascribe to the political values, then conjecture ceases, and these people are treated as part of the contract.

It might be objected that the duty of conjecture does not require approval of another’s viewpoint. Consider, for example, an argument from conjecture put forward by Peter, a reasonable person who accepts the importance of the political values, against Paul, a religious fundamentalist. Although Peter is trying to convince Paul that Paul’s religious beliefs commit him (despite appearances) to endorsing the fundamentals of political liberalism, Peter does not share, approve of, or in any way emotionally identify with Paul’s religious beliefs. If the empathetic biconditional holds true, then this would mean that contractual deliberation is not necessarily empathetic, since this allows that contractual deliberation can obtain its necessary moral insights without an emotional transfer. This picture of arguments from conjecture, however, underestimates the degree of inclusiveness which political liberalism aims for. It may well be that Peter does not share Paul’s religious beliefs, and may have strong reasons to disapprove of them. However, if the argument from conjecture succeeds, Peter, who as a reasonable person esteems the moral quality of the political values, will have at least come to respect the way in which Paul’s beliefs support these values.
4.4 Conclusion

In this chapter, I have shown how both the duty of engagement and the duty of conjecture require empathtic deliberation, if these duties are to be exercised effectively. We have seen how empathy has two necessary aspects to it: a cognitive, simulative aspect; and an emotional, infective aspect. We have also seen how engagement and conjecture both draw clearly and heavily upon the simulative aspect. Finally, we have seen that, despite the ambiguity over how we are to understand the empathetic biconditional – whether the moral insights gained from the empathetic emotional transfer involve recognition or evaluation of the moral value of another’s viewpoint – we still ought to view the full concept of empathy, involving both simulation and emotional infection, as a necessary virtue for the proper exercise of these duties. If we interpret the moral insights gained from empathetic deliberation as recognition of another’s viewpoint, then empathetic deliberation is necessary because it is more effective at gathering accurate information about another’s preferences than non-empathetic, hypothetical deliberation. And given the needs of political liberalism for effective insight into the true nature of the viewpoints held by others, we should hold that the most effective information-gathering form of deliberation is necessary. If, on the other hand, we interpret the moral insights gained from empathetic deliberation as evaluation of another’s viewpoint, then we can also point to the way in which engagement and conjecture, as extra-contractual duties, involve a moral appraisal of another’s viewpoint, prior to their inclusion in the contractual situation. As such, empathy is fundamentally a necessary virtue for political liberalism; without its presence, it is highly unlikely that the project of public justification can be carried out successfully.

I will conclude this chapter by considering two separate objections. Firstly, it might be argued that granting empathy such a significant role in public deliberation is to give way to problems of arbitrariness and bias in including some and excluding others. It has long been argued that human beings have the tendency to empathise with those who are most like them; empathy has the capacity to be, as Oxley herself acknowledges, ‘highly variable from one person to the next.’

Doesn’t this suggest that there will be no non-arbitrary way of distinguishing between those who are the beneficiaries of empathetic deliberation and those who will not? The force of this objection must be acknowledged in part; but it is hardly one

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155 Oxley, The Moral Dimensions of Empathy, 17
that arises with the introduction of empathy as an important virtue in public deliberation. If we accept the argument from reasonable dissent, and acknowledge that all or nearly all people can be excluded from an overlapping consensus only to the detriment of political liberalism, then it is in some sense arbitrary who is included and who is not. Political liberals may acknowledge, for example, that some arguments from conjecture may succeed and some may fail; but that does not change the fact that they ought to hope that as many as possible will succeed. And if empathy has an important role to play in the success of these arguments, then they ought to hope for its presence in as much of public deliberation as possible.

Secondly, it may be argued that, in arguing for the need for empathetic deliberation in public discourse, we have become too inclusive. It is necessarily a feature of political liberalism that the political values, and only the political values, can prescribe the correctness of a conception of justice. To attempt a greater level of inclusiveness is to allow politics to fall victim to the arbitrariness of the balances of power between existing comprehensive doctrines. Should political liberals not rather cling, as Macedo does, to ‘a liberalism with spine’? When we examine this objection, however, we find that it is entirely unwarranted. It might have some force, if this essay were calling for the abandonment of the duty of public reason as understood by Rawls, to be replaced, perhaps, by an unrestricted view of public deliberation. But this is not what I have argued for here. Both the argument from temporal exclusion and the argument from reasonable dissent are entirely consistent with VT - the claim that the political values, and no other values, can supply justificatory material for political justification. In presenting the argument from temporal exclusion, I showed how the first of these arguments assumes that the political values are the source of justification for political liberalism, and that they simply require on the part of political liberals an openness to expand their existing understanding of what the political values might be. In the argument from reasonable dissent, we saw how the second argument also assumes the importance of pro tanto deliberation as a necessary stage of justification, where a conception of justice is constructed on the basis of political values alone; it was claimed, however, that this is necessary, but not sufficient for the attainment of public justification. We can see, then, how both arguments preserve, to a large degree, the importance political liberals have traditionally ascribed to the political values in public justification. If this is accepted, then this objection loses its force.

Part II
Liberal Distributive Justice and Benevolence
Chapter 5

Incentives, Inequality, and Virtue: The Need for Benevolence

So far, we have seen that political liberalism requires the citizens of a well-ordered society to cultivate the virtue of empathy, in order for the outcome of public justification to be attained. In this chapter, I will try to show that political liberalism also requires citizens to cultivate the virtue of benevolence in order for any reasonable liberal conception of distributive justice.

As before, the argument for this claim must meet a twofold burden of proof. We must demonstrate both the necessity of the outcome, and that the virtue in question is necessary for the outcome. Concerning the first of these burdens, I will argue that any theory of distributive justice that qualifies as liberal must meet some broadly egalitarian standards, including a certain conception of fair equality of opportunity, and a guarantee of a minimum standard of living for all citizens. Concerning the second, I will demonstrate that neither of these standards will be met in a society where the citizens are not benevolent. I argue that, unless this virtue obtains to a sufficient extent, a society will suffer from vast levels of inequality and absolute poverty, both of which are intolerable consequences for the liberal tradition. Furthermore, these consequences may occur even in circumstances largely similar to what Rawls describes as a well-ordered society, where the basic structure is governed by the principles of a reasonable political conception of justice and citizens fully comply with its laws and edicts.

It should be acknowledged that this chapter in many ways draws on a particular theory concerning the relationship between citizenship behaviour and the policies of a Rawls-type basic structure articulated by G.A. Cohen. The idea, in short, is that the acquisitive, non-benevolent career choices of citizens, especially those of ‘the talented’ – understood as those

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157 This chapter benefitted greatly from feedback on a paper at a presentation at the 2012 Australasian Association of Philosophy Conference in Wollongong.

who can vary their productivity whilst still commanding an exceptional salary – can affect the extent to which a basic structure can promote the interests of the worst-off.\footnote{On the concept of "talented" citizens, see Cohen, "Where the Action Is", 7} My argument, however, differs from that of Cohen’s in at least three important respects, namely: the relationship between justice and equality; the role of perfectionism; and the language of virtue. In part 1 of this chapter, I will explain these differences in further detail, together with the Cohenite background to my own argument. In part 2, I introduce my main argument for the necessity of the virtue of benevolence by demonstrating that, in a society where this virtue is largely absent, there is no limit to the extent of inequality and absolute poverty that might prevail. Furthermore, I show that the basic structure is largely powerless to prevent these outcomes. In part 3, I will engage the respective theories of justice of Rawls and Quong, and show how both of them must necessarily find these outcomes intolerable for their own theory of justice. I also sketch a brief general argument that shows why any liberal theory of justice should find likewise. Part four considers a series of objections to the argument for benevolence as a necessary virtue for political liberalism, and shows how each of these objections fails. Part 5 concludes.

5.1 Equality and market incentives: Justice as Fairness and Cohen’s critique

One of the most striking and enduringly significant aspects of John Rawls’s idea of justice as fairness is the balance it seems to strike between liberty and equality, represented respectively in the two principles of justice. The first principle recognises each person’s claim to ‘a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all’. The second principle declares that social and economic inequalities must satisfy two conditions, namely: the idea of fair equality of opportunity, and the difference principle (that inequalities must ‘be to the greatest benefit of the least advantaged members of society’).\footnote{JFR, 42-43} As Thomas Nagel puts it:

. . . what Rawls has done is to combine the very strong principles of social and economic equality associated with European socialism with the equally strong principles of pluralistic
toleration and personal freedom associated with American liberalism, and he has done so in a theory that traces them to a common foundation.\textsuperscript{161}

This balance was never intended to be completely even. Given that the first principle enjoys priority over the second principle, liberty is clearly given the greater weight.\textsuperscript{162} Furthermore, the difference principle clearly permits, under at least some social circumstances, extraordinarily large gaps between rich and poor.\textsuperscript{163} If citizens of a liberal democracy are inclined to perform socially productive labour, that improves the welfare of all, only if they receive exceptional financial rewards in return, then the difference principle seems to legitimise inequality. Those with stronger egalitarian convictions, therefore, may have been inclined to hold that justice as fairness is simply ‘an apology for liberal societies that willingly create and sustain great economic inequalities in the name of protecting fundamental political liberties.’\textsuperscript{164}

Yet it appears deceptive, at least in some sense, to say that this inequality is necessary for realising the outcomes of socially productive labour. People are not, after all, automatons who perform tasks only once the required cash has been put into the slot; rather, they are capable of acting from a variety of motivations and interests, such that it is certainly not a metaphysical impossibility for people to deliberately perform valuable labour without such unequalising rewards. If this is correct, then the extent to which the difference principle can ever require serious inequalities seems doubtful. This is the essential thrust of Cohen’s argument. In contrast to other egalitarian critics of Rawls who regard the difference principle as fundamentally inegalitarian, Cohen argues that it does, in fact, have radically egalitarian implications if we are willing to revise our sense of what is actually ‘necessary’ for the output of socially productive labour which improves the position of the worst off.


\textsuperscript{162} TJ, 244

\textsuperscript{163} R. George Wright, “The High Cost of Rawls’ Inegalitarianism”, \textit{The Western Philosophical Quarterly}, 30 (1977): 73-79

\textsuperscript{164} Stanley Hauerwas, \textit{After Christendom? How the Church is to behave if freedom, justice, and a Christian nation are bad ideas} (Nashville: Abingdon Press, 1991), 49
The principle allows an inequality only if the worst off could not benefit from its removal. And I believe that it is in general more difficult than liberals suppose to show that the worst off could not benefit from removal of an inequality, and hence in general more difficult than liberals think it is to justify an inequality at the bar of the difference principle. The worst off benefit from incentive inequality in particular only because the better off would, in effect, go on strike if unequalising incentives were withdrawn. This inequality benefits the badly off only within the constraint set by the inegalitarian attitude, and the consequent behaviour, of the well off, a constraint that they could remove.165

What if this inegalitarian attitude could be removed, in favour of a more egalitarian one? It would no longer be the case that these incentive-based inequalities satisfy the difference principle. The worst off would thus receive the benefits that flow from productive labour, without the need for the inequalities that were once required to motivate this labour. Hence, Cohen holds that the difference principle, thus understood, has considerably stronger egalitarian implications than either Rawlsians or their egalitarian critics might have previously thought.

Cohen is aware, however, that Rawlsians have an objection available to them, which can be used to reconcile unequalising incentives with the difference principle. For Rawls, the principles of justice do not apply to all subjects in all times and places, but only to ‘the basic structure’ of a well-ordered society.166 Earlier queries about the suitability of the difference principle as a general principle of ethics prompted Rawls to clarify that the difference principle was never intended to serve as a ‘basis for morality’, but rather as ‘one principle constrained by others that applies to the basic structure’.167 To this, Cohen has a fundamental response that, he argues, calls into question the very idea of the basic structure as the subject of justice.168 According to Cohen, Rawls identifies the basic structure as the subject because

165 Cohen, “Incentives, Inequality, and Community”, 269. Italics are mine.
166 TJ, 7
168 Note that I leave aside here Cohen’s preliminary response to the basic structure objection: that a society that limits application of the difference principle in such a fashion is unable to display the characteristics of fraternity, dignity, and the sense of justice. See Cohen, “Where the Action Is”, 15-17
‘its effects are so profound and present from the start.’\textsuperscript{169} It is only because of the fact that the basic structure is understood in terms of its pervasive influence that Rawls is able to include non-coercive, yet influential institutions, such as the family, within the basic structure. Once we admit that the basic structure includes subjects according to their influence, rather than their coerciveness, we seem to have to include any other subject whose actions are also influential. And this naturally includes both sexist family structures and talented individuals with the capacity for highly productive labour:

\ldots why should we care so disproportionately about the coercive basic structure, when the major reason for caring about it, its impact on people's lives, is also a reason for caring about informal structure and patterns of personal choice? To the extent that we care about coercive structure because it is fateful with regard to benefits and burdens, we must care equally about the ethic that sustains gender inequality, and inegalitarian incentives.\textsuperscript{170}

To this, Rawlsians have a response of their own: there is more to the basic structure than its pervasive effects. Rawls’s 1977 paper “The Basic Structure as Subject” begins with the acknowledgment that \textit{A Theory of Justice} does not ‘in any detail consider why the basic structure is to be taken as the primary subject,’ and that he intends to rectify this.\textsuperscript{171} In \textit{Political Liberalism}, and in \textit{Justice as Fairness: A Restatement}, Rawls offers an interpretation and justification of the idea of the basic structure as the subject that is considerably less consequentialist in character.\textsuperscript{172} According to Andrew Williams, the central theme behind these arguments is the idea of \textit{publicity}. The basic structure includes all forms of norm-governed activity that are suitably public.\textsuperscript{173} This criticism reveals a more fundamental difference between Cohen and Rawlsian liberals. The former, in rejecting the role of publicity, conceives of justice in perfectionist, largely Platonic terms, such that it is

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\textsuperscript{169} \textit{TJ}, 7. Italics are mine.
\textsuperscript{170} Cohen, “Where the Action Is”, 23
\textsuperscript{171} John Rawls, “The Basic Structure as Subject”, \textit{American Philosophical Quarterly} 14 (1977): 159. Italics are mine.
\textsuperscript{172} \textit{PL}, 257-288; \textit{JFR}, 52-57
\textsuperscript{173} Andrew Williams, “Incentives, Inequality, and Publicity”, \textit{Philosophy and Public Affairs} 27 (1998): 225-247 at 233
\end{flushleft}
The latter, on the other hand, sees justice not as a matter of perfect truth, but rather, as part of the search for reasonable agreement concerning the formulation of fair terms of cooperation. Or as Jonathan Quong states, while Cohen views political philosophy as about what we should think, Rawlsians hold that justice ‘is about what we should think about what we must do’.175

We may summarise this exchange between Cohen and Rawlsians in the form of an imaginary dialogue, which might run as follows.

**R:** The difference principle is a principle of justice. It declares that inequalities are permissible if and only if they maximise the welfare of the worst off. Since market incentives are necessary for increasing productivity, which will in turn maximise the welfare of the worst off, the difference principle permits market incentives.

**C:** This is not fully correct. Market incentives are necessary for maximising the welfare of the worst off only if people behave in such a way as to make them necessary. But people do not need to behave in this way. In fact, if they accept the difference principle, then they will not behave in this way.

**R:** Your reply misunderstands the scope of principles of justice. They apply only to the basic structure, not directly to the actions of individuals everywhere.

**C:** But as long as you hold that the basic structure comprises those institutions which have pervasive effects and influence upon society, you cannot exclude individual behaviour from the basic structure.

**R:** Actually, there is more to the idea of the basic structure than its ‘profound effects’. The basic structure includes institutions and norms which meet the requirement of publicity. And while some norms which govern individual conduct might meet this requirement, the egalitarian principles which you prescribe do not.

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C: All right, I accept that the egalitarian norms I propose are not public norms. But I believe you are mistaken if you think that publicity has any role in a proper theory of justice. While it may be a useful concept for discerning the most appropriate principles of regulation, justice must always be understood as independent of such facts.

The impasse which Cohen and Rawlsians reach at this point highlights the difficulties facing anyone who wishes to deploy Cohen as a means of internal criticism of political liberalism. If this reconstruction of the Rawlsian-Cohen exchange is correct, then Cohen’s critique is entirely dependent upon his radically perfectionist understanding of justice and the tasks of political philosophy. If, in order to offer internal criticism of political liberalism, we abandon this kind of perfectionist standpoint, then to what extent does Cohen’s critique have any force at all?

A plausible strategy, I think, is to go beyond Cohen’s exclusive focus on the difference principle. The difference principle requires the elimination of incentive-based inequalities only if principles of justice apply to subjects beyond the basic structure in a perfectionist, non-public fashion. Given that the basic structure’s inability to realise such a level of equality consistent with the difference principle is unlikely to trouble political liberals, the charge that a political conception of justice cannot realise the outcome of Cohenite equality is essentially no criticism at all.

There are, however, other kinds of outcomes which justice as fairness does seem to require, such as fair equality of opportunity and the elimination of absolute poverty. Focusing on these outcomes has two major advantages. Firstly, the nature of these outcomes is not altered by how we interpret the scope of justice. As we have just seen, the outcomes required by the difference principle vary according to whether we say that the principles of justice apply only to the basic structure, or to individuals and associations as well. However, fair equality of opportunity and the elimination of absolute poverty are outcomes that do not change in the same fashion. Consider the latter as an example. If we say that the elimination of absolute poverty is a requirement of justice, then how we address the question of scope – whether we say the principles of justice apply only to the basic structure, or to individuals and associations as well – determines nothing more than who is charged with responsibility for achieving this outcome. But it does not change the nature of the outcome itself. If some
people remain in conditions of absolute poverty, then the outcome has not been satisfied, regardless of what we say the subject(s) of the principles of justice are. This is significant for our purposes here because if we can show that this outcome cannot be satisfied without individuals and associations behaving in a certain way, political liberals cannot simply reply that the principles of justice apply only to the basic structure. This would mean that political liberals can have either a commitment to liberal justice, or a commitment to a conception of justice that is limited in scope to the basic structure, but not both.

A second advantage of focusing on fair equality of opportunity and the elimination of absolute poverty is that they can, I believe, be shown to be necessary features of any conception of justice that can plausibly be described as liberal. It is less clear that this is the case for the difference principle, given that other prominent liberals have argued for different ideals of equality. If we can show that these outcomes cannot be achieved by the basic structure alone, then we can therefore extend our critique to all forms of political liberalism, as opposed to merely Rawlsian liberals and advocates of justice as fairness.

Taking this approach, then, separates the critique offered here from Cohen’s position in two ways. Firstly, whereas Cohen’s argument depends upon what is an essentially analytic link between justice and equality, I do not assume any such relationship. I am thus less interested in the impact of the behaviour of the talented on the ability of a basic structure to realise perfect equality than I am on its impact on the realisability of other states of affairs, namely, fair equality of opportunity and the non-relative welfare of the worst-off. Secondly, the importance of these states of affairs need not depend upon their status as fact-independent standards of justice; rather, I see them as states of affairs that political liberals are committed to viewing as necessary for the realisation of a reasonable liberal political conception of justice. Accordingly, my argument does not intend to rely on any ideal of the perfect society as such.

177 Cohen, Rescuing Justice and Equality, 7
178 For Cohen’s views on the relationship between facts and moral principles, see G.A. Cohen, “Facts and Principles”, Philosophy and Public Affairs 31 (2003): 211-245; Rescuing Justice and Equality, 229-274. In the following chapter, I will clarify the relationship between the arguments of this chapter, and perfectionism more generally. Although I do not assume, as Cohen does, that the nature of justice is fundamentally perfectionist, in
To these two differences, I also add a third. Cohen uses the language of an ‘egalitarian ethos’ to describe the duty of justice he believes individuals and associations have. I instead refer to a virtue of benevolence. I use this language for two reasons. Firstly, as Quong has shown, Cohen’s ethos is not simply an egalitarian ethos; it reflects a broader commitment to improving the position of the worst off as much as possible. Secondly, since the ethical requirements which liberal justice places on individuals and associations are not easily measured or quantified, the language of virtue seems more appropriate. I will argue that liberal justice requires that citizens think of the worst off more generally in their quotidian actions and choices; given this, I refer to a virtue of benevolence, as opposed to a more clearly act-oriented principle.

With the appropriate background in place, let us now move on to the argument for the necessity of benevolence for liberal justice. Recall that this requires the vindication of two separate claims. Firstly, a society that lacks the virtue of benevolence will be unable to achieve the outcomes of fair equality of opportunity, and the elimination of absolute poverty. Secondly, these outcomes are necessary for liberal justice. I argue for each of these claims respectively in the following two sections.

5.2 Why benevolence is needed: two observations

Let us begin this section by considering some of the key features of a Rawlsian well-ordered society. Rawls lays down three specific conditions: firstly, everyone accepts and knows that others accept the same principles of justice; secondly, its basic structure is publicly known to satisfy these principles; and thirdly, its citizens comply with the basic structure. For a society governed by Rawls’s idea of justice as fairness, this means that the government establishes its taxation and redistributive policies with a view to maximising the position of

the sense that it prescribes outcomes independent of any criterion of publicity, I do argue that the satisfaction of these outcomes requires citizens to cultivate virtues that do not meet this criterion. Hence, I describe my position as ‘social perfectionism’.

179 Cohen, Rescuing Justice and Equality, 203
181 PL, 35
the worst off.\textsuperscript{182} What’s more, everybody, including the talented, upholds these policies and regards them as just, supporting the government by faithfully paying their taxes.

It is just such a society that political liberals are inclined to consider either just or nearly just. All the relevant agents of justice are acting as they should. The basic structure is governed in accordance with reasonable liberal principles of justice, and the citizens all comply with its edicts. But when we factor in the possibility of alternative behavioural trends among the talented, our intuitive assessment of the society as just is called into question. Let us suppose that, in a certain society, $S_1$, the talented, motivated by the virtue of benevolence, are highly concerned about the plight of others, particularly the worst-off. This is modelled in their career and business choices. People capable of highly valuable labour are willing to produce high levels of output for relatively modest salaries; businesses continue to invest strongly and offer considerable employment opportunities, regardless of the level of taxation enforced by the government; people choose career paths based more on what they believe will contribute the most towards the social capital, rather than what will maximise their own wealth; and so on. In this society, the government can impose what is essentially a 100% taxation rate, in order to maximise the product available for redistribution, without causing any reduction in productivity amongst the talented.

Compare this to another society, $S_2$. In this society, the talented are what Cohen describes as ‘acquisitive maximisers’.\textsuperscript{183} Although the talented still pay their taxes in accordance with the legislation set by the government, their career choices and actions are otherwise uninterested with the welfare of the worst off. They are inclined to reject certain jobs which would contribute greatly to the social capital, unless they are provided with an exceptionally high salary. They also regularly threaten to lower their productivity and reduce their investments in response to the threat of a progressive income tax which they deem unfavourable.

Now in $S_1$, a government attempting to maximise the position of the worst off will be able to implement a strongly redistributive taxation policy. Any attempt to reduce taxes in order to provide more incentives for the talented to be productive would be unnecessary and unhelpful for the improvement of the welfare of the worst-off, since the talented are already more or

\textsuperscript{182} PL, 291; JFR, 43.

\textsuperscript{183} Cohen, “Where the Action Is”, 13
less maximally productive. In $S_2$ on the other hand, a high taxation rate may become counterproductive. As benevolence becomes increasingly scarce amongst the talented, it may well be that the interests of the worst-off are best served by giving the talented what they want: a lower taxation rate, with more incentives and rewards for productivity. Nigel Lawson’s 1988 tax cut to the wealthy might be justified (perhaps a little ahistorically) on such grounds: under a lower taxation rate, the talented will be more productive, and thus increase the overall product available for redistribution.$^{184}$ Hence, we can draw a further distinction between $S_{2a}$, where the government keeps the rate of taxation at the same level as in $S_1$; and $S_{2b}$, where the government lowers taxes in order to provide more incentives for the not-so-virtuous talented, in order to boost the total social product and improve the welfare of the worst off.

Let us summarise what we have said so far. We have considered three different societies: $S_1$, $S_{2a}$, and $S_{2b}$. In $S_1$, the virtue of benevolence is fully present, the taxation rate is fully egalitarian, and the welfare of the worst-off is maximised. In $S_{2a}$, the virtue of benevolence is considerably scarcer, but the taxation rate remains egalitarian. As such, equality still obtains, but the welfare of the worst off suffers. $S_{2b}$ is identical to $S_{2a}$, except that the government reduces the taxation rate in order to allow a role for incentives to boost productivity and increase the welfare of the worst off, at the cost of strict equality. This is summarised in the table below.

<table>
<thead>
<tr>
<th>Society</th>
<th>Virtue of benevolence</th>
<th>Taxation rate</th>
<th>Equality</th>
<th>Welfare of the worst off</th>
</tr>
</thead>
<tbody>
<tr>
<td>$S_1$</td>
<td>Fully present</td>
<td>100%</td>
<td>full</td>
<td>maximised</td>
</tr>
<tr>
<td>$S_{2a}$</td>
<td>more scarce than $S_1$</td>
<td>100%</td>
<td>full</td>
<td>less than $S_1$</td>
</tr>
<tr>
<td>$S_{2b}$</td>
<td>Same as $S_{2a}$</td>
<td>reduced</td>
<td>potentially significant</td>
<td>less than $S_1$, but</td>
</tr>
</tbody>
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$^{184}$ Cohen, “Incentives, Inequality, and Community”, 265; *Rescuing Justice and Equality*, 28-29
We can make two observations at this point. Firstly, as the presence of the virtue of benevolence becomes increasingly scarce amongst the talented, the overall product for redistribution decreases proportionally. Although a reduction in taxes may lead to an increase in the gross product in some cases where virtue is less than at its maximum level, this increase cannot rise above a certain limit point, which can be exceeded only with an increase in virtue amongst the talented. As long as there is no guarantee that the talented will be at least minimally virtuous, there is no telling how low the overall product available for redistribution might sink. This means, effectively, that *there is no bottom limit on the extent to which the welfare of the worst off might sink.*

Secondly, we pointed out how, in some circumstances, a government motivated by concern for the worst-off can best respond to the decrease in virtue amongst the talented by lowering the taxation rate. All this guarantees is that the worst-off can choose between $S_{2a}$ and $S_{2b}$. There is no guarantee of a minimum redistributable product in either. This means that for the most part, the government is unable to regulate the effects on the worst-off of the decrease in virtue amongst the talented.

Note that if we return to Rawls’s idea of a well-ordered society, we find that, for the most part, its essential features are still in place in $S_2$. The government, aiming to maximise the position of the worst-off, seeks to maximise the redistributable product by assessing the level of virtue among the talented and setting the taxation rate accordingly. Furthermore, all the citizens, including the talented, accept this legislative aim of the government as legitimate, and fully comply with the set rate of taxation. No one is refusing to pay their taxes or in any way breaking the law.

Now how does the fact that the basic structure cannot guarantee a minimum level of welfare for the worst off impact upon the two liberal outcomes we have named? One of them seems straightforward: if a political conception of justice cannot ensure that the welfare of the worst off will not drop below a certain threshold level, then it is incapable of preventing absolute poverty. Although one might point out that capitalist societies, with their high levels of
inequality, have generated extraordinarily high productivity, this is not quite the same thing as productivity available for redistribution ($p$). In such a society, the talented may work extremely productively, yet demand such high incentive payments for their labour that $p$ drops to such a low level that makes absolute poverty a common phenomenon.

The status of fair equality of opportunity is perhaps more ambiguous. We saw that a basic structure can choose between $S_{2a}$ and $S_{2b}$. We saw that, once the level of benevolence drops below a certain level, $p(S_{2b})$ exceeds $p(S_{2a})$. But in $S_{2a}$, equality is in many ways preserved. The egalitarian tax rate from $S_1$ is retained, but this comes with a trade-off. Since $p$ is at a level even lower than in $S_{2b}$, absolute poverty will be more common in $S_{2a}$ than in $S_{2b}$. So we can therefore say that, in a society where the benevolence is a scarce virtue, the basic structure is faced with a choice between two options. Firstly, they might choose to reduce the redistributive taxation rate and allow the talented to receive incentive payments in order to boost productivity ($S_{2b}$). If this option is taken, then there is no safeguard against the possibility that $p$ might drop to such a low level that absolute poverty becomes widespread. Furthermore, since this leads to an unequal society where there is no guarantee of a minimum level of welfare for the worst off, it follows that there is also no guarantee of a limit to the gap between rich and poor either.

Secondly, the basic structure might choose to stick with the high redistributive taxation rate of $S_1$, and preserve equality of opportunity ($S_{2a}$). However, this means that the levels of absolute poverty will only be worse than $S_{2b}$. Hence, fair equality of opportunity can be preserved only at the cost of even greater levels of absolute poverty.

This does not mean, of course, that these outcomes will necessarily obtain in either $S_{2a}$ or $S_{2b}$. If the drop in benevolence is only minimal, then the impact upon the worst off will be correspondingly minimal. The point is, rather, that as the benevolence of citizens decreases, the likelihood and severity of absolute poverty gets higher. And if the basic structure follows the trend of most modern liberal-democratic governments in allowing at least some space for incentive payments as a means of boosting social productivity, it will prefer $S_{2b}$ to $S_{2a}$ and make the viability of fair equality of opportunity also contingent upon the level of benevolence. And most importantly, the basic structure cannot effectively regulate these outcomes. Although its choice between $S_{2a}$ and $S_{2b}$ may help boost the overall redistributable product, it cannot guarantee that this product will remain above a certain level. It is therefore
incapable of preventing absolute poverty in a society that is sufficiently lacking the virtue of benevolence; and should it adopt a less than fully redistributive taxation rate in order to boost productivity, as per $S_{2b}$, it will also be unable to ensure that fair equality of opportunity.

5.3 Liberalism and distributive justice

In the previous section, we focused on the first burden of proof: we saw how the virtue of benevolence is necessary for any society that wishes to realise the outcomes of fair equality of opportunity and an absence of absolute poverty. In this section, we now turn to the second: it must be shown that this is a problem for political liberalism. Our purpose here is to show that these outcomes are seen by political liberals as necessary. If this can be successfully demonstrated, then it follows that political liberals must view the virtue of benevolence as a necessary virtue.

In trying to show that political liberalism is committed to a certain idea of justice, a difficulty arises. Since political liberalism does not specify a single conception of justice, but allows for a variety of different conceptions within the threshold of political legitimacy, we are faced with the dilemma of how to present an argument that is not bound to one particular form of political liberalism. Rather, the intention of this chapter is to extend the argument to political liberalism in general. In this section, my strategy for accomplishing this will come in three parts. The first two will consider the theories of distributive justice promoted by two prominent political liberals, namely, Rawls and Quong respectively. The third part will sketch some general reasons why we should expect any political conception of justice that is reasonable (in the political liberal sense) should find potentially limitless inequality or limitless poverty unacceptable. The claim here is that a state that allows virtually limitless poverty or inequality is not a liberal state.

5.3.1 Rawls

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185 See PL, 450
Let us first consider the idea of fair equality of opportunity in Rawls’s theory of justice as fairness. This idea is represented in the first part of the second of Rawls’s principles of justice. Rawls offers the following as a basic definition:

Offhand it is not clear what is meant, but we might say that those with similar abilities and skills should have similar life chances. More specifically, assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born.

Now insofar as this principle requires any kind of limitation on the level of inequalities within a society, then it is unattainable for a political conception of justice, where the presence of the virtue of benevolence cannot be guaranteed or established as a moral standard. The question before us is therefore as follows: does fair equality of opportunity require such a limitation on inequality? Or does it merely require, say, the removal of blatantly discriminative practices among employers? Rawls’s initial definition seems vague and unclear on this issue; however, his subsequent remarks give more of an indication of what he sees as the relationship between fair equality of opportunity and permissible levels of inequality:

Free market arrangements must be set within a framework of political and legal institutions which regulates the overall trends of economic events and preserves the social conditions necessary for fair equality of opportunity. The elements of this framework are familiar enough, though it may be worthwhile to recall the importance of preventing excessive accumulations of property and wealth and of maintaining equal opportunities of education for all. Chances to acquire cultural knowledge and skills should not depend upon one’s class position, and so the school system, whether public or private, should be designed to even out class barriers.

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186 TJ, 302; PL, 6, 291; JFR, 42-43.
187 TJ, 73
188 TJ, 73. Italics are mine.
Rawls here seems to indicate at least two things. Firstly, there is a suggestion that an excessively large gap between rich and poor is itself incompatible with fair equality of opportunity. We might think of the ways in which extreme financial disparities can severely reduce the capacity of the poor to organise themselves to defend their interests, and give them substantially less bargaining power when it comes to the business of arranging political compromises. Secondly, and most importantly, in such an inegalitarian society, the status of the public services is also put at risk, and in particular, those services that have a clear impact on the life prospects of citizens. Rawls’s reference to equal educational opportunities as a necessary condition for fair equality of opportunity is a prime example. As a means of ensuring that every person entering into adulthood within society is equipped with at least some essential tools, giving them a reasonable chance of success in life, public education is an undeniable cornerstone of the legislative demands of justice as fairness. But unless the talented are sufficiently committed to the public interest (hence willing to tolerate higher levels of taxation) public education is either discontinued or under-funded. Hence, we may understand fair equality of opportunity as implying a fixed limit on the extent of inequality permissible in a society regulated by Rawls’s principles of justice. Once this limit is exceeded, the prospects of the less well-off in society start to become unfairly jeopardised. Rawls’s commitment to fair equality of opportunity forces him to view the inequalities caused by the behaviour of the talented as unacceptable from the point of view of a theory of justice.

A second aspect is the absolute deprivation of the worst-off. Since the difference principle does not in itself seem to specify a minimum level of welfare, justice as fairness is potentially compatible with homelessness, malnutrition, and a lack of medical care for a significant portion of the population. While some may describe this as a human rights violation, it is not clear that Rawls does. The concept of human rights is, for the most part, conspicuously absent from justice as fairness and political liberalism. In The Law of Peoples, however, it plays a more central role. It first makes an appearance as part of a specific criterion for a state’s status as decent, and hence, worthy of membership in the law of peoples. A decent state, according to Rawls, ‘secures for all members what have come to be called human rights.’ One such right is the ‘right to life’. Rawls cites Henry Shue and R.J. Vincent in

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support of the claim that this implies a right to basic subsistence, understood as providing for
the economic security of its citizens. This is because ‘the sensible and rational exercise of all
liberties, of whatever kind, as well as the intelligent use of property, always implies having
general all-purpose economic means.’ On such a conception of rights, then, the absolute
depivation of the worst off is clearly a human rights violation. However, the limited class of
rights Rawls identifies at a later point does not seem so inclusive. Here, the list is limited to:

a special class of urgent rights, such as freedom from slavery and serfdom, liberty (but
not equal liberty) of conscience, and security of ethnic groups from mass murder and
genocide.

While the ‘right to life’ is absent from this particular list, the clear justification offered for its
inclusion in the criteria for a decent society give us good reason for us to think that Rawls
views it as an essential human right. However, even if this is not the case, we may still have
other grounds for believing that the absolute deprivation of the worst-off is an outcome that is
unacceptable to justice as fairness. For starters, the common liberal presupposition that
people are ‘free and equal’ stipulates, among other things, that people are ‘self-authenticating
sources of valid claims.’ This seems to suggest a relaxed form of humanism, where
people’s most basic needs are understood as having intrinsic importance. Furthermore, we
may reasonably see the identification of the worst-off as the ‘particular position from which
social and economic inequalities of the basic structure are to be judged’ as an indication
that the importance of the welfare of the worst-off is part of the collection of popular values
and intuitions with which Rawls attempts to ground justice as fairness. It is perhaps this
particular premise – the importance of the standpoint of the worst off – that leads Rawls to
the conclusion that ‘the difference principle specifies a social minimum derived from an idea
of reciprocity. This covers at least the basic ends essential to a decent life, and presumably
more.’ Although it is not clear how the difference principle, understood as a principle for

University Press, 1980), 23; R.J. Vincent, *Human Rights and International Relations* (Cambridge; New York:
Cambridge University Press, 1986). See also *PL*, 6, 450; *JRF*, 44 fn. 7
191 *LP*, 79
192 *PL*, 33
193 *TJ*, 75
194 *JFR*, 130.
judging inequalities, specifies a social minimum that holds independently of the facts about inequalities, it seems clear that absolute deprivation is something that Rawls would regard as intolerably unjust.\footnote{I owe this point to an anonymous reviewer.}
5.3.2 Quong

Quong’s approach to distributive justice differs from Rawls’s in one major sense: his notion of what a contractualist approach actually requires. For Quong, contractualism does not require the realisation of a certain state of affairs; rather, it requires that we treat each other in certain ways. This difference is drawn out particularly clearly in Quong’s notion of equality, which is defined in opposition to what he describes as ‘luck egalitarianism’. He cites Cohen as a paradigmatic example of what luck egalitarianism amounts to:

... an unequal distribution whose inequality cannot be vindicated by some choice or fault or desert on the part of (some of) the relevant affected agents is unfair, and therefore, pro tanto unjust.

Quong, borrowing Derek Parfit’s terminology, holds that any such theory of equality amounts to a telic conception of justice. This means that the conception is satisfied only when a certain state of affairs obtains – in this case, if there is no undeserved inequality. Against this conception, Quong argues for what he describes as a strictly deontic conception. According to this view:

the value of equal distributions does not inhere in the state of affairs itself, rather the value of equality is to be located in the manner by which distributions are brought about. What matters, on this view, is that people treat each other as equals when it comes to the distribution of goods or advantages, and while this will often, if not always, have the consequence of realising an equal distribution, bringing about this state of affairs is not the point. The point is that equality, suitably construed, requires certain forms of treatment and precludes others.

197 Quong, “Left Libertarianism”, 75; Cohen, Rescuing Justice and Equality, 7
198 Quong, “Left Libertarianism”, 79; Derek Parfit, “Equality or Priority?” in The Ideal of Equality, ed. Matthew Clayton and Andrew Williams (Houndmills: Palgrave, 2000), 81-125 at 84
199 ibid.
On this deontic conception of equality, all that matters, from the point of view of justice, is how people act. Equality requires that people treat each other equally, not that equality actually ensues. This means that Quong’s view is potentially more resistant to the challenge posed by the dual threat of limitless inequality and poverty than Rawls’s view; the latter is, to be sure, committed to what is for the most part a deontic view, where the realisation of justice largely rests with actions of the key subject of justice – the basic structure. But the importance of fair equality of opportunity and the idea of a basic right to a minimum standard of welfare are telic conceptions that stand out in an otherwise deontic theory. They represent goals of justice as fairness; should the basic structure be unable to meet these goals, then the society in question is no longer well-ordered. On Quong’s account, on the other hand, it might seem that, insofar as a government treats its citizens as equals and prescribes that its citizens cooperate with these intentions, then political justice is realised. Indeed, in claiming that ‘there is no suggestion in the Rawlsian project that judgments of justice pertain to states of affairs generally,’ Quong seems to hold to an interpretation of Rawls that is at odds with what I have offered above. However, let us assume that I have thus far been correct in my claim that it is necessary for some actual states of affairs to obtain for Rawlsian justice to be satisfied. It may be that this can be reconciled with a deontic conception, if it turns out that treating people in a certain way necessitates the realisation of certain states of affairs. In fact, Quong’s theory of legitimacy articulated in Liberalism Without Perfection gives us good reason to suppose as much:

A reasonably just state is one that does a reasonably good job establishing and securing the conditions of justice. I assume any such state qualifies as a rightful object of the natural duty of justice to which we are all subject.

For Quong, a legitimate state is a reasonably just state. And a reasonably just state does more than simply seek or pursue justice; it actually establishes the necessary empirical conditions relevant for the creation of a just society. If this is the case, then we may reasonably expect Quong’s theory of distributive justice to present us with at least some claims about the states of affairs that must feature in any well-ordered liberal society. In what follows, I will

200 Jonathan Quong, “Justice Beyond Equality”, 337

201 LWP, 129. Italics are mine
consider how both fair equality of opportunity and a basic right to a minimum standard of welfare are features of a theory of justice that Quong’s deontic conception of equality still has reason to endorse as necessary conditions of a well-ordered society.

Firstly, consider fair equality of opportunity. Either Quong accepts this idea as an important value of justice, or he does not. If the latter is the case, then it is not clear that his view remains a liberal theory at all. For Rawls, a liberal theory is distinguished from a theory of natural liberty by its commitment to fair equality of opportunity, as opposed to the idea of careers open to talent, without any formal restriction. On Rawls’s view, then, a view that rejects fair equality of opportunity is not properly thought of as a liberal theory. Are there any reasons available in support of such a view? The ideal that Rawls identifies as motivation for moving from natural liberty to fair equality of opportunity is that ‘positions are to be not only open in a formal sense, but that all should have a fair chance to attain them.’ This move from formal opportunity to fair equal opportunity emphasises the importance of treating people as free and equal citizens. If it did not, then it would make little sense to advocate for any kind of equality beyond formalism. It only makes sense to give people with equal abilities and talents an equal life chance if people are actually free and equal. I conclude, therefore, that insofar as Quong’s theory of distributive justice remains a liberal theory, it must accept the value of fair equality of opportunity.

Let us assume, then, that Quong, following Rawls, accepts fair equality of opportunity as a component of the overall idea of equality, to be incorporated into a political conception of justice in a deontic fashion. This means that the basic structure will do its best to provide people with equal opportunities, regulating workplace relations, the provision of education, healthcare institutions and so on. If we accept this, there is a further ambiguity facing Quong’s theory of justice. At times, Quong seems to suggest that acknowledging that we live in a system of social cooperation and interaction mandates that deontic conceptions of equality translate into some kind of egalitarian state of affairs in a well-ordered society. On this reading, the deontic/telic distinction is utilised mostly to draw out the difference between obligations of justice, and duties we might have to people with whom we have no cooperative

\[202\] TJ, 65
\[203\] TJ, 73
relationship (e.g. people in worlds or countries with whom we have no such relationship). If this is correct, then Quong’s conception of equality requires the implementation of fair equality of opportunity as a state of affairs within a well-ordered society. Suppose, however, that Quong is resistant to such a conclusion, and insists that the ideal of fair equality of opportunity requires nothing more or less than for us to treat each other in certain ways. But in this case it seems in some sense a faux concept. If, in accordance with the deontic conception, we accept that the course of action that agents take is the bearer of ethical value (as opposed to the states of affairs realised), then this requires that we treat people in such a way as to provide them with fair equality of opportunity. But how can we truly treat people in such a way, without actually providing them with fair equality of opportunity? As long as the access of the worst off to certain basic structures – for example, in the search for employment in competitive positions – is severely limited on the basis of their socio-economic status alone, then we seem not to be treating people in such a way as to ensure that they share similar life prospects with those who are similarly gifted. And this holds whether we are aiming to treat people equally or not. We have good reasons, then, to believe that fair equality of opportunity is a state of affairs that must be realised even by a deontic liberal conception of justice. While the deontic conception might hold that we can separate the satisfaction of certain moral ideals from their realisation as states of affairs, this asymmetry cannot hold for fair equality of opportunity. We cannot act in such a way as to satisfy this ideal, without actually realising the ideal.

Let us now consider how the absence of a minimum standard of welfare might also pose a problem for Quong’s theory of justice. It may be that this is such an ideal that will be harder for a deontic conception to accommodate, since it seems to make demands of a theory of justice that can possibly transcend cooperative relations. As before, however, there is the possibility that Quong’s theory is designed to allow for the need for the satisfaction of certain basic rights within the context of a closed political community. Members of such a community – i.e. a modern nation state – can be understood to be engaging in cooperation with each other, by virtue of the fact that they participate in the life of the same nation-state. However, suppose, again, that this is not his intended meaning. Even if this is the case, it is likely that Quong would still find a theory of justice’s inability to ensure that the citizens of a

\[204\] For example, consider Quong’s reply to the “divided world objection”: ‘What deontic theories will deny is that divided world scenarios, where there is no possibility of interaction, are unjust.’ “Left-Libertarianism”, 84.
well-ordered society have their most basic needs met an intolerable failure of a theory of justice. As with fair equality of opportunity, it seems incoherent for us to treat people in such a way as to guarantee them a minimum standard of welfare, without actually providing them with one. In fairness to Quong, it should be acknowledged that he is not unaware of the need for a reasonable liberal theory of justice to secure the basic needs of citizens. Although he sees reciprocity as a requirement for inclusion in the scope of contractualist obligations, he does not see it as a requirement for inclusion in the scope of justice in general. Quong considers the plight of the severely handicapped and infirm as examples of people who do not fit under the ideal of reciprocity. Nonetheless, Quong argues that ‘Rawlsians can include the infirm or severely disabled in their conception of justice by including them in Rawls’s natural duty of mutual aid’, and that this duty ‘is complementary to, but distinct from, the principles of justice that regulate cooperation between fully contributing members of society.’ 205 I take it here that the underlying motivation behind appealing to such a duty is that, should a theory of justice be incapable of addressing the most basic needs of people in society, whether they are people governed by the ideal of reciprocity or not, then this counts against the plausibility of the theory itself. 206 Hence, we have reason to believe that Quong’s theory also views the absolute deprivation of the worst off as incompatible with a society ordered by his conception of distributive justice.

5.3.3 General

To sum up this section, we have considered two non-identical, albeit similar, conceptions of justice held by prominent political liberals: that of John Rawls, and that of Jonathan Quong. In Rawls’s case, we found that he must necessarily find potentially limitless inequality unacceptable, because it is incompatible with the ideal of fair equality of opportunity. We also saw that absolute poverty is incompatible with at least some of the notions of human rights Rawls alludes to in The Law of Peoples, as well as some of the more basic liberal intuitions that sit behind justice as fairness. In Quong’s case, we found that the ideal of fair equality of opportunity as a state of affairs is a necessary feature of any liberal theory of justice. Furthermore, the fact that Quong endorses a duty of mutual aid for those who fall outside of obligations of reciprocity is evidence of the fact that he, too, would find absolute

205 Jonathan Quong, “Contractualism, Reciprocity and Egalitarian Justice”, 76
206 See also Quong, “Justice Beyond Equality”, 330ff.
poverty to be a feature that counts against the status of any well-ordered society as just. Quong’s commitment to a deontic conception of equality does not enable his theory to reject the importance of these states of affairs, as the diagram below demonstrates.

**How a liberal deontic conception requires the realisation of states of affairs**

- The deontic conception
  - Are fair equality of opportunity and the removal of absolute poverty important ends?
    - Yes
      - Does the deontic conception simply mean ‘guaranteeing states of affairs for people with whom we interact’? Or a strict focus on ‘how we treat people’?
        - Interaction
          - Requires holding fair equality of opportunity and a basic standard of welfare as important states of affairs within the confines of a well-ordered society
      - Treatment
    - No
      - Rejection of liberalism
        - Requires, on pain of incoherence, guaranteeing fair equality of opportunity and a basic standard of welfare as realised states of affairs
From these considerations, I think we can generalise the relationship between liberalism and the permissibility of unlimited inequality and absolute poverty. Firstly, since any liberal theory is required to endorse some conception of fair equality of opportunity, it will necessarily find unlimited inequality unacceptable. Secondly, since the liberties that liberals generally identify as essential rights imply a basic right to subsistence, and since the intuitions that sit behind liberalism tend to include ideas such as a broadly humanistic formula stipulating the intrinsic value of persons (in particular the importance of the perspective of those less well-off in society), a liberal political conception of justice should find absolute poverty equally unacceptable.

We can surmise, therefore, that the conclusions arrived at in this section, and the previous section, make salient the case for benevolence: insofar as a liberal society lacks this virtue, it will be unable to guarantee some of the most basic aims of a liberal theory of distributive justice.

5.4 Three objections

So far, we have seen that a political liberal state cannot effectively limit either the degree of inequality or the extent and severity of absolute poverty within its own borders. We have also seen how both of these claims present a difficulty for political liberals such as Rawls or Quong, since both of them hold conceptions of distributive justice that are incompatible with both unlimited inequality and unlimited poverty. In this section, I will consider three separate objections to the argument offered thus far.

5.4.1 The Perfectionist Objection

Firstly, one might argue that the description of liberal views of social justice offered in Part III is misleading: rather than consider a properly constructivist account of justice of the kind that political liberals such as Rawls endorse, I have considered what is in effect an interpretation of justice that is hardly less teleological than the conceptions offered by some of Rawls’s perfectionist opponents. We might be accused of replacing Cohen’s

teleological good of equality with fair equality of opportunity and a base level of welfare satisfaction. In the case of the former, the failure of this objection is more transparent. Since fair equality of opportunity is posited as an end to be achieved by the basic structure as an outcome of the constructivist procedure, it does not function as an end that is prior to the procedure itself. Compare this to Murphy’s critique of the difference principle, where he makes it clear that the virtual elimination of inequalities required by Cohen’s view holds only if equality is posited as a good that is prior to the original position as the key procedural device. ‘Dualism’ – the Rawls-type distinction between principles for the basic structure and principles for individuals – is supposedly refuted, but with little more than the assertion of ‘monism’:

On the dualist view, our concern with inequality or the amount of suffering abroad is mediated through institutional structures. But if equality or well-being is the underlying concern that produces a theory of justice, why would people not be directly concerned about these things?²⁰⁸

The point is that, for Rawls, Quong, and for the arguments offered in Part III, fair equality of opportunity is not the underlying concern that produces a theory of justice. But it is a contractual requirement that a constructivist theory of justice produces. Hence, the idea of fair equality of opportunity does not depend on the rejection of constructivism.

The defence of a minimum standard of welfare is less easily made on anti-perfectionist grounds. Since the need to respect human rights is one of the eight principles that Rawls attempts to derive from the ‘second original position’ for the law of peoples, it is possible to argue that the idea of a ‘right to life’ need not be understood in perfectionist terms.²⁰⁹ Beyond this, however, neither Rawls nor Quong name any principle that explicitly identifies a minimum standard of welfare as a basic requirement of justice; as such, it cannot be said to be an outcome of the procedure in the same way as fair equality of opportunity. However, if it is regarded as part of the family of values which ground the identification of reasonable people as the relevant constituency for the formulation of a political conception of justice, then it can be successfully distinguished from appeals to values and truths that are

²⁰⁸ Murphy, “Institutions and the Demands of Justice”, 280
²⁰⁹ LP, 37
independent of the criterion of reasonable acceptability. For example, consider Rawls’s description of the grounding of the original position:

In arriving at the favoured interpretation of the initial situation there is no point at which an appeal is made to self-evidence in the traditional sense either of general conceptions or particular convictions. I do not claim for the principles of justice proposed that they are necessary truths or derivable from such truths. A conception of justice cannot be deduced from self-evident premises or conditions upon principles; instead, its justification is a matter of the mutual support of many considerations, of everything fitting together into one coherent view.\(^{210}\)

Essentially, what matters here is that the importance of guaranteeing people access to their basic subsistence needs is an intuition that reasonable people hold *in virtue of their status as reasonable*, as well as an intuition which liberals such as Rawls and Quong see as providing just such mutual support for the formulation of their theories of justice. As long as this assumption holds, then this second ideal of a minimum standard of welfare also successfully avoids the perfectionist objection.

5.4.2 The Non-Ideal Objection

A second objection might be that the empirical claims argued for in Part II depict a society that is no longer well-ordered in the Rawlsian sense; hence, we have departed from ideal theory in such a way that goes beyond the focus of political liberalism. Why might we think that this is the case? Since the second condition of Rawls’s idea of a well-ordered society is that the basic structure ‘is publicly known, or with good reason believed, to satisfy [the principles of justice],’ it might be implied that the sheer fact that the government is unable to achieve Rawlsian justice necessarily amounts to such a departure.\(^{211}\) However, there are some ambiguities in the way Rawls invokes this condition. At times, he appears to suggest that the essence of ideal theory is compliance.\(^{212}\) Let us put aside these considerations here, and assume that Rawls means that, in a well-ordered society, the requirements of a particular

\(^{210}\) *TJ*, 21. Italics are mine.

\(^{211}\) *PL*, 35

\(^{212}\) For example, see *TJ*, 245
political conception of justice, such as justice as fairness, have been more or less satisfied. This does mean that we have made something of a departure from ideal theory, because the basic structure is, in this instance, incapable of achieving justice.

One response here might be to say that the general unwillingness of political liberals to give much weight to the considerations of non-ideal theory speaks against the plausibility of political liberalism itself. This is not an inherently unreasonable view. There is much to be said for the importance of developing a theory of justice that can respond first and foremost to the dilemmas facing the imperfectly well-ordered societies that exist in the world today. While political liberals might often claim, as Rawls does, that a theory of justice for a well-ordered society ‘should provide some guidance for non-ideal theory’, it is questionable whether it provides the best form of guidance.213

A problem with this response, however, is that political liberals are unlikely to find it particularly troubling. As such, if we wish to provide a sound internal criticism of political liberalism, we are required to accept its general framework as a basis for argument, and consider its plausibility on its own terms.

Let us therefore accept, then, that S2a and S2b both involve departures from ideal theory. However, when we examine the consequences of this particular departure, we find that the purchase of the argument for benevolence is not weakened in any meaningful way. If the argument has correctly shown that justice can only be achieved if the talented are sufficiently motivated by altruistic virtues, and if a well-ordered society is one where the demands of justice as fairness are met, then it follows that the conditions for a well-ordered society obtain just in case the talented are sufficiently virtuous. One cannot, on this basis, deny that the virtue of benevolence is necessary for political liberalism. To the extent that the conditions for a well-ordered society are necessary, these virtues are necessary also. I conclude, therefore, that the non-ideal objection is unsuccessful.

213 JFR, 13; see for example Amartya Sen, The Idea of Justice (London: Penguin Books, 2010), ix
5.4.3 The Basic Structure Objection

A third objection might be as follows. It is necessary for individuals to cultivate the virtue of benevolence only if we have an impoverished view of the capacities of the basic structure. There are various ways in which it might curb the acquisitive, self-maximising behaviour of talented citizens. This presents a challenge to the second claim from part 2, namely, that the basic structure is incapable of effectively mitigating the effects of the behaviour of the talented on the level of inequality in society and the welfare of the worst off. I will consider two different strategies the basic structure might adopt, which I will refer to as direct and indirect methods respectively. I will argue, however, that neither strategy is both effective and viable for the liberal state.

Firstly, it might be argued that the government should directly reassert its authority over the talented by regulating their behaviour. This argument is advanced against Cohen by Samuel Scheffler, who argues that there is nothing to prevent the basic structure from satisfying the requirements of a ‘strict’ interpretation of the difference principle, where inequalities resulting from incentives are not considered to be necessary for the maximisation of the welfare of the worst-off:

In fact, it is not at all obvious why a government could not implement that principle, by simply prohibiting incentive payments, or taxing them at 100% (absent compelling evidence that the recipients could not work as productively in the absence of such payments). Of course, if the society in which the government did this were well ordered, citizens would also have a sense of justice leading them wholeheartedly to comply with the strict principle. If, on the other hand, citizens lacked such motivation, then some of the talented might refuse to work as productively as they could. But it does not follow from the first of these points that a government could not implement the strict principle by itself. And, notwithstanding the second point, equality would prevail in the society in question, even if some of the talented refused to work as productively as they could. Cohen is therefore mistaken when he says that, in the absence of an ethos of justice, ‘inequalities will obtain that are not necessary to enhance the condition of the worst off’.
. . Nor does he establish that the strict principle requires all citizens to be as productive as they could possibly be.²¹⁴

A variety of responses are available here. Firstly, it may be that such a ban is not politically feasible. The difficulties involved with positing a clear distinction between incentive payments and legitimate income, and then developing an effective strategy of regulation, may well be insurmountable.

Secondly, it is not clear that such a ban is permissible for a liberal theory of justice. Although Rawls stipulates that the importance of the basic liberties also includes the resources necessary to make effective use of those liberties, it is unlikely that political liberals will look upon this as a permission to restrict the liberty of the talented in the manner required by Scheffler’s argument here.²¹⁵ Two aspects of Rawls’s work are, I believe, sufficient to demonstrate that he would regard such action as unacceptable for a liberal theory. Firstly, Rawls identifies ‘freedom of movement and free choice of occupation against a background of diverse opportunities’ as one of five headings under which the list of primary goods fall.²¹⁶ Secondly, Rawls claims that a ‘head tax’ on personal abilities, which ‘would force the more able into those occupations in which earnings were high enough for them to pay off the tax in the required period of time’, would be a violation of personal liberty.²¹⁷ Quong, similarly, stresses that the importance of an egalitarian distribution is not the only value that matters for a theory of justice. As part of an argument against the identification of justice with strict equality, he argues that there are other considerations that may give us good grounds to endorse a less than fully equal distribution:

Equality is only the prima facie just distribution, but departures might be fully justified by appeal to relevant considerations. What might those relevant considerations be? Suppose that one of the other morally relevant features about


²¹⁵ PL, 6

²¹⁶ PL, 181

²¹⁷ JFR, 158
persons (in addition to their equality) is that they are free, in the sense that they have the capacity to form, revise and pursue their own conceptions of the good life.\(^{218}\)

The importance Rawls and Quong attach to having the freedom to pursue one’s own conception of the good life would, in a substantial way, have to be forfeited in order to satisfy the requirements of Scheffler’s argument. Insofar as political liberals are unwilling to do this, then a political ban on incentive payments is incompatible with the fundamentals of liberalism.

Thirdly, the question of incentive payments is only one part of the whole issue of the behaviour of the talented. In Part 2, we noted that the decline in the virtue of benevolence among the talented can have effects that stretch beyond the demand for incentive payments; and that these effects, in turn, can also have substantive impacts upon the degree of inequality in a society and the welfare of the worst off. For example, it was suggested that the talented in \(S_2\) also may be businesspeople who threaten to reduce their investments, fire or refuse to hire workers, or pursue fewer generally productive projects in response to a progressively higher taxation rate. The point here is that even if incentive payments can be effectively prohibited in such a way that is consistent with liberal principles of justice, this alone may do little to arrest the escalation of poverty caused by the decline in virtue amongst the talented. Scheffler is not necessarily mistaken when he claims that the basic structure can still ensure that equality prevails; however, this is under the conditions of \(S_{2a}\), where the poverty experienced by the worst off may only be exacerbated. Hence, if the only measure the basic structure can take to counteract the absence of benevolence among the talented is to forbid incentive payments, it bites the same bullet as the basic structure that chooses \(S_{2a}\) over \(S_{2b}\): fair equality of opportunity is preserved only at the cost of even more severe poverty.

What if the basic structure is dissatisfied with \(S_{2a}\) and seeks to directly constrain these other aspects of the behaviour of the talented? It would be necessary for it to introduce legislation to curb these behavioural traits as well. And here, some of the earlier difficulties are heightened. Legislation would be required to compel the talented to retain a level of productivity that does not change with the introduction of policies such as a more progressive taxation system. Legislation would also have to declare as illegal the variation of

\(^{218}\) Quong, “Justice Beyond Equality”, 323
productivity as a political tactic. The ability of a government to design and effectively enforce the appropriate legislation in this case would be even more questionable than in the case of incentive payments, since it involves a more thorough and general regulation of the behaviour of the talented. And since this kind of regulation is so thorough, it would prove even more of a threat to the status of the political conception of justice as a liberal theory. For all these reasons, then, it seems that we have good reason to believe that the direct form of the basic structure objection cannot succeed.

Secondly, let us consider the indirect strategies open to the basic structure. It might try to create the appropriate conditions and structures that may lead talented citizens to act in such a way that will better aid the realisation of liberal justice. Tan, for example, emphasises the educative role a basic structure must have in developing a sense of justice in its citizens:

It is basic to the institutional view that living under just institutions can have the educative effect of altering people’s unconsidered preferences, of firming their commitment to justice, of motivating them to do what they already believe to be the right thing, and so on. Instead of being constrained by human infirmities, one of the aims of institutions is to correct human infirmities that constrain justice. So, if it is the case that living under an unjust institutional scheme has distorted a people's sense of their responsibility and entitlement for the worse, the institutional approach would enjoin a transformation of this ethos through the creation of just institutions.

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221 Tan, “Justice and Personal Pursuits”, 342. Note that Tan also has a second argument concerning how the basic structure can indirectly address the acquisitive behaviour of the talented. The fact that severely unequalising incentives are allowed to prevail in a society may be due to the fact that other principles of justice, such as the ability to make use of one’s liberties, or the value of fair equality of opportunity, have not yet been realised (342-345). I agree with Tan that such severe inequalities are symptoms of the failure of a society to realise fair equality of opportunity. I deny, however, that this necessarily constitutes an essentially institutional failure. I have tried to show here that even if a basic structure is determined to realise fair equality of opportunity in a society where the virtue of benevolence is scarcely present at all, it cannot do so without resulting in even more severe forms of absolute poverty.
Let us assume that the basic structure does have this capacity to effect certain forms of character change in its citizens. But there is an ambiguity here: exactly what kind of changes is the basic structure trying to bring about? One answer is that the basic structure should promote the virtue of benevolence through its various educational mechanisms, and so try to form the character of citizens in such a way as to lead them to lead the kind of lives which are less acquisitive, and more directed towards the welfare of the worst off. But this is tantamount to the claim being defended in this chapter: that political liberalism requires the cultivation of the virtue of benevolence in order to achieve liberal justice. In the following chapter, I will consider whether the promotion of this virtue by the state is consistent with the idea of a political conception of justice.

An alternative interpretation is to say that the basic structure does not need to explicitly instruct citizens, through educational apparatuses, to become more benevolent; rather, all it needs to do is to shape educational institutions in such a way as to foster the cultivation of this virtue. Perhaps an example of such a strategy might be a government that seeks to indirectly promote the virtue of benevolence by ‘getting the facts out there’, making sure that the citizens are informed about the plight of the worst off. This would take the indirectness of the basic structure’s strategy to another level. To clarify: we firstly saw how the basic structure might try to directly regulate the behaviour of the talented, and how this cannot be done within the framework of a liberal political conception of justice. We next considered the possibility that the basic structure could promote the virtue of benevolence through educational institutions, and thus hope to achieve the outcomes of liberal justice via indirect means. The distinction between these two kinds of strategies is what I have referred to as direct and indirect methods respectively. Now, we consider a variant of the second kind of strategy, where the basic structure might indirectly promote the virtue of benevolence, in order to realise liberal justice via indirect means. However, this final distinction, between a strategy that seeks to indirectly secure liberal justice by promoting benevolence in direct ways, as opposed to its promotion in indirect ways, is not a distinction that political liberals are able to rely on. Political power, as Rawls points out, ‘is always coercive power backed by the government’s use of sanctions, for government alone has the authority to use force in upholding its laws.’

Consider again the case of a government that seeks to indirectly

\[\text{PL, 136}\]
promote benevolence by exposing citizens to the facts about the reality of poverty and the state of the worst off. In this case, the government is relying on a political conception of justice that has incorporated the virtue of benevolence no less than a government that directly promotes this virtue, and is using coercive power to create the kinds of conditions in which benevolence will develop among the citizenry. Hence, the ambiguity collapses, leading us towards the same conclusion: political liberals depend on the virtue of benevolence, whether promoted directly or indirectly, in order to realise liberal justice.

I conclude, therefore, that both the direct and the indirect versions of the basic structure objection fail. The former, because it involves prescriptions that are either unfeasible or impermissible for the liberal state; the latter, because it effectively confirms the need for benevolence as a virtue required for securing liberal justice.

5.5 Conclusion

In this chapter, we have seen that political liberals must see the virtue of benevolence as necessary for realising certain fundamental liberal outcomes. At the beginning of this chapter, we identified two burdens of proof that are necessary for advancing this claim. Firstly, it needed to be demonstrated that, unless citizens in a liberal society are sufficiently benevolent, liberal distributive justice cannot be achieved. In 5.2, we saw that, in a society where benevolence is largely absent, the basic structure cannot guarantee the absence of absolute poverty, and that, unless it is willing to only further deepen this poverty in pursuit of equality, it cannot guarantee fair equality of opportunity either. Secondly, it also needed to be shown that these really are fundamental liberal outcomes; any reasonable liberal conception of justice must regard a failure to secure fair equality of opportunity and prevent absolute poverty as unacceptable. In 5.3, I argued for this claim by showing how two prominent political liberals, John Rawls and Jonathan Quong, are committed to accepting both of these claims about liberal outcomes. I also provided some general remarks as to why this claim should hold for any reasonable liberal conception of justice. Finally, in 5.4, I considered three separate objections, namely: the perfectionist objection; the non-ideal theory objection, and the basic structure objection; I argued, however, that all of these objections fail.
We are now in a position to assess the extent to which the viability of a political liberal society depends upon the virtuousness of its citizens. Firstly, if the virtue of empathy is insufficiently present, public justification is unattainable. Secondly, if the virtue of benevolence is insufficiently present, liberal distributive justice is unattainable. Our inquiry into the status of political liberalism now turns a corner as it asks a separate question: to what extent can a political conception of justice accommodate these virtues? Can they be added to the list of traditional liberal virtues, such as tolerance and reasonableness? Or do they have a fundamentally different character, such that they resist incorporation into liberal political theory? And if the latter answer is correct, can political liberals still hold out hope for the presence of these virtues amongst the citizens of a liberal society? The following two chapters will address these questions respectively.
Part III

Political Liberalism and Virtue
Chapter 6

Empathy, Benevolence, and the Political Virtues

So far, we have seen that political liberals require citizens to cultivate two separate virtues in order for certain key liberal outcomes to be attained. Firstly, the virtue of empathy is necessary in order for the outcome of public justification. Secondly, the virtue of benevolence is necessary for the outcome of liberal distributive justice. In this chapter, I will begin to consider how political liberals might try to accommodate these virtues. I will conclude, however, that any such attempts will be unsuccessful. It will become clear that political liberalism depends upon the prevalence of certain forms of what Will Kymlicka refers to as social perfectionism – that is, the willingness of individuals and associations to practice the virtues of empathy and benevolence, independent of any direct state sanctions or independent state encouragement.223

This chapter is in five parts. I begin by providing an account of Rawls’s notion of a ‘political virtue’, denoting the only kind of virtue that can be incorporated into Rawls’s understanding of a reasonable political conception of justice. In part two, I show how the virtues of empathy and benevolence are incapable of meeting the criteria necessary for identifying a virtue as ‘political’ in this sense. Parts three and four consider two separate objections. In part three, I consider an objection that holds that the criteria for politicality which I establish in part one, and rely on in part two, is unnecessarily demanding, and that a more minimal criterion would suffice. In part four, I take into account a claim which might be made in defence of political liberalism’s capacity to accommodate the virtues of empathy and benevolence: namely, that these virtues are built into the kind of contractual deliberations which political liberals typically engage in. I will argue, however, that both of these objections are unsuccessful. Part five concludes.

6.1 Rawls and the political virtues

Despite his insistence upon the priority of right over good, Rawls does not pretend that political liberalism can get along without invoking any ideas of goodness at all:

Now, as I have said, the right and the good are complementary: a political conception must draw upon various ideas of the good. The question is: subject to what restriction may political liberalism do so?

The main restriction would seem to be this: the ideas included must be political ideas. That is, they must belong to a reasonable political conception of justice so that we may assume (1) that they are, or can be, shared by citizens regarded as free and equal; and (2) that they do not presuppose any particular fully (or partially) comprehensive doctrine.

In justice as fairness this restriction is expressed by the priority of right. In its general form, this priority means that admissible ideas of the good must respect the limits of, and serve a role within, the political conception of justice.  

Rawls’s criteria for the politicality of a virtue thus seem to be twofold: firstly, the virtue in question must be shareable among free and equal citizens; secondly, the virtue must not suppose any comprehensive doctrine.

I will make two points about these criteria. Firstly, I have suggested in 3.3 that political liberals generally use the term ‘free and equal’ to refer to the capacities of reasonable people. Where political liberals indicate that people are reasonable, we are to understand that they possess the two moral powers, and the capacity to be fully cooperating members of a well-ordered society. If this is the case, then it seems plausible to assume that political liberals use the terms ‘free and equal’ and ‘reasonable’ somewhat interchangeably. This means that the first criterion for the politicality of a virtue is largely identical to the basic threshold test of public justification: shareability among reasonable people.

Secondly, recall that reasonable people, in recognising the burdens of judgment, also recognise the fact of reasonable pluralism. The fact of reasonable pluralism, in turn, rules out the possibility of finding fair terms of cooperation based on a comprehensive doctrine.

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223 PL, 176
224 PL, 18-19
226 See Besch, On Practical Constructivism and Reasonableness, 26f.
Hence, any virtue that can be incorporated into a conception of justice acceptable to all reasonable people cannot be comprehensive. Since a virtue that is comprehensive in character cannot be shared by all reasonable people, the second of Rawls’s criteria is effectively included in the first. The requirement of shareability among reasonable people implies a requirement of non-comprehensiveness.

These two points lead us to understand Rawls’s idea of a political virtue solely in terms of reasonable shareability. A virtue is political if and only if it is shareable by all reasonable people. What qualities, then, enable a virtue to meet this criterion? A good place to start is Rawls’s publicity condition. Let us suppose that a virtue can be shareable among reasonable people only if it meets this condition. In *A Theory of Justice*, Rawls offers the following account of the idea of a public institution:

> In saying that an institution, and therefore the basic structure of society, is a public system of rules, I mean then that everyone engaged in it knows what he would know if these rules and his participation in the activity they define were the result of an agreement. A person taking part in an institution knows what the rules demand of him and others. He also knows that the others know this and that they know that he knows this, and so on.\(^{227}\)

This extract allows us to identify at least two separate aspects of the publicity condition, which we may then apply to the idea of a political virtue:

i) **The demands requirement (DR).** A reasonable person must be capable of clearly identifying the demands of a virtue.

ii) **The reciprocity requirement (RR).** A reasonable person must be capable of telling whether or not other citizens are meeting the requirements of the virtue.

Note that in order for a reasonable person to be able to determine what the requirements of a virtue are, she must know exactly in what sort of circumstances the virtue applies. This leads us to a third aspect of the publicity condition, which, although contained in the demands requirement, is nonetheless identifying separately:

\(^{227}\) *TJ*, 56. See also *PL*, 66f.
iii) **The application requirement (AR).** The virtue must have clear guidelines as to the circumstances when it applies. These circumstances must be clearly identifiable by a reasonable person.\textsuperscript{228}

In Political Liberalism, Rawls distinguishes ‘three levels’ of publicity: firstly, the principles of justice are known and accepted (and known to be accepted); secondly, they are to be based on uncontroversial claims about human nature and scientific matters; thirdly, there must be a ready-made justification at hand which is itself acceptable.\textsuperscript{229} The fact that publicity requires that ‘the full justification is present in the public culture’ suggests a fourth aspect of publicity:

iv) **The justification requirement (JR).** The justification of the virtue must also be public. Hence, the justification of the virtue must be understandable and acceptable to reasonable people.

Let us say, then, that these four requirements all constitute necessary conditions for Rawls’s idea of publicity. Insofar as we also hold that publicity is a necessary condition for the reasonable shareability of a virtue, then these requirements are also necessary conditions for the politicality of a virtue as well. However, we might plausibly go beyond mere Rawlsian exegesis and ask whether these requirements ought to be necessary for the idea of publicity as well. DR and AR are perhaps the most contestable. It might be argued, for instance, that the justification requirement ought to be seen as sufficient for publicity, and that DR is an unnecessary addendum. In 6.3, I will consider the merits and capacities of a different conception of publicity based solely around the justification requirement. Here, however, I will try to defend the Rawlsian notion of publicity as constitutive of the politicality of a virtue.

One attempt to justify the importance of a Rawlsian account of publicity is suggested by Thomas Pogge. In support of the importance of publicity as a reason for rejecting a ‘monistic’ conception of justice that does not identify the realm of the political as requiring

\textsuperscript{228} Note that these three criteria correspond roughly to those identified by Andrew Williams. See “Incentives, Inequality, and Publicity”, 233f.

\textsuperscript{229} PL, 66f.
its own unique justification, Pogge offers two reasons. Firstly, political institutions are often ineffective at promoting certain kinds of goods, such as ‘music, poetry, humour, good conversation, movies, parties, etc.’ Rawls can hold that goods such as these are ‘best promoted through ethos or personal choices and not, in any case, through fine-tuning of the basic structure.’ Secondly, an important consideration in the choice of principles is the need to ‘help preserve a just basic structure and guide reform towards one.’ Principles such as utilitarianism which are ‘difficult to apply and hence susceptible to controversy and abuse’ are unlikely to be much aid in this endeavour. Hence, something pretty much akin to DR is necessary for publicity. A serious difficult with Pogge’s view here, however, is how it manages the capture the non-contingent status of Rawlsian publicity. Take the question of perfectionist goods such as music and poetry. It may well be the case that a basic structure is ill-equipped to promote such goods. But it seems to me that a genuinely sincere political liberal would be unsatisfied with this, when taken as a reason why a basic structure ought not to embody perfectionist aims. Rather, political liberals ought to hold that a basic structure ought not to pursue perfectionist policies even if it were logistically capable of doing so. Likewise, the political liberal objection to controversial and general theories like utilitarianism seems to run deeper than the fact that it is difficult to apply them to the basic structure. If this were not the case, one might imagine that political liberals would simply call on the services of political scientists and economists, whose expertise might enable the devising of strategies for effectively implementing complicated principles such as utilitarianism in such a way that does not undermine the stability of the basic structure, and of society as a whole.

The main cause of these defects in Pogge’s account, I believe, is the absence of a link between the idea of publicity, and that of reasonable shareability. I have suggested that publicity is a necessary condition for reasonable shareability; if this suggestion is well-founded, then it seems plausible to infer that the idea of reasonable shareability should play some kind of a role in determining the content of the idea of publicity. Given that political liberals regard reasonable shareability as a matter of fundamental moral importance, an account of publicity that accords it a more privileged role is less likely to possess the same

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231 Pogge, “On the Site of Distributive Justice”, 157

contingent characteristics as Pogge’s account. This is what I will now attempt to provide. I will present two reasons why political liberals ought to endorse a Rawlsian conception of publicity as defined above, based on the importance of reasonable shareability. Recall that reasonable people possess the capacities of free and equal people. I offer a reason based on each of these characteristics respectively.

Firstly, people are free in the sense that they possess the two moral powers: a sense of justice and a capacity for a conception of the good life. An important task of a reasonable political conception of justice, therefore, is to balance these two moral powers against each other: on the one hand, fundamental requirements of justice must be secured in a society where an array of different reasonable conceptions of the good exist; on the other hand, these reasonable conceptions of the good must be protected from encroachments of justice. As Kok-Chor Tan puts it:

A theory of justice that does not amply allow for, or unduly constrains, personal pursuits will not only be self-defeating, but it will serve no purpose. It is individuals’ capacity for a conception of the good that makes considerations of justice especially poignant. The good is that which gives purpose and meaning to persons’ lives, even as justice dictates the permissible bounds of the good.

It is important, therefore, that a theory of justice avoid placing demands on citizens which are overly complicated or broad in application. Otherwise, the theory is likely to run into conflict with the conceptions of the good endorsed by reasonable citizens, lead to the erosion of any ‘agent-centred prerogative’, and hence fail to respect fully the capacity of reasonable citizens for a conception of the good life. This actually suggests a revision of AR along the following lines:

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233 PL, 18
234 Tan, “Justice and Personal Pursuits”, 333
AR (revised formulation): the virtue must have clear guidelines that indicate the limited circumstances in which it applies. These circumstances must be clearly identifiable by any reasonable person.

Note that this actually separates AR from DR. While DR implies that reasonable people must be able to tell when they are required to exercise this virtue, it is not so clear that it also implies that the virtue must also have identifiable boundaries in its scope of application. This idea is supplied by the political liberal conception of the reasonable person as free.

Secondly, people are equal in the sense that they are to be understood as fully capable of participating in the life of a well-ordered society. Their general powers of reasoning and ability to comprehend certain scientific truths are thought to be sufficient for the purposes of forming reasonable views about political justice. Hence, to introduce controversial or esoteric principles into a political conception of justice would be to treat people as though they lack this capacity, and are therefore not equal in this sense. The problem with principles such as utility, for instance, is not so much that it is difficult for a basic structure to apply them effectively, but rather, their application requires knowledge of ‘human nature and the way political and social institutions generally work’ that is not obtainable through the capacities shared by reasonable people. In this way, we can see how a Rawlsian idea of publicity that adheres to DR is derived from the status of reasonable people as free and equal, and not from contingent facts about the nature and capacity of political and social institutions.

We should clarify that DR does not in any way prevent contributions to political decision-making from complicated scientific discoveries. Suppose a team of scientists researching cures for cancer develop, through a complex and esoteric process of experimentation, a new drug that will help shrink tumours. DR does not apply to the scientific methodology itself here, but to the principles of justice which are to govern how the drug is made available to the public (concerning issues such as a possible subsidy for the cost of the drug). The point is

236 PL, 19
237 PL, 66
that publicity applies in this way to political justice, rather than to the entirety of politics itself.

To sum up thus far: we have identified four separate aspects of the Rawlsian idea of publicity: the demands requirement (DR); the reciprocity requirement (RR); the application requirement (AR); and the justification requirement (JR). We then considered whether DR and AR ought to be included in this list, not merely as a matter of exegesis, but as part of a charitable interpretation of political liberalism. We saw that although Pogge’s attempt to account for the importance of something like DR relied on unacceptably contingent factors, a justification for the importance of DR can be offered on the basis of the status of reasonable people as free and equal. If reasonable people are to be understood in this way, then they are also understood as i) possessing a capacity for a conception of the good which a theory of justice ought to minimise interference with; and ii) possessing all the necessary abilities to participate in the construction of a political conception of justice. Hence, DR and AR are fundamental aspects of any political liberal account of publicity. In 6.2, I consider whether the virtues of empathy and benevolence are public in this sense.

6.2 Can empathy and benevolence meet the publicity condition?

In this section, I will argue that the virtues of empathy and benevolence are incapable of meeting the idea of publicity as outlined above. I will concentrate specifically on DR and AR, and how these requirements disqualify empathy and benevolence from counting as political virtues. I will proceed by showing how both empathy and benevolence share two features which each individually violate one or both of these requirements: generality, and high epistemic demands. In each case, the burden of proof is twofold: firstly, it is necessary to show that both empathy and benevolence share the particular feature; secondly, it is also necessary to show how this feature violates the requirements of publicity.

6.2.1 Generality

A virtue is general if it is concerned not just with a limited sphere of human activity, but applies to human conduct in such a way that is either unconstrained, or not clearly limited. In other words, suppose we ask the question: ‘when does an agent have to display the virtue?’ If
the answer is either ‘always’, or ‘it is not fully clear which circumstances require or do not require the virtue’, then the virtue is general. Such virtues are inconsistent with AR, which stipulates that clear guidelines are necessary for the circumstances in which the virtue applies.

It is clear that both empathy and benevolence are general in this sense. Firstly, consider the breadth of circumstances in which the virtue of empathy applies. The duties of engagement and conjecture require that the virtue of empathy be exercised in relation to all those who dissent from the public political culture of a liberal society. Concerning the former, there can be no attempt to distinguish ‘reasonable dissenters’ who are worthy of empathetic deliberation, from ‘unreasonable dissenters’ who are not, since to do so would be to undermine the very purpose of the duty: to test whether those excluded from the public political culture are, in fact, unjustly excluded. While latter duty, on the other hand, does make something of a distinction concerning the greater importance of addressing reasonable dissent, compared with that of unreasonable dissent, it nonetheless recognises that all dissent, whether reasonable or unreasonable, needs to be addressed. Hence, the virtue of empathy applies to all cases of dissent, whether they be reasonable or otherwise.

It can also be argued that the duty of engagement requires the exercise of the virtue of empathy even in relation to non-dissenters. This is because it may be possible for certain people to be neglected by the public political culture without actually realising it, or possessing the vocabulary necessary to articulate their viewpoint. Recall, for example, the case of women who are raised in a sexist household, and given an education that only further ingrains such sexist beliefs. Such women may not be fully conscious of the ways in which their interests are unjustly ignored by their society’s understanding of the political values. Or, even if they are aware that there is something oppressive about their life circumstances, it may be that the very limiting upbringing and education that has been given to them prevents them from identifying precisely what this is. In this way, we can see that the end of public justification does not properly allow for any limits on the extent to which citizens are required to exercise the virtue of empathy. It is, of course, especially required in the case of those who dissent from the political consensus of society, but it is not the case that its presence is anything less than desirable (to say the least) in any circumstance. If there are any situations in which the virtue of empathy is not required as a way of relating to people, they are too difficult to identify and clearly define in such a way as to counteract the general character of the virtue, and render it more consistent with AR.
Secondly, consider the virtue of benevolence. As we have seen, the requirements of liberal distributive justice require the exercise of this virtue not merely as part of a one-off or occasional act of generosity or altruism, but rather, as a more wide-ranging disposition to act out of concern for those worse off. The person who may stop on their way to work to rescue Peter Singer’s drowning child may in some sense be displaying the virtue of benevolence, but not in the required sense for our purposes here. If liberal justice is to be attained, then people must be benevolent in a far more comprehensive way. In his criticism of Cohen’s ethos, Andrew Williams distinguishes between a ‘narrow ethos’ which focuses only on the ‘limits upon talented individuals receiving unequally large rewards’\(^{239}\), and a ‘wide ethos’ which focuses on productive as well as distributive requirements:

> A wide ethos therefore governs career choice as well as wage negotiation. For illustration, consider how the communist dictum “From each according to his ability, to each according to his needs!,” when read as a moral imperative, incorporates productive and distributive requirements.\(^{240}\)

As Williams points out, Cohen ought to view the wide ethos, rather than the narrow ethos, as best encapsulating the demands he believes the difference principle requires, since the former, unlike the latter, will not result in a promotion of equality at the expense of efficiency.\(^{241}\) Although I conceded in chapter 5 that the realisation of strict Cohenite equality may not be required by liberal justice, I did argue that it nonetheless does require, like Cohen’s ethos, a combination of efficient productivity and egalitarian concern for the worst off. Hence, the wide ethos also better encapsulates the scope of the virtue of benevolence for our purposes here. The virtue does not simply apply to a single career choice, such as whether to accept a lucrative salary or not, but instead reflects a disposition to consider the worse off throughout the course of a lifetime of career-related choices. Estlund\(^{242}\) and Tan\(^{243}\) have both argued that a wide ethos of this sort, which finds its application in the ‘thick of

\(^{239}\) Williams, “Incentives, Inequality, and Publicity”, 235

\(^{240}\) Williams, “Incentives, Inequality, and Publicity”, 235

\(^{241}\) Williams, “Incentives, Inequality, and Publicity”, 236-238


\(^{243}\) Tan, “Justice and Personal Pursuits”, 345-352
daily life, effectively rules out space for agent-centred prerogatives, which both Cohen and political liberals have good reason to accommodate: the former because he grants that individuals have a legitimate right to pursue self-interest to some extent; the latter because they must hold to AR of publicity, which, as we have seen, holds in light of the capacity of reasonable citizens for a conception of the good. The virtue of benevolence as it is required for liberal justice, therefore, is inconsistent with AR of publicity.

6.2.2 High epistemic demands

A virtue has high epistemic demands if it requires those who would be virtuous to possess uncommon knowledge and information-gathering skills. ‘Uncommon’, for our purposes, denotes ‘not common to all reasonable people’. As we have seen, the conception of reasonable people as free and equal implies that they are understood as having the epistemic powers necessary to be fully cooperative members of society. This, in turn, led to the establishment of DR as a necessary condition of publicity. Hence, a virtue that requires knowledge and information-gathering skills that are not common to all reasonable people is inconsistent with DR.

Let us again consider firstly how this description fits the virtue of empathy. We have seen how the duties of engagement and conjecture both require us to give consideration to views that may begin from radically different premises to our own (conjecture), or operate under a different kind of moral vocabulary (engagement). In this sense, the duties are in many ways quite similar to Alasdair MacIntyre’s understanding of the task of engaging in dialogue with different moral traditions. Consider his characterisation of the way in which such dialogue involves: firstly, conceptualising the viewpoint of another tradition on its own terms; and then secondly, translating this conceptualisation into one’s own moral vocabulary.

In controversy between rival traditions the difficulty in passing from the first stage to the second is that it requires a rare gift of empathy as well as of intellectual insight for the protagonists of such a tradition to be able to understand the theses, arguments, and concepts of their rival in such a way that they are able to view themselves from

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244 Cohen, If You’re an Egalitarian, How Come You’re So Rich?, 3
245 Cohen, If You’re an Egalitarian, How Come You’re So Rich?, 213n.
such an alien standpoint and to recharacterise their own beliefs in an appropriate manner from the alien perspective of the rival tradition.246

The duties of engagement and conjecture can be understood as involving similar two-stage processes. Firstly, one must try to understand the views of the relevant other on the other’s terms. Secondly, the citizen translates these views into the moral language of political liberalism. The citizen who observes the duty of conjecture, for instance, tries to characterise the viewpoint of the dissenter as the dissenter sees it. She then attempts to discern whether these views can support a political conception of justice that is based on a reasonable ordering of the political values. Likewise, the citizen who engages with excluded others first tries to familiarise herself with the other’s viewpoint and experience, before testing its capacity to translate into the language of the political values. MacIntyre claims that this process involves both empathy and ‘intellectual insight’; recall, however, that in 4.1 we accepted Oxley’s definition of empathy as involving both emotional transfer and cognitive simulation. Hence, under this definition, the virtue of empathy already includes the kind of intellectual insight MacIntyre treats as a separate quality. Empathy, in its most full and complete sense, thus includes this dual process of recognition and translation, thus granting the empathiser the deepest possible insight into the relevant other’s viewpoint.

There are three points to be made here, each of which highlights distinctive ways in which the virtue of empathy involves high epistemic demands which are inconsistent with DR. Firstly, the task of coming to understand a viewpoint alien to oneself is intellectually demanding. The challenges involved in identifying the salient premises and the precise nature of the inferences involved seem to stretch far beyond the capacities of many reasonable people. Secondly, the measure of ‘intellectual insight’ required in the translation of this viewpoint into the language of political liberalism adds further weight to the claim that the virtue of empathy places epistemic demands on people that exceed the mere fact of reasonableness. Finally, even if these demands were sufficiently modest to be common to all reasonable people, the virtue of empathy itself remains, as MacIntyre puts it, ‘a rare gift’ that is itself especially uncommon. Consider, for example, a person who has extraordinary intellectual powers, such that they are capable of identifying hidden premises and

assumptions in even the most esoteric and complicated arguments. Such a person, however, may still fail to be empathetic. This is because, as has been stressed repeatedly, empathy includes emotional as well as intellectual demands. The intellectual insights that are gained from empathetic deliberation are gained precisely by means of the emotional transfer that takes place. Hence, unless a citizen has sufficiently cultivated the ability to be emotionally receptive to another’s viewpoint, even the most extraordinary intellectual powers will be insufficient to allow her to deliberate empathetically. These three features, I take it, are more than sufficient to demonstrate that the epistemic demands of the virtue of empathy are incompatible with publicity.

The virtue of benevolence, similarly, turns out to place high epistemic demands upon citizens. It should be acknowledged that it does not necessarily require the detailed interpersonal comparisons which Williams believes are necessary for a Cohen-type ethos. If I choose the most productive career without relying on economic incentives, then I can have reasonable confidence that my career choice will be of greatest benefit to the worst off, even though I might not necessary be completely capable of clearly identifying who the worst off are. The key difficulty, however, lies in making this choice. The task for benevolent citizens to identify the most socially productive career is epistemically demanding in at least two ways. Firstly, a generally thorough and comprehensive understanding of the empirical facts concerning the productivity of different careers is necessary. Here it perhaps useful to recall Pogge’s argument: teleological principles such as utilitarianism, which are directed more or less towards the maximisation of a particular good, rely on effective information-gathering mechanisms in order for them to be implemented effectively. Although we saw that the incompatibility of such principles with publicity goes deeper than these practical obstacles, we nonetheless acknowledged that these obstacles are real. To expect that everyone apply themselves towards a certain particular good will require detailed empirical knowledge of circumstances which is seldom obtainable through accessible methods. Consider, for example, whether it is more productive for a citizen to be a doctor or a social worker. The virtue of benevolence, as a directive to choose the career that will contribute most greatly towards the welfare of the worst off, can then only be fully exercised if citizens have access to the kinds of information that can enable them to make such a choice. Although it might be replied that the virtue of benevolence does enable us to realise that both

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247 Williams, “Incentives, Inequality, and Publicity”, 239
of these possible careers are better options than, say, speculating on the stock market, this is not sufficient to assure citizens that they are actually acting virtuously in their career choice.

Secondly, it is difficult for citizens to identify their own productive capacity. Even if citizens are able to discern which career is likely to be more productive *ceteris paribus*, this calculation might be altered by any facts about their own ability to be productive. Suppose that it turns out that the career of a doctor is more productive than that of a social worker. However, Betty happens to have a particular skill set that is more suited to being a social worker. Given Betty’s skill set, at what point does it become better for her to be a social worker, rather than a doctor? The point is that the personal abilities and talents of citizens may make an otherwise productive career relatively unproductive, and vice versa. As Williams points out, ‘under realistic conditions, they will have only incomplete information about their own productive potential.’ On the basis of these two points, then, I conclude that the virtue of benevolence also places extraordinarily high epistemic demands on citizens, and is in this way incompatible with publicity.

We have therefore seen how the virtues of empathy and benevolence cannot be political virtues. Firstly, we singled out AR, and saw that both virtues were incompatible with this requirement in light of their generality. Secondly, we focused on DR, and saw that both virtues were incompatible with this requirement in light of the way in which they are epistemically demanding. Nothing has been said so far about either the reciprocity requirement or the justification requirement. I will make no effort to claim or deny that the virtues are incompatible with the former. The latter, however, will be in many ways the subject of the next section. It may be objected that the justification requirement is in fact the only necessary requirement for the politcality of a virtue, and that DR and AR, in particular, are unnecessary additions which unduly constrict the scope of political liberalism. I will argue, however, that this is not the case: it is possible for a virtue to meet the justification requirement without being admissible as a political virtue.

248 Williams, “Incentives, Inequality, and Publicity”, 241
6.3 Is the Justification Requirement enough?

According to this objection, one of two things must be true: either publicity is not necessary for politicality; or publicity is better defined in accordance with this more narrow criterion, where the justification requirement is the sole condition for publicity. Both of these possibilities depend on the claim that DR and AR are not necessary for politicality. I will respond to this objection by arguing against this claim.

We should first note that there is something intuitively plausible about this objection. If it turns out that it is possible for a virtue to meet the justification requirement, yet be ineligible for politicality, then this might seem a strange result. Since we have found that reasonable shareability and politicality are equivalents, this would mean that the justification of a virtue can be reasonably shareable, without the virtue itself being reasonably shareable. Consider how both empathy and benevolence are necessary for the attainment of key liberal outcomes, namely, public justification and liberal distributive justice respectively. Hence, the justification offered for these virtues is concerned with matters of justice, as opposed to the good life. It might therefore be claimed that incorporating empathy and benevolence into the political conception of justice does nothing to threaten its neutrality in any relevant way. Rawls sometimes appears to think of the political virtues in a way that is very similar to this. A state that adopts the virtue of toleration, for example, is not turning itself into a perfectionist state:

Rather, it is taking responsible measures to strengthen the forms of thought and feeling that sustain fair social cooperation between its citizens regarded as free and equal. This is very different from the state’s advancing a particular comprehensive doctrine in its own name.249

Insofar as this amounts to a justification that is reasonably shareable, then we are led towards the following, seemingly paradoxical position: if reasonable shareability presupposes publicity (understood as including all four requirements), reasonable people would accept the necessity of attaining these liberal outcomes, yet deny that justice requires them to cultivate the virtues without which these outcomes cannot be attained. How can this be the case?

249 PL, 195. Italics are mine.
I think there are at least three reasons that weigh either strongly or decisively against the claim that DR and AR are not necessary for politicality. I believe that each of these reasons also helps to make this seemingly paradoxical outcome – that the virtues necessary for key liberal outcomes are not reasonably shareable – appear somewhat more intelligible.

Firstly, we should recall from 3.3 that the justificatory link between the fact of a citizen’s reasonableness on the one hand, and their acceptance of the importance of the political values on the other, is not quite as strong as political liberals are wont to assume. We found that is at least theoretically possible for someone to reject the political values without impugning their status as reasonable. If this is the case, then it is likely that it is also possible for reasonable people to reject the importance of liberal outcomes such as public justification and distributive justice. The significance of this lies in the way in which it undermines the force of a key premise in the objection, namely, that there is tension between the following two claims:

1) Liberal outcomes such as public justification and distributive justice are reasonably shareable.
2) The virtues which are necessary to achieve these liberal outcomes are not reasonably shareable.

If we were correct to argue that the justificatory link between reasonableness and the political values is not watertight, then the truth status of 1) is called into question. Public justification and distributive justice may still be necessary outcomes for any reasonable liberal political conception of justice, but that is not the same thing as demonstrating that they are reasonably shareable. If these liberal outcomes are not reasonably shareable, then it is not clear that empathy and benevolence are able to satisfy JR, let alone DR or AR. Hence, the case for making JR the sole criterion for politicality is considerably weaker than what might have been first thought.

Secondly, we saw earlier in this chapter how DR and AR are rooted in the conception of reasonable people as free and equal. Because reasonable people are understood as free, it is important that a political conception of justice not require them to adopt any virtues which do not have clearly defined boundaries of application. Similarly, because reasonable people are
understood as equal, it is important that a political conception of justice not require them to adopt any virtues which contain requirements which are not clearly identifiable by all reasonable people. If our earlier assumption that reasonable shareability presupposes publicity is correct, then any attempt to deploy a more minimalist criterion of publicity will be tantamount to a refusal to treat reasonable people as free and equal. The same argument holds if this assumption is rejected, and it is instead argued that publicity is not necessary for shareability: any attempt to circumvent DR and AR is inconsistent with the respect that political liberals believe is due to reasonable people.

Thirdly, even if we ignore these two difficulties for the objection, the claim that empathy and benevolence are neutral virtues that can meet the justification requirement rests upon an impoverished conception of justification. Rawls’s idea of reflective equilibrium seeks ‘coherence among considered convictions at all levels of generality’. Even after the political conception of justice has been constructed, and it has become clear what kind of demands it will place upon citizens, justification remains incomplete until the final product also passes the test of reflective equilibrium. Consider the way Rawls describes the standpoint of ‘you and me’ as the fundamental standpoint to which justification is pitched:

Here the test is that of reflective equilibrium: how well the view as a whole articulates our more firm considered convictions of political justice, at all levels of generality, after due examination, once all adjustments and revisions that seem compelling have been made.

If it turns out that the virtues of empathy and benevolence are not reasonably shareable on account of their inability to satisfy DR and AR, then it is not the case that these virtues meet the justification requirement without being reasonably shareable. Rather, these virtues are, at best, incompletely justified. Citizens may at first accept that there is a need for the virtues of empathy and benevolence; however, upon learning more about what this would demand of them, they may rescind this initial acceptance and decide that the justification for these virtues is unestablished. The opportunity citizens have to revise their earlier judgments at the end of theory construction enables us also to see how empathy and benevolence may not be

\[250\] JFR, 32; PL, 8. Italics are mine.

\[251\] PL, 28. Italics are mine.
fully neutral virtues, despite the fact that their justification is presented in terms of justice, rather than in terms of the good. The fact that both virtues violate the application requirement means that it is likely that they will place severe restrictions upon the kinds of conceptions of the good life which citizens will be able to pursue. Hence, it is at least somewhat deceptive to claim that these virtues are neutral between different conceptions of the good life.

Note that in making this claim, we need not ignore the distinction political liberals typically make between neutrality of aim and neutrality of effect. Rawls’s rejection of the latter is reflected in his rejection of the following formulation of the idea of neutrality:

that the state is not to do anything that makes it more likely that individuals accept any particular conception rather than another unless steps are taken to cancel, or compensate for, the effects of policies that do this.

This idea of neutrality of effect is different from, and more expansive than, the kind of neutrality which is inconsistent with the virtues of empathy and benevolence. One difference is that neutrality of effect concerns itself with preventing the state from affecting the ability of a comprehensive doctrine to gain adherents over time. This can be contrasted with a state prescribing certain virtues which will prevent people who are already adherents of a certain doctrine from effectively pursuing it. Secondly, neutrality of effect concerns itself with avoiding the indirect production of ‘social influences favouring some doctrines over others’. This differs from the more direct actions of a state which promotes virtues that do not meet AR, and will hence clash with some of the conceptions of the good life held by reasonable citizens. Hence, we can hold that the virtues of empathy and benevolence are not neutral virtues, without having to subscribe to an ideal of neutrality of effect.

In short, if we are correct in thinking that DR and AR are necessary for reasonable shareability, then it is impossible for a virtue to fully meet JR without also meeting DR and AR. Hence, any attempt to make JR the sole criterion for the publicity or politicality of a

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252 PL, 190-200; LWP, 18; Macedo, “Liberal Civic Education and Religious Fundamentalism”, 485
253 PL, 193
254 PL, 197
virtue will be largely redundant; since JR effectively presupposes DR and AR, they will be necessary criteria as well.

We have three reasons, then, for rejecting the objection that only JR, and not DR and AR, are necessary for the politicality of a virtue. Firstly, since it is not clear that all reasonable people are necessarily committed to the political values in virtue of their reasonableness alone, it is equally unclear that all reasonable people are committed to the liberal ends of public justification and distributive justice. Secondly, DR and AR are grounded in the status of reasonable people as free and equal. If a political conception adopts virtues that do not meet DR and AR, then it does not properly respect reasonable people. Thirdly, insofar as political liberals follow Rawls in insisting that reflective equilibrium operates ‘at all levels of generality’, then justification is not complete until it has been shown that the final product is reasonably shareable. As long as DR and AR are necessary for reasonable shareability, then a virtue cannot satisfy JR if it cannot satisfy DR and AR as well.

6.4 Isn’t political liberalism empathetic and benevolent at its foundations?

A second objection is as follows. It cannot be correct to claim that political liberalism cannot make space for the virtues of empathy and benevolence, when they are present, at least in some fashion, at the foundational stages of contractual deliberation which political liberals typically employ. According to this objection, it follows that there has been a mistake at some point in the argument presented in this chapter thus far, either in the set-up of the criteria for politicality (6.1), or the claim that empathy and benevolence are unable to meet these criteria (6.2).

Let us consider Rawls’s own theory of justice as fairness as a prime example. Rawls holds that, behind the reasoning process that is the selection of principles through the original position, there lies an assumption about the kinds of natural attitudes and dispositions that [reasonable] people have. Consider the following passage:

To be sure, on the contract theory principles of right and justice have a certain content, and as we have just seen, there is a sense in which acting in accordance with them can be interpreted as acting from a concern for mankind, or for the good of other
persons. Whether this fact shows that one acts in part from certain natural attitudes, especially as those involve attachments to particular individuals, and not simply from the general forms of sympathy and benevolence, is a question that I shall leave aside here. Certainly, the preceding account of the development of morality supposes that affection for particular persons plays an essential part in the acquisition of morality. But how far these attitudes are required for later moral motivation can be left open, although it would, I think, be surprising if these attachments were surprising if these attachments were not to some degree necessary.

. . . If A cares for B, then failing a special explanation A is afraid for B when B is in danger and tries to come to B’s assistance. Again, if C plans to treat B unjustly, A is indignant with C and attempts to prevent his plans from succeeding. 255

What I take Rawls to mean here is that the principles of justice as fairness seem to presuppose certain natural virtues like benevolence. While this does not mean that people necessarily act on the basis of these virtues, it is assumed that citizens possess these virtues, or at least value them, in some measure.

This objection is mistaken because it fails to draw a distinction between the following:

i) Some things that it might be at least sometimes appropriate to call empathy or benevolence.

ii) Forms of empathy and benevolence that are necessary for the attainment of public justification and liberal standards of distributive justice.

This distinction has already been alluded to. Suppose, for instance, I pause on my way to work to rescue a drowning child. Insofar as I am motivated to act because of my concern for the child’s life, it seems plausible to describe this as an act of benevolence. However, this kind of action is not sufficient to demonstrate the kind of benevolence that is required for liberal distributive justice. To return to the argument of 6.2, the latter kind of benevolence (which political liberals require) is general and epistemically demanding, whereas the former kind (demonstrated in the drowning child case) is not. This is because the act of saving a

255 TJ, 486–487
drowning child is a one-off action, which has a clearly identifiable beginning and end to it. It also involves no extensive complications or predictions. As we have seen, these characteristics do not hold for the kind of benevolence which political liberals require.

The virtue of empathy has a similar relationship with political liberalism. In chapter 4, we saw how the ideal of public justification requires not only hypothetical deliberation (simulating another’s perspective), but empathetic deliberation (the acquisition of moral information through emotional contagion). The latter is general and epistemically demanding, whereas the former is not. And while, as we saw in 4.2, some versions of political liberalism might be (very tendentiously) framed as forms of hypothetical deliberation, this is simply not equivalent to empathetic deliberation. Indeed, if we have been correct to argue that any form of deliberation that lacks emotional contagion is not worthy of being called empathetic deliberation, then it follows that political liberalism does not merely incorporate a weaker form of the virtue of empathy; rather, it does not incorporate any form of empathy at all. At best, it draws mildly on a form of hypothetical deliberation which is sometimes (but probably mistakenly) referred to as empathy.

What we find, then, is perhaps possible that political liberalism is empathetic and benevolent at its foundations, in the sense of i); but that it cannot accommodate either empathy or benevolence in the sense of ii). This means that a liberal political conception of justice cannot include the forms of empathy and benevolence that are necessary for the attainment of public justification and liberal distributive justice.

6.5 Conclusion

In this chapter, we have seen why political liberals are unable to include the virtues of empathy and benevolence as part of the set of political virtues within a political conception of justice. We first found that a virtue can be political if and only if it is shareable by all reasonable people, and that a necessary condition of reasonable shareability is a certain idea of publicity, rooted in the conception of people as free and equal. We then saw that neither empathy nor benevolence is capable of meeting the criteria for this idea of publicity. Finally, we considered two separate objections. The first of these claimed that a less demanding criterion of publicity is more appropriate, and questioned whether publicity is even necessary
for politicality at all. The second claimed that, since political liberalism is empathetic and benevolent at its foundations, at least one of the premises of either 6.1 or 6.2 must be false. We found, however, that both of these objections were unsuccessful. This leaves political liberalism in a potentially difficult position. It finds itself committed to the following three claims:

1) Political liberals see public justification and a reasonable form of distributive justice as necessary outcomes for any reasonable political conception of justice.

2) The virtues of empathy and benevolence are necessary in order for these respective outcomes to be achieved.

3) Since empathy and benevolence cannot be political virtues, a basic structure governed by a reasonable political conception of justice cannot legitimately promote either of these virtues.

Note, however, that these three claims do not amount to a contradiction. All it establishes is that political liberalism requires virtues which it cannot promote; what it does not establish, however, is that these virtues will not or cannot be present in a liberal society. It may be the case that citizens will adopt these virtues, independently of any action on part of the basic structure. But this renders political liberalism dependent upon what I refer to as social perfectionism. Political liberals rely on either one, or both of the following facts about society to obtain:

i) There must be an abundance of individuals and associations who view the virtues of empathy and benevolence as intrinsically good, hence at least partially constitutive of the good life. Such individuals and associations will therefore practise these virtues in their daily lives, thus helping to make possible the conditions for the outcomes of public justification and distributive justice.

ii) There must be an abundance of individuals and associations who share a more perfectionist commitment to the outcomes of public justification and distributive justice, such that it is unconstrained by any requirement of publicity. Such individuals and associations will recognise the necessity of empathy and benevolence as virtues internal to these ends.
Political liberals must concede, therefore, that political justice is incapable of securing its own ends. A basic structure fully governed by a reasonable political conception of justice cannot achieve at least some of its necessary aims without receiving support from outside the scope of the political. But this support cannot be demanded, or even encouraged in any way. While political liberals need their citizens to cultivate the virtues of empathy and benevolence, their refusal to endorse any idea of virtue that cannot be shared among reasonable people prohibits them from promoting either as a virtue, even exclusively for the purposes of justice. At best, political liberals can look favourably upon individuals and associations who choose to pursue more virtuous ways of life, but this is as far as they can go.

Two things are worth noting as we conclude this chapter. Firstly, although, as we saw, this is not necessary a fatal difficulty for political liberals, it is an ironic one, since it strangely resembles some of the original reasons offered by Rawls as a criticism of utilitarianism:

> It is evident then why utilitarians should stress the role of sympathy in moral learning and the central place of benevolence among the moral virtues. Their conception of justice is threatened with instability unless sympathy and benevolence can be widely and intensely cultivated.\(^{256}\)

To be fair to Rawls, it may be that his intention in this passage is to contrast the sentimental, self-sacrificial motivations behind utilitarianism with the more Kantian ideal of treating another ‘not only as means only but ends in themselves’\(^{257}\), which he believes underlies justice as fairness. Nonetheless, the point remains: an important consideration against the principle of utility lies in the fact that these altruistic virtues are taken to be unrealistic demands. Persons in the original position, according to Rawls, ‘would reject the principle of utility and adopt a more realistic idea of designing the social order on a principle of reciprocal advantage.’\(^{258}\) If political liberalism is to be viable, then this view must be mistaken: it must not be unrealistic to hope that altruistic virtues like empathy and benevolence can be cultivated in a liberal society.

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\(^{256}\) *TJ*, 178; see also *LWP*, 185

\(^{257}\) *TJ*, 179. I owe this point to an anonymous reviewer.

\(^{258}\) *TJ*, 178
Secondly, the above point directs us towards a new inquiry, the outcome of which will more properly determine the extent to which a political liberal society is possible. We know that political liberals cannot command the cultivation of the virtues of empathy and benevolence. *But to what extent does it permit these virtues to be cultivated within a political liberal society?*

The question is perhaps best phrased a little differently. Of course political liberalism permits the cultivation of these virtues, insofar as it does not expressly forbid them through the use of threats and punishments. But it does not follow from this fact that a political liberal society is conducive to the cultivation of these virtues; nor does it follow that their cultivation is fully consistent with the basic moral principles on which political liberals base their distinctive kind of justification. It must be the hope of political liberals that a liberal society will be encouraging and commodious to social perfectionists, since the attainability of essential liberal outcomes depends upon their ability to flourish in a liberal society. But is this hope well-founded? Can citizens accept the basic claims of political liberalism, all the while holding to a particular form of social perfectionism required to achieve liberal outcomes? It will be questions such as these that I will take up in the following chapter.
We have seen, thus far, that political liberalism is dependent upon various forms of social perfectionism – that is, a willingness on the part of citizens to cultivate certain virtues without any assistance or encouragement from the basic structure. In this chapter, I consider whether it is reasonable to expect that these kinds of social perfectionism will be prevalent in a political liberal society. There seem to be two main ways of addressing this question. One is to do an empirical study about the sociological effects of liberal institutions on their citizens. Although this method might well be valuable, I will eschew it for two reasons. Firstly, such a study will likely encounter difficulties in establishing clear causal relationships between political liberal institutions and the prevalence of social perfectionism. Suppose it turns out that few, if any such forms of perfectionism actually happen to flourish in real societies that have adopted distinctly political versions of the liberal ethos. It does not therefore follow, however, that the former is a result of the latter. Secondly, as we have mentioned earlier, the fact that political liberals reject any kind of commitment to neutrality of effect suggests that they seek to do political philosophy from the point of view of moral theory, rather than consequences. Even if it turned out that political liberalism has a causal role in the erosion of social perfectionism, it is not necessarily the case that political liberalism is in any way inconsistent with social perfectionism.

I will therefore adopt a second kind of approach in this chapter. I will focus on whether citizens can consistently assent to the premises deployed by political liberals in support of their political views, all while remaining convicted social perfectionists. I will conclude that they cannot. The argument I offer in support of this conclusion will take the following form:

1) Social perfectionists are committed to viewing their doctrines as based on an external source of authority.
2) Political liberals hold that the choices of reasonable people are based on an internal source of authority.
3) Political liberalism is therefore in tension with social perfectionism. (from 1 and 2)

259 An early version of this chapter was presented as a paper at the 2012 Australasian Postgraduate Philosophy Conference, held in Wellington. I am grateful for the comments and advice I received during this presentation.
What is meant by the distinction between internal and external sources of authority? As far as the social perfectionist is concerned, she is morally entitled to pursue her doctrine just in case certain facts external to her happen to obtain i.e. her doctrine happens to be true or correct. I claim that political liberals, on the other hand, hold that a reasonable person is entitled to pursue her doctrine not because of external facts, such as the truth-status of the doctrine, but because of facts that are internal to the agent i.e. her status as reasonable. If both 1) and 2) are correct, then political liberals find themselves in a kind of conflict with social perfectionists, which has the potential to hinder the ability of such perfectionists to flourish in a political liberal society.

In this chapter, I will assume that 1) is correct and argue for 2). The truth-status of 2), I argue, is contingent upon a certain ambiguity concerning the way in which political liberals regard reasonable citizens as free. We have seen how political liberals interpret this claim to mean that reasonable citizens possess the two moral powers: a sense of justice, and a capacity for a sense of the good. It is what is meant by the second of these powers that I am most interested in here. I hold that this can be interpreted in one of two ways, which I refer to as the moral interpretation, and the coercion interpretation. Parts 1 and 2 of this chapter seek to explain this distinction, and properly locate this ambiguity within political liberalism. Parts 3 and 4 present two preliminary arguments in favour of the claim that political liberals are committed to the moral interpretation. I acknowledge, however, that neither of these arguments are decisive. In Part 5, I will present what I take to be a more fundamental argument in favour of this claim. Parts 6 and 7 consider two objections to this claim. In Part 8, I will show how the fact that political liberalism is committed to the moral interpretation is sufficient to establish the truth of 2), and further, places political liberalism in conflict with the social perfectionist. Part 9 concludes.

7.1 Two ways of interpreting liberal freedom

A common theme among the modern liberal-democratic tradition is that citizens ought to be regarded as free. And it is almost equally common, so it seems to me, for liberal-democratic thinkers to leave the precise meaning they have in mind for this theme as vague, ambiguous, or open-ended. One such ambiguity concerns the political liberal view that reasonable
citizens ought to be allowed the freedom to pursue their own conception of the good life. One interpretation holds that this freedom is purely political in scope. That Amy is free to collect fine art, for example, guarantees her nothing more or less than a right against coercive interference. Whether she is actually morally permitted to exercise her freedom in this way is an entirely separate matter, on which political liberalism falls silent. Call this the coercion interpretation.

A second interpretation views this freedom as having a considerably broader scope. Amy’s freedom to collect fine art entails that it is morally permissible for her to do so. As such, there is a sense in which Amy’s actions in pursuing fine art become insulated from moral criticism. Her devotion to fine art is morally permissible precisely because she is free to choose. Call this the moral interpretation.

I will argue that political liberalism is necessarily committed to the moral interpretation. This means that political liberals must view the freedom of reasonable citizens as a freedom that accords them a kind of moral permission to act as they please, so long as they comply with the requirements of a reasonable political conception of justice. Since political liberals hold that the essence of justification is acceptance by reasonable people, they are consequently committed to regarding the conceptions of the good chosen by reasonable people as morally permissible.

The argument I am offering here can be contrasted with three other claims commonly made about the relationship between political liberalism and the good: namely, that political liberalism leads to scepticism, relativism, or non-neutral effects, with regards to the various conceptions of the good life that exist in a well-ordered society. The arguments from scepticism and relativism both assume that political liberalism makes a claim about the relationship between the conception of the good and truth; Graham Long, for example, argues that ‘metaethical relativism is not only consistent with the claims of contemporary liberalism, but underpins those claims.’260 The argument I present in this chapter, on the other hand, makes no claim about the relationship between political liberalism and the truth-status of

conceptions of the good. Therefore, it is consistent with both the sceptical argument and the relativist argument, but it is not equivalent to either of them. It is rather a claim about what conceptions of the good we are permitted to pursue. If my argument is correct, then political liberals can, by and large, freely denounce Amy’s devotion to fine art as an objectively bad conception of the good life, or uphold it as objectively good; in either case, however, they are still required to insist that it is morally permissible for her to pursue this way of life. Hence, the claim that political liberals are committed to the moral interpretation does not in any way imply that they are committed to scepticism or relativism about the good.

We can also distinguish the argument offered here from the claim that the culture indirectly promoted by political liberalism will make it hard for certain forms of perfectionism to flourish. Such an argument involves a sociological claim about the nature of existing conceptions of the good life, and the impact of liberal culture on their continued existence. A political liberal society, as Stephen Macedo puts it, ‘promotes moral laxity as well as a certain kind of individualism.’ Political liberals generally acknowledge that almost any reasonable political conception of justice is bound to indirectly privilege some comprehensive doctrines ahead of others, insofar as a society that stresses the importance of certain liberties and toleration will cause people to see themselves as free to abandon traditional comprehensive doctrines in favour of alternatives. My argument, however, holds that this ‘moral laxity’ is no accidental by-product of political liberalism. Regardless of the substantive effects of a political liberal society, I argue that its most basic normative propositions entail a commitment to the moral interpretation.

7.2 Political liberalism, reasonableness, and the good

In this section, I will briefly pinpoint how this ambiguity between the moral interpretation and the coercion interpretation arises for political liberalism. We have said that a fundamental aspect of political liberalism is a certain ideal of what it means to be a.

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262 Stephen Macedo, “Liberal Civic Education and Religious Fundamentalism” 478-479

reasonable person. The definition of reasonableness is the subject of a certain measure of disagreement among political liberals. Throughout this essay, I have relied upon Rawls’s idea of the reasonable person, which consists of two basic features: a willingness to propose fair terms of cooperation, and a willingness to accept the burdens of judgment. I will continue to do so in this chapter, although all that the argument here assumes is that political liberalism is committed to respecting the moral powers of reasonable people.

Recall from 3.3 that these moral powers include a capacity for a sense of justice, and a capacity for a conception of the good. We have seen that political liberals cannot endorse a conception of justice that is based on a single comprehensive doctrine, since this would be incapable of gaining equal acceptance among reasonable people. Rather, any admissible principles of justice must not entail a commitment to one comprehensive doctrine over another; as such, their promotion must be consistent with a ‘method of avoidance’ when it comes to controversial matters of metaphysical truth. If a set of principles of justice restrict the freedom of reasonable people to pursue their comprehensive doctrines in unduly complicated ways, then their acceptance of these principles seems doubtful. For this reason, political liberals adopt what Rawls describes as a ‘division of labour’, where ‘individuals and associations are then left free to advance their ends more effectively within the framework of the basic structure, secure in the knowledge that elsewhere in the social system the necessary corrections to preserve background justice are being made.’

Now it is this notion of the division of labour between the two moral powers that is of most interest for our purposes here. Political liberals claim that citizens have the ‘capacity for a conception of the good’ and ought to be ‘free’ to pursue their conception of the good life within the limits permitted by the principles of justice. But what does this mean? Two possibilities spring to mind. Political liberals might mean that the state ought not to interfere with the lives of citizens, as long as their actions are consistent with the requirements of a

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264 On the primacy of the reasonable person in political liberalism, see Wenar, “Political Liberalism: An Internal Critique”, 32-62 at 36
265 PL, 19
267 PL, 267; Williams, “Incentives, Inequality, and Publicity”, 233-235
268 PL, 269
Another possibility, however, is something more substantial: the fact that citizens are free to pursue their conception of the good life might be interpreted to mean that they are in some sense free from the moral scrutiny of others. Whatever the rights or wrongs of the conception of the good chosen, it is in some sense morally legitimate for citizens to pursue their chosen conception, so long as it falls within the limits outlined by the principles of justice. These two different possibilities are what I have referred to as the coercion interpretation and the moral interpretation respectively. In the three following sections, I will provide a series of arguments in support of my claim that political liberals are committed to the moral interpretation. In the next section, I argue that the coercion interpretation is inconsistent with Quong’s argument against paternalism. In part 4, I argue that the coercion interpretation contradicts some essential liberal rights such as the right to freedom of occupation. In part 5, I will put forward a more fundamental argument for this claim based around the foundational role of the concept of reasonableness in political liberalism.

7.3 Paternalism and the second moral power

My first preliminary objection to the coercion interpretation is that it is inconsistent with Quong’s rejection of paternalism. Quong bases this position on what he calls ‘The Argument From Moral Status’, which begins with the traditional liberal conception of ourselves as free and equal. This status refers to our capacity for the two moral powers: a sense of justice, and a conception of the good life. According to Quong, there is something about paternalistic action that conflicts with this capacity for the second moral power:

Paternalistic actions, however, appear inconsistent with this conception of our moral status. This is true because paternalism involves one person or group denying that another person or group has the necessary capacity, in a given context, to exercise the second of the two moral powers: the capacity to plan, revise, and rationally pursue their own conception of the good. To treat someone paternalistically is thus (at least temporarily) to treat that person as if he or she lacks the second moral power. This means there is always

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269 On the idea of a reasonable liberal political conception of justice, see John Rawls, “The Idea of Public Reason Revisited”, PL, 583-584

270 LWP, 100
a strong moral reason not to treat a sane adult paternalistically, and this is why paternalism is _prima facie_ wrong.\textsuperscript{271}

What is striking about this argument is what seems to be assumed about the significance and meaning of this capacity. Paternalism is inconsistent with our capacity to a conception of the good if and only if it is also true that it is important for reasonable people to be able to pursue their own self-chosen conception of the good. If, for example, the second moral power implies nothing more than the bare fact that I am capable of coming to have a conception of the good at any time, then it is not clear that this is in any way at odds with a paternalistic ethos. James’s attempt to combat his housemate John’s preference for skateboarding over surfing by purchasing him a surfboard might be a paternalistic attempt to alter his view of the good life, but it doesn’t particularly seem to threaten his simple possession of _a view_ of the good life. It is the normative content contained in the fact that citizens have ‘the capacity to \textit{plan, revise, and rationally pursue their own conception of the good}’ that makes paternalism incompatible with the exercise of their second moral power.\textsuperscript{272} If James succeeds in altering John’s preference for skateboarding, John clearly still retains a conception of the good, but it is not so clear that it is chosen by John. The argument for the rejection of paternalism, therefore, depends upon the view that it is important for people to pursue the conception of the good \textit{that they choose for themselves}, not just that they not be subject to coercion. This affirmation of the intrinsic value of individual choice amounts to a clear rejection of the coercion interpretation in favour of the moral interpretation.

The purchase of this argument is perhaps limited by the fact that it is not entirely clear that the substantive commitments of political liberalism necessarily entail that paternalistic action is _prima facie_ wrong. The wrongness of paternalism seems to play little role, for instance, in the arguments for political liberalism advanced by the likes of Rawls or Macedo. The former is willing, for instance, to grant that a limited form of paternalism is in fact consistent with the deliberations of people in the original position:

> They will want to insure themselves against the possibility that their powers are underdeveloped and they cannot rationally advance their interest, as in the case of

\textsuperscript{271} \textit{LWP}, 101
\textsuperscript{272} \textit{LWP}, 101
children, or through some misfortune or accident they are unable to make decisions for their good, as in the case of those seriously injured or mentally disturbed. It is also rational for them to protect themselves against their own irrational inclinations by consenting to a scheme of penalties that may give them sufficient motive to avoid foolish actions by accepting impositions designed to undo the unfortunate consequences of their imprudent behaviour.\textsuperscript{273}

Macedo, similarly, grants that the presumptions against paternalistic action ‘may often be very strong, but they are not absolute.’\textsuperscript{274} Government policies that attempt to curb drug addiction, for instance, may be legitimate infringements upon human freedom. Now it may be the case that, in practice, the limited paternalism advocated by Rawls and Macedo is by and large identical to Quong’s claim that paternalism is \textit{prima facie} wrong, but arguably necessary on rare occasions as a result of stronger moral considerations.\textsuperscript{275} However, it does not seem that either Rawls or Macedo are explicitly committed to rejecting paternalism on the basis of its conflict with the capacity of reasonable people for a sense of the good. If they are committed to regarding state paternalism as \textit{prima facie} wrong, it is more likely to be because this generally involves a violation of the commitment to public justification, understood as the requirement that state power be used only in ways that are equally acceptable to all reasonable people.\textsuperscript{276}

The fact that Quong’s rejection of paternalism entails that his version of political liberalism is committed to the moral interpretation does not, therefore, \textit{necessarily} entail that all political liberals are also committed to the moral interpretation. However, it may be that this argument can still have at least some more general force that extends beyond an ad hominem application. The important feature of this argument is what it shows about the way Quong interprets the second moral power: reasonable people are regarded as having not only the capacity to hold to a conception of the good, but also the freedom to choose a conception of the good, under the assurance that they are morally permitted to pursue their choice. The fact that Quong, as a philosopher within the political liberal tradition, interprets the second moral power in this particular fashion gives us at least some case for thinking that this interpretation

\textsuperscript{273} \textit{TJ}, 249.
\textsuperscript{274} \textit{LV}, 209.
\textsuperscript{275} \textit{LWP}, 103-106
\textsuperscript{276} This would be consistent with Rawls’s liberal principle of legitimacy. See \textit{PL}, 137
is actually correct, and holds for political liberalism generally. Hence, we may view this argument as providing us with at least a moderately persuasive case for thinking that political liberalism is committed to the moral interpretation.

### 7.4 Liberal rights and market incentives

A second preliminary objection to the coercion interpretation is that it seems less consistent with what political liberals usually view as the meaning of certain key liberal rights. Specifically, ‘option rights’ such as the right to freedom of occupation, for instance, are typically understood by liberals as signifying something more substantial than a guarantee of protection against coercive interference; rather, they are viewed as a kind of moral permission, creating a sphere of activity within which moral criticism seems out of place.\(^{277}\)

This understanding of rights is illustrated very neatly in Quong’s defence of justice as fairness against the egalitarian perfectionism of G.A. Cohen. While Cohen proposes an ‘ethos of justice’ that applies to individuals and associations within a well-ordered society, Quong considers how this ethos might impact on the lives of particular citizens.\(^{278}\) Suppose that Albert is capable of working as a doctor, and that this career will be highly productive for the rest of society; however, he instead chooses the less productive career of gardening. On Cohen’s account, Albert’s choice of careers is morally criticisable. In making this point, however, Cohen recognises that his argument faces an intuitive dilemma: if Albert is morally required to pursue the more socially productive career path, consistent with the demands of both egalitarianism and Pareto-efficiency, in what sense does he enjoy a right to freedom of occupation? Cohen’s response to this dilemma is the ‘ethical solution’: as long as Albert freely chooses to become an entrepreneur without coercive interference from the state, his freedom of occupational choice is left unviolated:

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\(^{277}\) Here I use Martin P. Golding’s distinction between option rights and welfare rights. The former concerns freedom and choice, whereas the latter concerns our entitlement to a particular good or set of goods that are essential to our wellbeing. See Golding, “The Concept of Rights: A Historical Sketch”, *Bioethics and Human Rights*, ed. E. Bandman & B. Bandman, (Boston: Little, Brown, 1978), 44-45; Michael Freeden, *Rights* (Minneapolis: University of Minnesota Press, 1991), 47

\(^{278}\) For why Cohen’s ethos should be referred to as an “ethos of justice”, see 5.1.
the doctor-gardener does not act unfreely if she acts in an egalitarian way because she thinks it’s right to do so, even if she would prefer, other things being equal (which they are not, because of her egalitarian conviction) to do otherwise; or, differently, if she does the egalitarian thing because she likes doing the egalitarian thing, as such, even at cost to other things that she likes doing, such as gardening. And those two structures of motivation are plausible possibilities.²⁷⁹

For Cohen, Albert may find that his natural desire to garden may be overridden by a realisation that he has a moral duty to become a doctor. Or, he may find that, in addition to his desire to become a gardener, he may also discover that he has a stronger desire to help realise Cohen’s brand of egalitarian justice, and as such, is motivated to become a doctor in ways that are completely compatible with his status as a free person. For Quong, however, there is something unsatisfactory about this response. If Cohen claims that the ethos is required by morality, then he is denying the kind of freedom of occupation that Quong believes is morally relevant:

It is true that Albert’s negative liberty – measured in the non-moralised sense of the extent he is free from the physical interference of others – may not be diminished, but this is not the only type of freedom that we care about. In the modified version of the freedom of occupational choice trilemma that I am proposing, the question is whether equality and Pareto can be made consistent with each person having a right of occupational choice.²⁸⁰

What Quong is claiming here is that the fact that Albert has not been coerced by others into a particular career path is not enough to satisfy the idea of freedom of occupational choice, understood as a right. While the coercion interpretation of democratic rights and freedoms would claim that freedom of occupational choice is satisfied by the absence of external coercion, Quong is suggesting that this freedom implies a kind of moral permission: it must be possible for Albert to choose the life of either a gardener or a doctor without this choice being subject to moral criticism. Cohen’s ethos limits the range of actions available to the

²⁷⁹ G.A. Cohen, Rescuing Justice and Equality, 191
²⁸⁰ Jonathan Quong, “Justice Beyond Equality”, Social Theory and Practice 36 (2010), 333
moral agent ‘regardless of whether our principles of justice are backed by coercion’. In making this claim, Quong indicates his clear commitment to the moral interpretation. The idea of a right to freedom of occupational choice, on this account, means that the career we choose to pursue is entirely up to us. At best, moral reflection might inform us that it would be better for Albert to choose to become a doctor rather than a gardener, but this must be regarded as a supererogatory duty, which we are not in any way bound to fulfil.

As with the point on paternalism, the question before us is whether Quong’s understanding of rights is indicative of political liberalism generally. To be sure, Rawlsian liberals are undoubtedly committed to upholding option rights such as freedom of movement and occupation. But they may try to claim that these rights are purely political rights, entailing nothing more than the immorality of state coercive power being used to force people into one career rather than another. If Larmore is right in claiming that liberalism is better understood ‘not as a philosophy of man, but a philosophy of politics’, then we should expect political liberals to be reticent about claiming that liberal rights entail anything more than a right against external coercion. However, this reticence may come at a cost. Insofar as political liberals wish to reject Cohen’s perfectionist egalitarian critique, they may seem committed to holding a view of option rights as creating a space that is in some measure immune from moral criticism. Quong, after all, deploys this particular notion of the right to freedom of occupation in order to refute Cohen, or at least, demonstrate that the kind of ethos Cohen has in mind is no more than supererogatory. If this particular conception of rights is not adopted, then the artillery with which political liberals are able to respond to Cohen’s argument is significantly weakened.

281 Quong, “Justice Beyond Equality”, 332
282 PL, 181, 228
283 Larmore, Patterns of Moral Complexity, 129; LV, 52
284 Quong, “Justice Beyond Equality”, 328-329
285 Although Quong marshals other arguments against the claim that Cohen’s ethos is not a supererogatory duty, it is not clear that they are fundamental to a Cohen-type position. Firstly, he claims that it is inconsistent with Cohen’s persistent claim that justice requires equality (328-331). But, as Quong himself acknowledges in part, it is possible for Cohen’s definition of justice to be reformulated in such a way that allows for non-comparative factors as well (331). Secondly, Quong argues that Cohen’s allowance for the legitimacy of at least some self-interested actions ought to extend to Pareto-sub-optimal career choices (332). However, even if it extends to some sub-optimal career choices, this does not mean that it can apply to all such choices, especially those that are sub-optimal to such an extent that the welfare of the rest of society, and in particular the worst off, is
Quong’s argument is not, of course, the only response that political liberals and defenders of justice as fairness have deployed against Cohen. Perhaps the most compelling of these responses is made by Andrew Williams, who argues forcefully that Cohen’s ethos is incompatible with the requirements of publicity. Cohen effectively acknowledges the force of Williams’ critique by focusing his reply not on the relationship between his ethos of justice and publicity, but rather, on the relationship between publicity and justice. It is important to note, however, that Williams’ argument only establishes that ‘traditional socialist opposition to self-seeking market motivation by appeal to Rawls’s theory of justice is unlikely to succeed.’ This leaves open the door for the possibility that market incentives may be correctly classed as unjust, as the result of a non-public, extra-Rawlsian conception of morality. Political liberals, we may recall, will insist that any reasonable political conception of justice will avoid judging broader conceptions of morality as true or false, so long as these broader conceptions are reasonable. If this is the case, then insofar as political liberals are unwilling to class Cohen’s ethos as an unreasonable comprehensive doctrine, they must be willing to countenance the possibility that incentive payments are actually morally wrong. This does not, of course, mean that they are committed to the view that they are wrong, but it does mean that they cannot properly deny this view either. Hence, I take it that, without a commitment to something like Quong’s conception of a right to freedom of occupation, political liberals cannot defend incentive payments as legitimate.

It is not clear that political liberals are required to find this problematic in virtue of their most basic commitments; some may explicitly disavow any defence of personal acquisitiveness and attempt to accommodate at least some of Cohen’s egalitarian concerns. These sentiments, however, are not shared by Quong or Williams. The former holds that Cohen’s

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286 Williams, “Incentives, Inequality, and Publicity”, 225-247
287 Cohen, Rescuing Justice and Equality, 344-376
288 Williams, “Incentives, Inequality, and Publicity”, 247. Italics are mine.
ethos is supererogatory from the point of view of morality, as well as justice.\(^{290}\) The latter at first acknowledges that ‘the nonpublic strategies and maxims that individuals employ in making those choices need not be assessed as just or unjust by means of Rawlsian principles’ but then goes on to claim that we can appeal to the idea of publicity to ‘support our denial that [market incentives] involve injustice.’\(^{291}\) I do not wish to try here to resolve the many ambiguities in these statements, not least the relationship between justice and morality (which neither Quong nor Williams explicitly define in their responses to Cohen), but I will take it that political liberals are generally lukewarm, at best, to the idea that market incentives might be morally indefensible, and as such, have a good reason to be committed to a right to freedom of occupation that grants citizens moral, as well as political freedom.

### 7.5 On the priority of the reasonable person

Having made two preliminary arguments against the viability of a coercion interpretation of political liberalism, I will now put forward a more fundamental argument which, I believe, decisively tells in favour of the moral interpretation. This argument centres around the role of the concept of reasonableness in political liberalism. Let us begin by highlighting two key aspects of this role.

Firstly, reasonableness is, for political liberals, an embodied concept. Political liberals aim to respect reasonable people. This means that the virtues and qualities of reasonableness are not just simply valued in the abstract. According to Macedo, ‘we respect as free and equal moral beings all those who pass certain threshold tests of reasonableness: we respect those whose disagreement with us does not impugn their reasonableness.’\(^{292}\) Similarly, Rawls stresses the embodied nature of reasonableness by distinguishing the viewpoint of ‘you and me’ from both the people in the original position and citizens of a well-ordered society.\(^{293}\) Now if a person is reasonable, then the entirety of their person is to be respected. To make this clearer, let us consider Rawls’s notion of the reasonable person. As we reminded ourselves in 7.2,

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\(^{290}\) Quong, “Justice Beyond Equality”, 330

\(^{291}\) Williams, “Incentives, Inequality, and Publicity”, 234, 245

\(^{292}\) *LQ*, 47. Italics are mine.

\(^{293}\) *PL*, 28; on why Rawls must necessarily be interpreted as referring to real reasonable people in his reference to ‘you and me’, see Besch, “Political Liberalism, The Internal Conception, and the Problem of Public Dogma”, 161.
Rawls believes that all reasonable people share at least two features: a willingness to propose fair terms of cooperation, and recognition of the burdens of judgment as showing the reality of reasonable disagreement. People who accept these values, it is hoped, will converge on a set of broadly liberal views about justice and political legitimacy. Suppose that Amy is a reasonable person who displays these two features, and as such, endorses a reasonable political conception of justice. However, Amy is not a liberal wraith with nothing more to her moral personality. Since political liberals assume that reasonable people have two moral powers, they assume that they will hold a particular comprehensive doctrine as well as a view about justice. If a reasonable person such as Amy is able to reasonably reject a political conception of justice, then it is not clear that she is being respected as a reasonable person.

The upshot of this is that, in virtue of their commitment to respecting reasonable people, political liberals are required to take into account the comprehensive doctrines of reasonable people as well. This is not to say that the political liberal ideal of public reason is misguided: political liberals can consistently hold that a political conception of justice must be formed on the basis of political values, while at the same time insisting that the political conception must be consistent with the comprehensive doctrines of reasonable people. As we saw in 3.1, this is reflected in Rawls’s multi-stage version of justification, where the principles of justice are first laid out pro tanto on the basis of values which can be shared by all reasonable people, at which point they are then tested for their compatibility with the comprehensive doctrines of reasonable people, so that an overlapping consensus of reasonable comprehensive doctrines can be formed. Hence, if political liberals seek to respect embodied reasonable people, then they are required to respect the comprehensive doctrines that are held by reasonable people as well.

Secondly, political liberals think that reasonable agreement is genuinely justificatory. For the purposes of public justification, the value of reasons ‘becomes entirely a function of their capacity to gain widespread agreement among reasonable people moved by a desire for reasonable consensus.’ The views and intuitions of reasonable people, therefore, are not to

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294 PL, p xviii, 12, 38, 135, 140
295 Thomas Besch, On Practical Constructivism and Reasonableness, 28
297 LV, 44; Besch, On Practical Constructivism and Reasonableness, 18
298 LV, 46-47; Larmore, The Morals of Modernity, p 13; PL, 95-96
be misunderstood as clarification devices designed to help represent some external moral principle; rather, they are constitutive of the correctness of principles of political justice. Behind this sits the idea of the reasonable person as basic. It is the foundation on which the political liberal idea of legitimacy and any political conception of justice are built.\footnote{Besch, “Political Liberalism, The Internal Conception, and the Problem of Public Dogma”, 5}

Reasonableness is not derived from other liberal beliefs or principles; rather, these beliefs and principles are derived from the views of reasonable people. Rawls’s liberal principle of legitimacy, after all, stipulates that a state power is legitimate only when exercised in accordance with a constitution that ‘all reasonable citizens as free and equal might reasonably be expected to endorse’ .\footnote{\textit{PL}, 393} It does not, for example, say that legitimacy is conferred by a constitution which all reasonable citizens \textit{ought} to endorse. The concept of reasonableness is thus not only an embodied concept: as an embodied concept, it has a fundamental priority as the standpoint of justification. The standpoint of ‘you and me’ is the essential standpoint from which political liberalism is to be evaluated: the test is ‘how well the view as a whole articulates our more firm considered convictions of political justice, at all levels of generality, after due examination, once all the adjustments and revisions that seem compelling have been made.’\footnote{\textit{PL}, 28}

Now once we take into account both of these features of the role of reasonableness in political liberalism, we are led inexorably towards the moral interpretation. Since reasonableness is an embodied concept, respecting reasonableness requires, among other things, respect for the comprehensive doctrines held by reasonable people. If this is the case, then we are required to view the comprehensive doctrines of reasonable people as authoritative for them, unless we can invoke a lexically prior principle to justify limiting the authority of acceptance by the reasonable to political principles only – in other words, if the standpoint of embodied reasonable people are not basic. But as we have seen, for Rawls, this standpoint is fundamentally basic. Justification is owed not to deliberators in the original position, nor is it owed to citizens of a well-ordered society, but rather, to reasonable people here and now. It follows that \textit{the standpoint of the reasonable person precedes any restriction of politicality}. Reasonableness does not follow from politicality; rather, politicality follows from reasonableness. There is something incoherent about the claim that,
for political liberalism, reasonable acceptability matters only from the point of view of the political, or that the acceptance of reasonable people is to be sought only for the purposes of forming principles of justice that will govern the regulation of state power. To the contrary, it is because reasonable people believe that the principles of justice should be acceptable to other reasonable people, that we are led to the idea of a conception of justice that is shareable among people who hold different reasonable comprehensive doctrines, and generally restricted in its scope of application to the basic structure of society. 302

How does this commit Rawls to the moral interpretation? We have said that, according to political liberalism, the views of embodied reasonable people are basic, in such a way that is not constrained by a prior principle of politicality. This means that the idea of respect for reasonable persons has an application that extends beyond those principles that govern the exercise of coercive power. The full standpoint of the reasonable person – both in terms of views about justice, and views about the good – is authoritative for political liberalism. The fact that Amy thinks that a continual expansion of her collection of expensive artworks would make her life better means that her actions in pursuit of this aim are morally permissible. As with Amy’s views about political principles, her views about the good life are not held accountable to a standard beyond herself. She is, in a very real sense, sovereign over her conception of the good.

Note that this interpretation is somewhat at odds with Rawls’s own understanding of political liberalism. 303 Citizens are to be thought of as ‘self-authenticating’, for example, ‘from a political point of view.’ 304 However, if my argument is correct, this restriction cannot be fully maintained. It is because citizens are self-authenticating in some general sense that they are to be regarded as self-authenticating from the political point of view in particular. The fact that Amy’s beliefs are ‘self-authenticating’ means that she can understand herself as morally free to act as she pleases within the limits of a reasonable political conception of justice.

302 See Besch, “Political Liberalism, The Internal Conception, and the Problem of Public Dogma”, 163
303 PL, 29-35
304 PL, 33
To sum up thus far: in sections 3 and 4 we saw two preliminary arguments in favour of the claim that political liberals are committed to the moral interpretation: unless the freedom of reasonable people is interpreted in this fashion, the grounds available to political liberals for rejecting two views – that paternalism is legitimate, and that market incentives are illegitimate – are limited at best. In this section, we have seen a more fundamental argument for this claim: if political liberals see the views of embodied reasonable people as basic, then they are unable to limit the authority of reasonable people to the domain of the political. In Sections 6 and 7, I will consider two separate objections. The first of these is what I have called the “Paradox of Freedom” objection, and responds specifically to the argument of Section 5 by considering the possibility that reasonable people might not actually view themselves as free in the sense specified by the moral interpretation. The second objection, which I call the “Virtuous Citizen” objection, considers whether political liberalism can nonetheless supply a sufficiently substantive conception of citizen virtue that can provide them with a viable alternative to a straightforward acceptance of the moral interpretation.

7.6 The “Paradox of Freedom” Objection

In the previous section, we said that if the views of embodied reasonable people are basic, then the significance of reasonable acceptability is such that it extends even to questions of the good life. If a reasonable person chooses to pursue a conception of the good, then according to political liberals, they must be morally permitted to pursue this conception.

One response on behalf of political liberalism immediately suggests itself: is this how reasonable people really think of their chosen conceptions of the good life? Don’t reasonable people think that reasonable acceptability is authoritative only for political principles? This response may appear to offer an escape route for any political liberals who may wish to avoid the moral interpretation. However, the appearance of the availability of such a response is illusory. This is because it simply begs the question. Suppose that it is actually true that reasonable people believe that acceptance by reasonable people is authoritative only for political principles. However, we may then ask exactly what makes this belief authoritative. Why should the fact that reasonable people think that reasonable acceptability is authoritative only for political principles matter, unless reasonable people have an authority that transcends even their own view that the authority of reasonable people is limited to political principles?
This does seem to point us towards a paradox somewhat akin to that posed by Dostoyevsky’s Grand Inquisitor: what ought we to make of people who freely give up their freedom? If the citizens of a political liberal well-ordered society, having moral authority over their own conceptions of the good life in virtue of their status as reasonable people, nonetheless refuse to see themselves as sovereign over the good, can we still regard them as morally free to pursue their chosen conception?

We can respond to this objection by clarifying the order of justification for political liberalism. Here Larmore is particularly valuable for coming to terms with the fundamental basis of Rawls’s political liberalism. Larmore, unlike Rawls, does not merely acknowledge that political liberalism has a moral basis of some kind; he explicitly identifies it as ‘respect for persons.’ He insightfully points out that this value has a clear priority over politicality:

Liberalism, formulated as a strictly political doctrine, rests therefore on this moral foundation. It forms a freestanding conception in regards to comprehensive moral visions of the good life, but it cannot coherently claim to be freestanding with respect to morality altogether. In particular, we would be wrong to suppose that the moral principle of respect for persons has the political significance it does because reasonable people share a commitment to it. On the contrary, the idea of respect is what directs us to seek the principles of our political life in the arena of reasonable agreement. Respect for persons lies at the heart of political liberalism, not because looking for common ground we find it there, but because it is what impels us to look for common ground at all.

Larmore here elucidates what he believes is a foundational premise in political liberalism’s justificatory project: respect for persons. Given that Larmore, like Rawls, operates under a particular conception of reasonableness (albeit a different one as discussed in 7.2), we may plausibly assume that he means ‘respect for reasonable people’. Let us call this premise the Moral Principle of Respect (MPR).

**MPR:** The views of embodied reasonable people ought to be respected.

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305 *PL*, 11n; Larmore, “The Moral Basis of Political Liberalism”, p 607
306 Larmore, “The Moral Basis of Political Liberalism”, 608
In this way, we can see that political liberalism sees MPR as a foundational, unchosen moral premise. What Larmore does not explicitly acknowledge, however, is that this points us towards the *contingency* of politicality. According to Larmore, as I understand him, MPR automatically impels us to find political principles which reasonable people can agree on. This inference seems to be presented as something of an analytic truth; what it does not take into account, however, is the sense in which reasonable people are fully basic. On my account, MPR impels us to look to their views and intuitions for guidance. It is through this search, and only through this search, that the importance of reasonable agreement on political principles is uncovered. While reasonable agreement is genuinely justificatory, this is only so because reasonable people believe this. And the fact that reasonable people believe this matters only because reasonable people must be respected.

But this is not all. Larmore’s description of political liberalism’s order of justification points towards another contingency: the views of reasonable people are important only because of MPR. And the importance of this value transcends the choices of reasonable people. ‘Political liberalism makes sense only in the light of an acknowledgement of such a higher moral authority.’\(^{307}\) It is through MPR that we arrive at Rawls’s foundational premise; call it the ‘Basic Principle’ (BP):

**BP:** The views of embodied reasonable people are basic.

We may illustrate the order of justification in political liberalism as follows:

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\(^{307}\) Larmore, “The Moral Basis of Political Liberalism”, 610
Moral principle of respect for embodied reasonable people (MPR)

The views of embodied reasonable people as basic (BP)

The importance of reasonable acceptability for political principles (the liberal principle of legitimacy)

The set of reasonable liberal political conceptions of justice

In 7.5, we saw that the importance Rawls attaches to public justification for political principles is grounded in the status of embodied reasonable people as basic. Here, we can see that the status of embodied reasonable people is itself grounded in an unchosen moral principle that specifies as much. Hence, this places one single constraint on the sense in which the foundational status of reasonable people: since their status rests on a moral value that is unchosen, they cannot coherently choose to reject their justificatory authority. Reasonable people, for Rawlsian political liberalism, are understood as free in all respects except one: their right to deny their freedom. This enables us to provide a consistent response to the Paradox of Freedom objection. Reasonable people are unable to deny their freedom to pursue their chosen conception of the good life, because this freedom is grounded in a moral principle that they do not get to choose for themselves: the views of embodied reasonable people are to be respected.

Some political liberals might complain that Larmore offers political liberalism a foundation that it does not require. Quong, for instance, argues that MPR ‘provides a deeper moral grounding for political liberalism’ than Rawls’s approach, which rests instead upon ‘shallow
Quong claims that Rawlsian political liberalism seeks to ‘pass the buck’ of justification to reasonable citizens, who will provide their own deeper foundation for the value of reasonable acceptability. Let us grant that this idea of buck-passing is both a viable option and a plausible representation of Rawls’s view. Even if this is the case, it does not follow that political liberalism can do without MPR. This could be possible only if it could be shown that one can arrive at BP without relying on MPR. But this seems to me to be extremely doubtful. It may be that BP can be given deeper foundations than MPR – perhaps by further appeal to some metaphysical or religious truth. However, this alone does not mean that one can arrive at BP without arriving first at MPR. Even if political liberals can ‘pass the buck’ to citizens when it comes to finding a justification for BP, it seems highly unlikely that citizens can find any such justification that does not come to BP via MPR. Perhaps the only way of doing this would be to treat BP as a fully foundational starting point, which can be offered no further justification. But this option is not open to Rawlsian political liberalism. Unlike MPR, BP is not a moral principle: when separated from the background of MPR, it involves no claims about moral value as such; rather, it simply identifies a step in the process of justification. Rawls, however, has always claimed that, even though justice as fairness is a political conception of justice, it is also a moral conception, insofar as it is worked out on the basis of ‘certain ideals, principles and standards’. This means that Rawlsian political liberalism cannot be satisfied without giving BP a moral foundation.

MPR is, of course, not by itself a very deep foundation; although it may well be that a full justification of MPR may involve some appeal to metaphysical or religious truth, it does not in itself specify a particular metaphysical or religious truth. It is precisely the kind of moral principle from which political liberals can begin their justificatory project. If I am right in thinking that no other moral principle can be found that supports BP, without also drawing on MPR, then MPR is indispensable to political liberalism; as such, MPR effectively demonstrates the one way in which the justificatory authority of reasonable people is constrained. Reasonable people, according to political liberalism, are condemned to regard themselves as free; this is something they are unable to deny.

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309 LWP, 221-255
310 PL, 11 11n.
7.7 The “Virtuous Citizen” Objection

Let us assume that the arguments offered thus far, claiming that political liberals are committed to the moral interpretation, are more or less sound. Even if this is the case, it may be that these arguments are still vulnerable to the complaint that they only tell one side of the story. Political liberals, it may be argued, can still have reason to encourage citizens to cultivate certain virtues ahead of others. This would enable the conceptions of the good life adopted by reasonable citizens to be assessed in light of this set of virtues. If this is the case, then it might be overly hasty at best, and grossly misleading at worst, to say that political liberalism is committed to the moral interpretation simpliciter. Or rather, even if political liberalism is committed to the moral interpretation, it might still turn out not to be the case that it views the choices of reasonable citizens as justified with reference to an internal source of authority.

This objection is immediately confronted with a paradox. In order to provide a conception of virtue that can be used to measure the choices of reasonable citizens, it cannot simply be derivable from the fact of a person’s reasonableness alone. Consider, for example, Rawls’s political virtues. These virtues are seen as necessary for the creation of ‘the very conditions that make fair social cooperation possible on a footing of mutual respect.’

Now Rawls is not unaware that admitting ideas of citizen virtue into political liberalism may seem to threaten the politicality of the theory, insofar as it ceases to be a theory that applies exclusively to the exercise of state power. His response, as we have seen, is to insist that political virtues are shareable between reasonable people. It is this criterion of politicality, however, that prevents Rawls’s political virtues from offering any real alternative to the moral interpretation. If the political virtues are those virtues which reasonable people already accept, then they are insufficiently rich to be deployed as a means of assessing conceptions of the good life. If all reasonable people are tolerant, and Amy is a reasonable person, then the fact that tolerance is a virtue is of little help in assessing the morality of Amy’s pursuit of fine art. Amy is, in virtue of her reasonableness, already a tolerant person, and will remain so whether she continues her pursuit of fine art or not.

311 PL, 157
We can see, then, that if political liberalism is left with any resources that can challenge the moral interpretation, they must not simply follow from the fact of reasonable shareability. It may be that Macedo’s distinction between the autarchic citizen and the autonomous citizen supplies just such a resource. In response to what he perceives as a key communitarian criticism of liberalism – that liberalism regards one conception of the good life as no more or less valid than any other – Macedo balances the liberal bias towards individual freedom against a distinct form of liberal flourishing which he refers to as ‘autonomy’:

Liberals believe that persons merit respect and that consequently they should be free to choose their own ideals or to live without ideals. While respecting the freedom to choose, liberals need not, however, regard all choices as equally valuable or as equally compatible with a liberal form of excellence. To develop more fully the reflective capacities associated with normal personhood leads one toward an ideal of character, an ideal we may call ‘autonomy’.

This can be contrasted with the concept of ‘autarchy’:

A merely autarchic person does not act from values, ideals, and aspirations that have been critically assessed and reasonably integrated. An autarchic person with only instrumental rationality still qualifies for basic forms of respect; flourishing as a liberal requires reflective capacities beyond instrumental rationality.

If I understand Macedo correctly here, he seems to be acknowledging a kind of tension within liberalism. On the one hand, liberalism values, and ought to value, respect for autarchic persons: liberals ‘object in principle to manipulation, coercion, paternalism, and perfectionism.’ On the other hand, liberals have reason to accept a certain ideal of the good life centred around this notion of autonomy. The key feature that distinguishes the autonomous person from the autarchic person seems to be located in the relationship between the self and its ends: whereas the latter, much like Alasdair MacIntyre’s bureaucratic manager, treats her ends as given and simply reasons about the best means to satisfy these

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312 LV, 215-216
313 LV, 216
314 LV, 215
ends, the former is actually capable of meaningful deliberation about the merits of these ends through *critical reflection*.\(^{315}\) The autonomous person develops a capacity for ‘strong evaluation’ through assessment of one’s actions and character.\(^{316}\)

Now Macedo’s idea of liberal virtue is distinguished from Rawls’s by means of its comparative richness and substance; since it is completely possible for reasonable people to qualify as autarchic without also qualifying as autonomous, Macedo in effect acknowledges that autonomy as a liberal virtue is not shareable among reasonable people in the same way that Rawls’s political virtues are.\(^{317}\) If this is the case, then it might be that political liberalism can successfully balance the tendency towards the moral interpretation posited by its foundational commitments with a rich idea of the good life that can function as a standard by which the lives of reasonable citizens can be assessed.

This, however, leads us towards the other horn of the paradox. If a conception of virtue, like Macedo’s ideal of autonomy, is not reasonably shareable, in what sense is it related to political liberalism at all? It is not clear, for instance, that the ideal of autonomy is fully consistent with a commitment to a political, as opposed to comprehensive or perfectionist liberalism. This is something that Macedo is clearly not unaware of. He defines his position as that of a middle ground between the ‘neutralist’ view of Larmore and the ‘perfectionist’ view of William Galston, insisting that ‘the ambiguity of autonomy should be preserved.’\(^{318}\) Elsewhere, he holds that we still ought to opt for ‘liberalism as something less than a fully comprehensive philosophical system’, but a liberalism that nonetheless ‘has broad implications for the shape of people’s lives as a whole.’\(^{319}\) Regardless of the justification of such a form of liberalism, it is not clear that it counts as a political liberalism. And even if the middle ground position is coherent, it is doubtful whether it has sufficient strength to provide any kind of meaningful criterion by which citizens can evaluate their chosen conceptions of the good life. Macedo still claims, for example, that ‘we still respect the non-autonomous: people have the right to lead lazy, narrow-minded lives, and so we minimise

\(^{315}\) Alasdair MacIntyre, *After Virtue*, 23-35 at 30

\(^{316}\) *LV*, 216

\(^{317}\) *LV*, 253

\(^{318}\) *LV*, 253

\(^{319}\) Macedo, *Diversity and Distrust*, 276
and soften interference with their choices. In short, Macedo is faced with a dilemma: either strengthen the commitment to autonomy beyond a willingness to promote it ‘in modest and gentle ways’, and fully break with political liberalism; or weaken the commitment to autonomy, and accept the moral interpretation as a definitive characterisation of political liberalism.

Another difficulty is that it is not clear what it is about political liberalism that makes autonomy a distinctly liberal virtue. While it is easier to see how a properly perfectionist liberalism can proclaim autonomy as a superior way of life, it is not so clear that the same can be said of any kind of liberalism that seeks even a modest kind of neutrality concerning such matters. Some other candidates for providing an explanation for the importance of autonomy are evidently flawed. Macedo cannot claim that autonomy is a political virtue, because it is not shareable among reasonable people. Nor can he claim that it is valuable because it is effectively promoted by ‘an allegiance to liberal justice.’ Liberalism, as Macedo acknowledges, promotes moral laxity, not just autonomy. Also, the effects and consequences of liberalism must always be distinguished from its moral commitments; if that were not the case, then the complaints of those groups who accept liberal political principles but struggle to flourish under them are entirely justified. Liberalism, it would seem, would be treating them unjustly.

What we are left with, then, is a clear paradox for the virtuous citizen objection. If the conception of virtue is reasonably shareable, it is incapable of providing any means by which the conceptions of the good chosen by reasonable people can be assessed (as per Rawls’s political virtues). If, on the other hand, the conception of virtue is not reasonably shareable, it is not clear that it has a place within political liberalism at all (as per Macedo’s conception of autonomy).

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320 LV, 253
321 LV, 263
322 LV, 266-267. Galston seems to interpret Macedo in this fashion. He claims that Macedo argues that ‘liberal principles of social unity may well have effects “all the way down,” on intermediate associations and individuals within liberal societies.’ Galston, Liberal Purposes, 291. Italics are mine. While I do not think that this is the most charitable way of reading Macedo, I acknowledge that may well be what Macedo has in mind.
323 LV, 260; PL, 192-198
Is there any way in which this objection can be salvaged? Let us persist a while with Macedo’s approach. Perhaps the most charitable way of connecting autonomy with liberalism is that it is most conducive to the creation and maintenance of a well-ordered society. ‘Liberal citizens who act from and not only in accordance with liberal justice do not simply impose ‘side-constraints’ on self-chosen actions; rather, they seek to realise justice in their conduct as an independently valuable and regulative end.’ The realisation of justice as an end, Macedo might claim, requires the adoption of certain substantive and potentially demanding virtues among citizens. Even if, as we have seen so far, the ends of liberal justice require the adoption of virtues that are not suitably public, it nonetheless remains the case that they are ends of liberal justice. If we allow that liberal justice is a good for liberal citizens, regardless of whether its requirements are consistent with the demands of publicity, then liberal citizens are furnished with a conception of virtue with which they can assess their own chosen conceptions of the good life. It is true that political liberalism provides little by way of guidance as to how citizens ought to pursue these ends, since they require the cultivation of non-public virtues. However, it is not straightforwardly the case that political liberalism declares that there are no criteria which can be used to judge the conceptions of the good life chosen by reasonable citizens. Those conceptions which contribute more to the ends of liberal justice are preferable to those which contribute less.

One difficulty with this version of the virtuous citizen objection concerns the question of how citizens are to relate to ends which they have little moral guidance on how to pursue. Since political liberalism is fundamentally a deontological, rather than teleological theory, it may be that it will struggle to make sense of such ethical dilemmas. A second, perhaps more serious difficulty, concerns the status of justice as a potentially all-encompassing end. In Tan’s terminology, we may try to draw a distinction between ‘personal’ and ‘non-personal’ kinds of actions:

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324 LV, 270. Italics are mine.

325 See TJ, 30. Note that even if we were to allow that certain paradigmatic teleological principles, such as utilitarianism, can somehow function as reasonable political conceptions of justice, they will still produce a Mill-type deontological ethic. For example, if utilitarianism is to have any hope of being a reasonable doctrine, it will provide an account of the extraordinarily high utility of fair terms of cooperation.
Genuinely personal choices . . . pertain only to those actions and decisions of individuals that have no direct implications for the kinds of institutions that can be established and supported in society.\textsuperscript{326}

These can be contrasted with non-personal choices, which have an impact upon the capacity of a basic structure to deliver liberal justice. Note that this is decidedly different to the public/non-public distinction. While the latter is based on the concept of reasonable shareability, the former has a more consequentialist character, insofar as it is concerned with what kinds of actions will have effects on the attainability of justice.

The problem here is that, given the general character of the virtues of empathy and benevolence which are required for this end, it is not clear that there are any truly personal choices. Consider in particular the way the virtue of benevolence operates in relation to the end of distributive justice; given the quotidian nature of the choices a citizen makes about her productivity, one can reasonably ask: is there ever a moment where a citizen is not faced with a life choice that does not come to bear on matters of justice? If the answer is anything other than a clear and well-defined ‘yes’, then the personal/impersonal distinction seems to melt away. Macedo is then required to establish clear limitations on the kinds of demands justice can make of us. Since, as we have seen, his conception of autonomy goes beyond the notion of reasonable shareability, he must reject the possibility of publicity as providing an appropriate limitation. But what other options does he have? Either he can operate within the limitations of publicity, in which case the more expansive virtue of autonomy must be scrapped; or he can concede that justice is an end which ought to be pursued by citizens \textit{in all their choices}, which I take to amount to a rejection of the limited scope that characterises political liberalism. It seems extremely difficult, then, for Macedo to derive the non-public virtue of autonomy from the importance of liberal justice as an end in itself.

Even if we put these concerns aside, there is a third difficulty facing Macedo’s conception of autonomy. This lies in the fact that the capacity of autonomy to mount a serious challenge to political liberalism’s disposition towards the moral interpretation is severely limited. When it comes to challenging the ends held by reasonable citizens, the exercise of autonomy as critical reflection may be little more than a toothless tiger. Suppose Amy comes to reflect on

\textsuperscript{326} Tan, “Justice and Personal Pursuits”, 336
her devotion to collecting fine art. As a fully autonomous person, she is not satisfied with the
fact that she enjoys this practice; nor is she content with being a slave to fashion or
convention. Rather, she asks herself, ‘is my devotion to collecting fine art justified?’ But
this then begs the question: on what basis can Amy regard her devotion to collecting fine art
as justified or unjustified? Suppose that, on reflection, she discovers that she values a greater
level of excitement and drama in her life; as such, she considers her existing pursuit a poor
use of her time and money, and thinks that, on the whole, she would be better off if she
devoted herself to following her local football team instead. In this case, it seems that all
Amy has done is reflect upon what her desires are, and whether or not they are best supported
by her existing practices. Now it may well be possible for Amy to reflect upon her ends in a
distinctively less Humean way: suppose, for example, she accepts an Aristotelian justification
for the belief that participation in local community life is an objective good, and as such,
switches her attention to her local football team. But it is not clear that there is anything in
Macedo’s explicitly non-Kantian idea of ‘situated autonomy’ that requires us to reflect upon
our ends in light of some idea of the good life that is prior to our desires. Autonomous
agents are, in essence, characterised not by their ability to reflect based on objective goods, but on
what Harry Frankfurt describes as ‘second-order’ desires. The point is that the exercise of
the virtue of autonomy is fully consistent with being lazy and narrow-minded. Autonomy will
prompt such an agent to break with their laziness only if, on reflection, the agent discovers
that she has a specific kind of second-order desire that conflicts with her present state of
sluggishness. She may have other second-order desires that may prompt her to switch from
reality TV shows to stand up comedy; or to stop eating lamb in favour of eating beef. But no
such behavioural revision, I take it, achieves the kind of reflection required to provide a
genuine alternative to the moral interpretation. Macedo’s autonomous citizen, it turns out, is
morally permitted to pursue her conception of the good life, as long as it is consistently based
on a set of desires that are coherently ordered.

I conclude, therefore, that the ideals of the virtuous citizen put forward by both Rawls and
Macedo are incapable of enabling political liberalism to effectively resist the moral
interpretation, and that the virtuous citizen objection fails. In a well-ordered society of
reasonable people, both the autonomous and the autarchic citizen will see themselves as

morally entitled to pursue their own chosen conception of the good life. They can have no criterion of evaluation available to them, other than the fact of their own free choice.

7.8 The moral interpretation as internal source of authority: how political liberalism conflicts with social perfectionism

So far, I take it that we have seen sufficient reasons to hold that political liberalism is committed to the moral interpretation. I will now briefly show how this means that political liberalism views reasonable citizens as people whose choices are justified by an *internal*, rather than *external* authority. I will also point out how this places political liberalism in conflict with social perfectionism.

The moral interpretation, recall, claims that reasonable citizens are morally entitled to pursue their chosen conception of the good. If this is true, then this moral permission holds just as long as it is their chosen conception. The reasonable citizen is her own source of authority. She need not seek to assess her choice in light of any external standard of goodness; she only need assure herself that the choice she makes is her own. Remember, however, that this does not equate to either subjectivism or scepticism about the good. Suppose, for instance, that regular prayer is a feature of the good life for a human being. Suppose also that this ideal of the good life is objectively true. This is not sufficient to establish that people ought to pray regularly – this inference would require us to supply a further premise, namely, that we ought to pursue what is objectively good. This much holds whether or not the moral interpretation is correct. But suppose political liberalism is justified as a doctrine and the moral interpretation is correct. In this case, we are able to make a stronger claim: *insofar as a reasonable person chooses a life that does not involve regular prayer, she is not morally required to pray regularly.* The moral interpretation thus implies that the choices of reasonable citizens are justified on the basis of an internal authority; although it is not (necessarily) the case that the views of a reasonable person are constitutive of the good life for her, it is the case that they are constitutive of her ethical obligations.

Consider then how this impacts upon the social perfectionist. Insofar as she regards her conception of the good life as something that is morally required of her, rather than merely optional, then she will find that her doctrine is in conflict with any view of politics that, like
political liberalism, is committed to the moral interpretation. This casts doubt over the common claim of political liberals that a liberal society is generally friendly to the perfectionist. For example, consider the rejoinder Stephen Macedo offers to a well-known perfectionist, Alasdair MacIntyre:

There is no reason why a belief in common or objective human goods should lead one away from liberalism. It may be, after all, that the good life is importantly linked to human freedom, as in MacIntyre’s description of it as ‘the life spent seeking the good life for man’. Tolerant, pluralistic, liberal communities are just the right places for exploring the variety of ways people seek to live well. Liberal rights to speak, publish, associate with whom you please, travel, and secure privacy for intimate relations among consenting adults, all protect a search for the good life conditioned by equal respect for the rights of others.\(^3\)

If the argument presented in this chapter is correct, then Macedo’s optimism here is misplaced.\(^3\) Those who regard themselves as bound to pursue only the morally best kind of life will experience political liberalism as more of a challenge to their particular moral view, rather than as a protection of their rights. There is, it would seem, a measure of inconsistency in the idea of a citizen who simultaneously holds allegiances to a liberal political conception of justice on the one hand, and a form of social perfectionism on the other.

It is important that we are fair to political liberalism: it is not as if the importance of the moral interpretation amounts to anything like, say, a political ban on social perfectionists. Indeed, it might be argued that the non-empirical approach of this chapter effectively renders it little more than conjecture. Buchanan, for instance, claims that any suggestion that liberalism is hostile to any form of ‘deep commitments’ to a particular conception of the good will be ‘incomplete, and therefore indecisive’ without an in-depth empirical analysis.\(^3\) Yet we may

\(^3\)Macedo, \textit{Liberal Virtues}, 208; Alasdair MacIntyre, \textit{After Virtue}, 219
\(^3\)Consider also Alan Buchanan’s idea of liberalism as ‘cautious communitarians’. If the claims of this chapter are correct, then political liberalism cannot so enthusiastically proclaim itself as ‘the defender of community’; if by ‘community’, one should mean a community that shares a common social perfectionist ideal, then by virtue of its commitment to the moral interpretation, political liberalism is a kind of opponent of community. See Allan Buchanan, “Assessing the Communitarian Critique of Liberalism”, \textit{Ethics} 99 (1989): 852-882 at 858-861.
\(^3\)Buchanan, “Assessing the Communitarian Critique of Liberalism”, 866-867
expect the logical inconsistency between the two positions to manifest itself in at least some tangible forms of political and social conflict. For example, a basic structure governed by a political conception of justice will promote the ideal of reasonable acceptability as a metavalue. Citizens will be taught and encouraged to view respect for the reasonableness of others, and themselves, as an ultimate value which ought to shape their life as a whole. Now, as we suggested earlier, it may be that reasonable people do not always think of themselves as possessing authority over their chosen conception of the good in the way specified by the moral interpretation. Yet if this ultimate value of reasonable acceptability spreads, it is plausible to assume that more people will come to think of themselves in this way. Doctrines that promote certain ways of life as objectively true, and ethically binding, will find it more and more difficult to win the allegiance of citizens in a political liberal society. Similarly, it is also plausible to expect that many of those who presently hold perfectionist allegiances will be at least influenced by the force of the value of reasonable acceptability, such that their loyalty to the former may begin to waver. In a political liberal society, it is in ways such as these that the tension between political liberalism and social perfectionism is likely to play out. If we have been correct in holding that political liberalism is committed to the moral interpretation, then it is likely that a political liberal society will make it difficult, to say the least, for social perfectionist views to thrive and flourish.

7.9 Conclusion

In this chapter, we have examined the status of social perfectionism within a political liberal society. We have seen that that, whereas social perfectionists are committed to regarding their doctrines as justified with reference to an external authority, the fact that political liberalism is committed to the moral interpretation means that it must regard the views of reasonable people as justified with reference to an internal authority. We saw that there are at least three reasons in support of the claim that political liberals are committed to the moral interpretation. Firstly, it seems to underlie at least some political arguments against paternalism. Secondly, it plays an important role in allowing political liberals to establish the legitimacy of at least some kinds of market-based incentives for citizens. Thirdly, and most importantly, it flows from the priority that political liberals accord to the viewpoint of embodied reasonable people.
We then considered two objections to this view. According to the Paradox of Freedom objection, the third argument, based on the claim that political liberals take the viewpoints of embodied reasonable people to be basic, must be mistaken, because reasonable people do not think of themselves in this way. However, we saw that this objection neglects the fact that, for political liberals, there is one value that is lexically prior to the viewpoint of reasonable people: the value of respect for reasonable people. Hence, according to political liberalism, reasonable people are not morally entitled to reject the status of their own viewpoint as basic. Secondly, according to the Virtuous Citizen objection, political liberalism does offer at least some criteria for reasonable people to assess their chosen conceptions of the good life. However, this objection runs into a dilemma: either these criteria are derived from the viewpoint of reasonable people, or it is not. If they are, then it cannot properly provide any kind of criteria by which the choices of reasonable people can be assessed, since, by definition, reasonable people already meet these criteria. If they are not, then it is not clear that they can play a role within political liberalism at all. We saw that any attempt to rely on Rawls’s political virtues here falls foul of the first horn of the dilemma. We then saw that Macedo’s ideal of autonomy is unable to function as an effective virtue within political liberalism, even if we try to understand it as derived from the importance of maintaining a well-ordered liberal society.

Finally, we saw how the fact that political liberalism is committed to the moral interpretation, and therefore, to viewing the choices of reasonable citizens as justified according to an internal authority, means that it is likely that a political liberal society will be one in which social perfectionists find it hard to thrive. The status political liberals ascribe to reasonable people is in conflict with the social perfectionist; and the propagation of this value of respect for reasonableness is likely to limit the ability of such perfectionist doctrines to gain the allegiance of citizens.

This now heightens the predicament that we found characterised political liberalism at the conclusion of the previous chapter. We found there that a political conception of justice cannot coherently incorporate the virtues of empathy and benevolence; hence, political liberals cannot require the cultivation of the virtues which they require in order to achieve some essential outcomes of liberalism. In this chapter, however, we have found that they are not only unable to require these virtues; rather, the very nature of political liberalism discourages these virtues from being cultivated. What we identified as the key hope of
political liberalism has turned out to be ill-founded: a political liberal society does not provide conditions that are conducive to the cultivation of perfectionist virtues; rather, quite the opposite is the case. Insofar as liberalism is political, it may be liberal in its aims, but it will be decidedly illiberal in its outcomes.
Chapter 8

Conclusion

In this concluding chapter, I will attempt to accomplish four things. Firstly, I will provide a summary of the argument offered in this essay, and reiterate my claim, stated in the introduction, that political liberalism requires a conception of virtue that it cannot get. Secondly, I will speculate on some of the characteristics which, in light of this claim, are likely to feature in a society governed by a political conception of justice. Thirdly, I will put forward a brief argument against a possible suggestion that liberal perfectionism is not vulnerable to the same dilemma. Finally, I will make some brief suggestions concerning the kind of approach to political theory that is necessary if the limitations of liberalism are to be successfully avoided.

8.1 Summary

Let us return to the three key claims of this essay:

1) Political liberalism requires certain outcomes (public justification and liberal distributive justice).
2) These outcomes cannot be attained without the presence of certain virtues (empathy and benevolence).
3) Political liberals cannot consistently use the state to promote these virtues, nor is it likely that these virtues will be present in a political liberal society.

Part I (chapters 2-4) focused on establishing the link between public justification and empathy. We saw that public justification requires citizens to adopt two separate duties in relation to the duty of public reason: a duty of engagement (chapter 2), and a duty of conjecture (chapter 3). In chapter 4, we saw citizens can effectively exercise these duties only if they have cultivated the virtue of empathy.

Part II (chapter 5) focused on establishing the link between liberal distributive justice and benevolence. Following Cohen’s critique, we saw that a society that lacks the virtue of benevolence is likely to suffer from absolute poverty, and, most likely, be characterised by
severe inequalities that are impermissible under the ideal of fair equality of opportunity. Through examination of the political conceptions of justice endorsed by Rawls and Quong respectively, we showed that absolute poverty and violations of fair equality of opportunity are unacceptable for any reasonable liberal political conception of justice. Hence, we concluded that the virtue of benevolence is necessary for the attainment of at least some necessary standards of liberal distributive justice.

Part III (chapters 6-7) assessed the extent to which political liberalism can find a place for these necessary virtues. In Chapter 6, I argued that both empathy and benevolence are unable be considered a political virtue, since they are unable to meet the publicity condition. As such, they cannot be incorporated into any political conception of justice. This means that the political liberal state is unable to consistently promote these virtues. The hope of political liberals, therefore, is that citizens may cultivate these virtues off their own initiative, without relying on any support from the state in this respect. What political liberals require is for citizens to develop relevant forms of social perfectionism. In chapter 7, I argued that this is highly unlikely, due to the fact that the core normative commitments of political liberalism are incompatible with those of social perfectionism. Since political liberalism is committed to what I have called the moral interpretation, it contradicts any particular doctrine that holds that moral principles are binding independently of the willingness of reasonable people to accept them.

For these reasons, I conclude that the virtues of empathy and benevolence are likely to elude political liberalism, despite their necessary role in achieving key political liberal outcomes. To reiterate the claim made in the introductory chapter: political liberalism needs virtues which it cannot get.

**8.2 The tragic character of political liberalism: The disjuncture between values and outcomes**

The political liberal vision is in many ways a morally attractive one. Its appeal draws from its integration of at least three very powerful values. The first of these is the value of justice. Political liberals, like all liberals, believe in the importance of securing basic rights and liberties for all citizens. If a society suffers from discriminatory policies, unjustified
restrictions on individual freedoms, or an inequitable educational system, then political liberalism promises redress.

Secondly, political liberalism draws appeal from the value of inclusivity. Rather than ground liberal politics in a thick, contestable conception of the good life (as per comprehensive liberalism), political liberalism offers a form of public justification for the workings of the liberal state that purports to be acceptable to all reasonable people. Rather than have the liberal state promote any one kind of conception of the good (as per liberal perfectionism), political liberalism neither adjudicates between nor directly supports any reasonable conceptions of the good. If a particular form of religious belief, ethical commitment, or general way of life fits within the boundaries of reasonableness, then it fits within the boundaries of political liberalism.

Thirdly, and perhaps most uniquely among the different varieties of liberalism, political liberalism promises stability. This value is intended to be realised through the restriction of liberalism to the domain of the political. Unlike utopian forms of political philosophy, which may specify a radically transcendent ideal, without any clear sense of how this ideal is to be obtained, political liberalism attempts to rely on people as they are, drawing upon notions and intuitions taken from the tradition of democracy itself. In contrast to sectarian forms of government, where a minority relies upon the threat of force in order to subdue a majority,

331 PL, 13-15. In making this remark, I do not deny that a political conception of justice may seek to shape the beliefs and intuitions of the citizens of a liberal society. As we saw in chapter 5, political liberals hold that it is permissible to shape institutions in such a way as to produce certain changes in character amongst the citizenry. See Joshua Cohen, “Taking People as They Are”; also Ronzoni, “What Makes a Basic Structure Just?”. Although I argued that institutions cannot be designed in such a way as to deliberately help foster the cultivation of the virtue of benevolence, political liberals can consistently use the educative power of institutions to generate support for political virtues. Hence, it is not strictly true that political liberals are fully committed to ‘taking people as they are’. However, political liberals may still claim, with some justification, that they escape the charge of utopianism by appealing to the fact that any such actions on the part of the basic structure to promote the political virtues can be justified with reference to the values held by real reasonable people. Insofar as this claim holds, then political liberals can claim, in a certain sense at least, to rely on the intuitions and beliefs of people as they are.

If the core argument in this essay is correct, however, then political liberalism can no longer defend itself from this charge, and neatly distinguish itself from utopian approaches to political philosophy. Since it requires virtues that are not political virtues, and therefore, not shareable among reasonable people, it follows that political liberalism relies on at least some values that have a considerabily less immanent basis.
political liberalism relies on the support of all reasonable people in order to ensure the maintenance of a well-ordered liberal society. Since this idea of stability is expected to be realised without compromising the values of justice or inclusivity, political liberals claim to offer *stability for the right reasons*.

But we have seen that political liberalism is effectively incapable of meeting the demands of any of these values. Its status as an inclusive approach to political philosophy is undermined by the relationship between public justification and the virtue of empathy. We saw here how the duty of public reason unjustifiably excludes people from an overlapping consensus. In Chapter 2, we saw how public reason is often unable to recognise the legitimacy of the claims of those who are on the margins of political discourse, whose viewpoints are often unaccounted for by existing interpretations of the political values. In Chapter 3, I showed that the Rawlsian idea of reasonableness cannot rightly be deployed by political liberals as a way of demarcating the scope of justification; since it is seldom clear that dissent from the political conception of justice can be dismissed as unreasonable, political liberals owe such dissenters a response. Although we acknowledged that these problems could be addressed respectively by the adoption of duties of engagement and conjecture, we saw how these duties cannot be effectively exercised without the virtue of empathy (Chapter 4). In Chapters 6 and 7, we saw that empathy is not a virtue that political liberals can cultivate, nor can we reasonably expect that it is likely to be present in a political liberal society.

We have also seen that political liberalism is also incapable of satisfying the value of justice. In Chapter 5, we saw how a just liberal society is possible only if citizens are sufficiently benevolent. As with empathy, however, chapters 6 and 7 demonstrate how this virtue can neither be promoted as part of a political conception of justice; nor can it be plausibly expected to be sufficiently present in a political liberal society.

Since a political liberal society cannot guarantee either justice or inclusivity, it will find stability for the right reasons equally elusive. Any hope of political liberalism overcoming its inability to achieve the outcomes of public justification and liberal distributive justice rests on the ability of citizens to cultivate virtues that are not only beyond the limits of reasonable shareability (chapter 6), but also against the basic normative claims of political liberalism itself (chapter 7). Does this mean that a political liberal society will be unstable *simpliciter*? It seems more likely to me that a society governed by a liberal political conception of justice
will become something of a compromised *modus vivendi*, where unjust inequalities are tolerated, and people are knowingly excluded or discriminated against for unjustified reasons. Perhaps even reasonable people will come to accept, and even work for the stability of such a society. But they deceive themselves if they ever come to regard it as just.

This is not a claim that political liberalism seeks to legitimise certain forms of injustice and exclusion. As we have seen, it offers clear reasons for regarding these as unacceptable. But since its own commitments to politicality prevent it from preventing them, it is perhaps plausible to expect that governments and citizens will settle for stability without realising the values of justice and inclusivity. The requirements of liberal justice and public justification are likely to be forgotten or ignored in order to preserve what can be salvaged from political liberalism. If this is correct, then political liberalism will perhaps encourage a kind of amnesia among citizens: if stability is to be preserved, then the more lofty goals of liberal justice and public justification must be forgotten.

Another possibility is that the outcome of this compromised form of political liberalism will be renamed as legitimate. Rather than regard the outcomes of public justification and liberal distributive justice as the standards by which the legitimacy of a liberal regime is to be judged, it may be that new, less demanding standards will emerge, that prove more compatible with the requirements of stability and politicality. Perhaps two examples drawn from contemporary political issues can help to illustrate how this might come to be the case. Firstly, consider *the treatment of indigenous peoples* at the hands of liberal democracies. The statements of people and politicians from opposite ends of the spectrum seem to nonetheless suggest some consensus that indigenous peoples have suffered *some form* of injustice which requires *some form* of political redress. However, any political policies developed in relation to this issue, whether in the form of cash-handouts, affordable housing programs, or military intervention, are invariably designed and carried out from the point of view of the existing understanding of the political values of the society in question. Largely absent from these measures is the presence of empathetic deliberation, where, firstly, the perspective of indigenous peoples is sought; and secondly, attempts are made to understand the meaning and significance of this perspective, at both a cognitive and an emotional level. Yet in a society where people do not widely feel that they have an obligation to engage with each other’s viewpoint in an empathetic fashion, it may be that societies will become content with the
results of policies that are not formulated empathetically, and find ways to redescribe their outcomes, which fall well short of the requirements of public justification, as legitimate.

A second example is the role of the idea of the economy in modern liberal democracies. The economy has come to represent the most decisive political issue of modern times. Invariably, the political party who is perceived to be the superior manager of the economy will emerge victorious, come election time. Why is it that the health of the economy is prized so highly? The answer, presumably, is that the health of the economy is important for the prosperity of people. To use the terminology of chapter 5, a thriving economy will help maximise the total product available for redistribution ($p$), which will, in turn, improve the welfare of all, including the worst off. But as we saw (5.2), it is possible for a government to order economic institutions and set the taxation rate with a view towards maximising $p$, without satisfying the requirements of liberal distributive justice. This means that a strong economy does not entail that liberal standards of distributive justice have been attained. However, the maintenance of a healthy economy is just the sort of task that the political liberal state is able to set itself. The government can set the taxation rate at such a level as to maximise $p$ without making any demands of people, other than to pay their taxes. It can treat citizens as if they are people who follow predictable behavioural patterns, and set the taxation rate accordingly. The point, then, is that the political liberal state cannot provide liberal justice, but it can ensure some version of a healthy economy. Given the sheer volume of political capital surrounding the economy, we can assume that one of two things must be true: either citizens in modern democracies have little interest in justice; or they (falsely) equate justice with a healthy economy. If we say that the latter of these two options is true, then we can plausibly suggest that this mistake is at least partially a result of a modus vivendi redesignation of a stable but compromised form of liberalism as a just society, when it is anything but just.

If, on the other hand, the former of these two options is true, and citizens in modern democracies have little interest in justice, then we can suggest a third feature that political liberalism encourages in its citizens: apathy. If I have been correct in arguing that political liberalism renders public justification and liberal distributive justice unattainable, then a natural response to this pessimistic conclusion from citizens is to distance themselves from these ends. Indeed, such apathy would seem to help contribute to the stability of this
compromised form of liberalism, since it relies on the willingness of citizens, who are aware of its inability to meet these outcomes, to tolerate its shortcomings nonetheless.

To sum things up: in light of its inability to achieve its own ends, I have suggested that a society governed by a liberal political conception of justice is likely to result in a stable compromise, where the outcomes of public justification and liberal distributive justice remain unrealised. We might reasonably expect such a society to be characterised by three features: firstly, citizens may be inclined to forget about the requirements of justice and legitimacy; secondly, they may deceive themselves and each other by renaming as just or legitimate the actual outcomes of the compromised form of liberalism; thirdly, they may become apathetic towards the realisation of these ends.

Note that these suggestions about the characteristics of a society governed by a liberal political conception of justice are not made on the assumption that political liberalism is the dominant or most prevalent way of thinking about politics in modern democracies. Rather, these suggestions are arrived at purely on the basis of what I have argued for in this essay: that there is an insurmountable gap between the aims of political liberalism on the one hand, and the outcomes of implementing political liberalism on the other. Yet if modern democracies do seem to display at least some of these features (e.g. such as the self-deception involved in conflating the health of the economy with the requirements of distributive justice), this seems to provide at least some evidence in favour of Michael Sandel’s claim that ‘this liberal vision is the one by which we live.’\textsuperscript{332} I will refrain from adding anything further on this matter, except to suggest that if this is correct, and political liberalism is indeed the view that characterises much of the way in which citizens of democratic societies think about their relationship to justice, politics, and the good, then this naturally makes the predicament of political liberalism which I have argued for very much more real, and the need for an alternative way of thinking about political philosophy very much more pressing.

\textbf{8.3 Can liberal perfectionism do any better?}

If political liberalism is unable to supply, or even allow the cultivation of, the virtues necessary to attain these liberal ends, we might ask whether we ought to prefer a form of

liberal perfectionism instead. There are intuitively plausible reasons to think that this might be the case: after all, liberal perfectionists have no scruples about designing institutions in such a way as to make people virtuous. Yet there is a complication here: liberal perfectionists typically concern themselves with the promotion of virtues that are intrinsically good, rather than instrumentally good. For example, when Joseph Raz holds that the aim of politics is to ‘enable individuals to pursue valid conceptions of the good and to discourage evil or empty ones’ 333, he presumably is referring to conceptions of the good which are themselves at least partially constitutive of the good life for a human being. If he merely means that it is the task of politics to enable people to develop the conceptions of the good which are necessary for realising justice, for instance, then his position is hardly distinguishable from that of political liberalism. 334 If liberal perfectionism can provide a way out of the difficulties we have identified for political liberalism, then it must be capable of going beyond its more typical focus on intrinsically valuable virtues, and assess the space it can find for instrumentally valuable virtues as well.

My assessment of liberal perfectionism comes in five parts. Firstly, I will provide a criterion which any form of liberal perfectionism, hoping to do better than political liberalism, must be able to meet. Following this, I will consider the theories of three prominent liberal perfectionists: Galston, Chan, and Raz. I will argue that none of these theories are well suited to the challenge of accommodating the need for the virtues of empathy and benevolence. Finally, I will provide some general comments on why this conclusion is likely to hold for any form of liberal perfectionism.

8.3.1 Criteria for liberal perfectionism

Let us briefly recall why political liberalism was unable to make space for the virtues of empathy and benevolence. Firstly, political liberalism can incorporate a virtue into a political conception of justice only if it is a political virtue. Since empathy and benevolence were shown not to be political virtues (chapter 6), they cannot be consciously promoted in any way.

333 Raz, *The Morality of Freedom*, 133

334 Political liberals, as we have seen in chapter 6, hold that a virtue’s necessary role in realising conditions of justice is only one requirement for any virtue that would be the subject of political action. Any such virtue must be able to meet the full publicity condition, which includes the followability requirement and the application requirement.
by the political liberal state. Secondly, since political liberalism is committed to the moral interpretation, a political liberal society will effectively discourage the cultivation of any non-political virtue (chapter 7). If a version of liberal perfectionism is to prove itself to be superior in this respect, then it must be capable of overcoming at least one of these reasons. This means that at least one of two things must be true for any such theory:

1) It must reject the claim that a virtue can be promoted by the liberal state only if it is a political virtue.

2) It must not be committed to the moral interpretation.

We should first recall precisely what is meant by the idea of ‘the moral interpretation’, according to which, liberal freedom means that people are morally permitted to pursue their own choices, within the relevant scope. Recall from chapter 7 that this could be contrasted with the coercion interpretation, according to which, liberal freedom means that people are able to pursue their own choices within the relevant scope without the threat of coercive power (although they may or may not be morally permitted to pursue these choices). Now the problem posed by the moral interpretation is this: if a theory T, which governs society S, is committed to viewing people as free to pursue their chosen conceptions of the good, then T is also committed to rejecting any idea that the people in S are morally obligated to cultivate one conception of virtue or another. Hence, people in S are unlikely to cultivate virtues like empathy and benevolence when they are not encouraged by the state to do so.

Note that this means that it is possible for a theory to effectively enable the cultivation of the virtues of empathy and benevolence even if it is committed to the moral interpretation. If T should prescribe the cultivation of empathy and benevolence, and require the state to promote these virtues, then the moral interpretation does not cause problems for the cultivation of these virtues. For example, suppose that the arguments made in chapter 6 were mistaken, and that political liberalism is able to regard empathy and benevolence as political virtues. The fact that it remains committed to the moral interpretation would not then prove problematic; all this commitment entails is that we should not expect any virtue not prescribed by T to be widely cultivated among the citizens of S. Insofar as T is unable to promote the virtues of empathy and benevolence, then its commitment to the moral interpretation is problematic.
Two further comments are appropriate. Firstly, note that 1) can be met in several different ways. The most ideal liberal perfectionist theory, for our purposes here, would be one which can posit empathy and benevolence as liberal virtues (either as intrinsic or instrumental virtues), and thus directly enable their promotion. Alternatively, if the theory includes any other non-political virtues without explicitly including empathy and benevolence, this would at least seem to suggest a rejection of the criterion of politicality, and its adaptability and openness to finding space for these virtues. Finally, it might not name any specific non-political virtues at all, but may nonetheless contain an explicit rejection of the claim that the politicality of a virtue is a necessary prerequisite for allowing for its promotion by means of coercive political power.

Secondly, the fact that a form of liberal perfectionism is able to meet 1) is not necessarily sufficient to enable it to fare better than political liberalism. Suppose that a theory rejects the publicity condition (hence rejecting the need for the politicality of virtues admissible to the theory), but does not name anything resembling the virtues of empathy and benevolence as virtues which ought to be promoted by the state. If the theory also happens to be unable to meet 2, and is committed to the moral interpretation, then it is even less likely to be conducive to the cultivation of these virtues, since the ascription of ethical value to people’s choices will stand in tension with any attempt to expand the list of virtues prescribed by the state.

It seems to be the case, then, that if a theory T does not prescribe the promotion of the virtues of empathy and benevolence, and is also committed to the moral interpretation, then it falls victim to the same difficulties facing political liberalism. We should therefore revise our criteria in the following fashion. A liberal perfectionist theory is superior to political liberalism, in respect of its ability to cultivate virtues necessary for liberal outcomes, if it meets any one of the following criteria:

1) It explicitly singles out the virtues of empathy and benevolence as virtues that ought to be promoted by the liberal state, either for intrinsic or for instrumental purposes.

2) It must not be committed to the moral interpretation.

The second of these criteria might be strengthened by adding an additional requirement: that the state is justified in promoting any virtue that is necessary for the creation of a just liberal
society. This would mean that the state is certainly entitled to promote virtues like empathy and benevolence, since they are required for the purposes of liberal justice. However, one might plausibly claim that a theory that does not meet this additional requirement, but still avoids the moral interpretation, is superior to political liberalism, in virtue of the fact that it is not hostile to the cultivation of empathy and benevolence, even if it does not specifically promote them. In any case, I will argue that liberal perfectionism cannot meet either 1), or this less demanding version of 2).

8.3.2 Chan: moderate perfectionism

Chan describes his theory as a form of ‘moderate perfectionism’. The most significant aspect of this form of perfectionism is its rejection of comprehensive liberalism. For Chan, perfectionism need not rest on a comprehensive view of what amounts to the single best form of life; rather, it may simply make local judgments, that ‘promotes valuable goods such as the arts, family life, and basic human virtues, and discourages people from leading ways of life that are highly deficient in these goods.’

What does this amount to in practice? Chan’s moderate perfectionism seems to enable the state to judge that the life of a drug addict is less good than that of a healthy person, or that a life full of aesthetic experience is better than one devoid of it. It may be that such judgments can, to some extent, be accommodated within the framework of political liberalism, for a political conception of justice draws on a certain selection of primary goods, which can offer an elementary evaluation of certain aspects of life. If we recall Rawls’s criteria for a political idea of the good (6.1), any goods that can count as primary goods must be necessarily shareable among reasonable people. Hence, if the basic judgments of value which Chan has in mind turn out to be shareable among reasonable people, then it would seem possible that the ideas of the good which they draw on may be considered part of the list of primary goods.

335 Chan, “Legitimacy, Unanimity, and Perfectionism”, 14
336 PL, 178-190.
337 See LWP, 197, 215
Regardless of the extent to which political liberalism is genuinely able to accommodate the full nature of Chan’s moderate perfectionism, it is clear that Chan’s approach is not any better equipped to deal with the necessity of the virtues of empathy and benevolence than is political liberalism. The only judgements about the value of people’s lives that Chan’s liberal state would make are those that would be reasonably shareable. This means that Chan does not reject the idea that a virtue can be promoted by the state only if it is reasonably shareable. Since reasonable shareability is the sole criterion for politicality, it follows that Chan’s moderate perfectionism cannot promote non-political virtues such as empathy and benevolence.

Chan’s theory certainly cannot meet 1), but can it meet 2)? If a theory cannot promote non-political virtues, perhaps it can still prove itself more conducive to their cultivation than political liberalism, if it can demonstrate that it avoids a commitment to the moral interpretation. But it is difficult to see how this could be true of Chan’s theory. Insofar as it differs from political liberalism at all, it only holds that reasonable shareability permits the liberal state to make some judgments about the good life, which are, at most, slightly more comprehensive in character than what political liberals allow for. But other than this, his theory seems largely identical to political liberalism from beginning to end. Indeed, his justification of perfectionism seems to affirm the foundational political liberal premise: that the views of reasonable people are basic.

I will not speculate on whether it might be possible to recast a version of moderate perfectionism in such a way that it is premised on foundations that are radically different.

\[338\] It is perhaps doubtful whether Chan’s position is inconsistent with political liberalism at all. He holds that the ability of the liberal state to legitimately promote reasonably shareable goods (such as primary goods) still amounts to a form of perfectionism, since to say otherwise would be to confuse political perfectionism with philosophical perfectionism. Since some judgments about the good life are reasonably shareable, this means that political perfectionism is consistent with philosophical neutrality (Chan, “Legitimacy, Unanimity, and Perfectionism”, 35). But this distinction rests on an impoverished notion of politicality. As we have seen throughout this essay, the domain of the political, for Rawls, is not characterised only by coercive state power, but also by reasonable shareability (PL, 11f.). This means that one cannot draw a clear distinction between philosophical neutrality and political neutrality; rather, the former implies the latter.

Quong assumes that liberal perfectionists ‘will want to go much further’ and extend this to many judgments about the good life, not just those that have to do with primary goods (LWP, 215). Chan’s theory seems to be inconsistent with political liberalism just to the extent that this is true of his form of perfectionism.
from political liberalism, such that it should prove clearly capable of resisting the moral interpretation. I take it, however, that Chan’s theory involves no such reconstruction. Quite the contrary, his position appears designed to draw strength from the way in which it appeals to the basic norms which political liberals also hold to, and is therefore intended to function as an effective form of internal criticism. I conclude, therefore, that Chan’s perfectionism is able to meet neither 1) nor 2), and therefore cannot be any more conducive to the cultivation of the virtues of empathy and benevolence than political liberalism.

8.3.3 Galston: intrinsic and instrumental virtues

Galston’s account of the relationship between liberalism and virtue includes a comprehensive and extensive list of different kinds of virtues, together with a clear distinction between those virtues which are instrumentally valuable, for the purposes of forming and maintaining a just liberal society, and those virtues which are intrinsically valuable. None of these virtues correspond to the virtues of empathy or benevolence. Although he speaks at one point of the virtue of finding ‘a mean between ascetic self-denial and untrammelled self-indulgence’, this is seen not as a particularly altruistic virtue like benevolence, but rather as a means to ‘subordinate immediate gratification to longer-run self-interest.’

While Galston’s account does not meet 1 (promotion of the virtues of empathy and benevolence), there are some signs that it might be more open towards 2 (allowance of the state to promote non-political virtues). The long list of virtues includes at least some that might possibly be unable to meet the publicity condition. The virtue of courage, which may take the form of ‘the willingness to fight and even die on behalf of one’s country’, is perhaps an example. Although he does endorse the idea of publicity, his understanding of this concept seems to signify only ‘a commitment to resolve disputes through open discussion unless compelling reasons can be adduced for restricting or concealing the policy process.’

Let us assume, perhaps generously, that Galston’s account of liberal virtue does not hold that the liberal state can only promote political virtues. But as we have pointed out, this is not sufficient to meet the requirements of 2). Galston’s account must also avoid the moral

339 Galston, Liberal Purposes, 223
340 Galston, Liberal Purposes, 221
341 Galston, Liberal Purposes, 227
interpretation. And there are good reasons to believe that it does not. This is due to the distinctive character of the intrinsic liberal goods which his theory identifies. Galston names three virtues which he believes are singled out by the liberal tradition as ends in their own right: rational self-direction, Kantian excellence, and individuality. It is the virtue of individuality which I am most interested in here. This virtue, which points to the importance of ‘development . . . of human powers’ and ‘self-determination’, singles out the moral importance of pursuing one’s own, freely chosen ends. This seems to be further confirmed by Galston’s citation of George Kateb’s claim that ‘one must become the architect of one’s soul.’ If this is the kind of good that the liberal state promotes, citizens will be taught to regard their own individual preferences and life plans as valuable precisely because they have chosen them, and not because they conform to any antecedent ethical standard. Citizens will be discouraged from believing that their lives need to conform to an ideal of virtue that they do not choose. Insofar as individuality is a liberal virtue, then liberalism is committed to the moral interpretation no less than political liberalism.

Note that Galston’s form of liberalism is committed to the moral interpretation because of the particular idea of the good life it seeks to promote. Political liberalism, on the other hand, is committed to the moral interpretation not because of any idea of the good it promotes, but rather, because of the status it accords reasonable people. In 7.1, I claimed that the fact that a particular theory is committed to the moral interpretation does not in and of itself imply a commitment to any particular theory about the good. But this is fully consistent with the claim that certain theories of the good may also commit a theory to the moral interpretation.

We may summarise, then that Galston’s perfectionism cannot satisfy 2) because it is committed to the moral interpretation. As such, it is not any better suited for allowing the virtues of empathy and benevolence to be cultivated than is political liberalism.

342 There is a sense in which Galston’s description of individuality seems quite similar to that of rational self-direction. Yet we may plausibly draw a distinction between the two by pointing to his citation of Rogers Smith’s idea of ‘self-guidance and self-control.’ Whereas individuality stresses the morally valuable character of the ends of liberal citizens, rational self-direction emphasises the need to pursue these ends in a self-controlled manner. Galston, *Liberal Purposes*, 229; Rogers Smith, *Liberalism and American Constitutional Law* (Cambridge, Mass.: Harvard University Press, 1985), 200.

8.3.4 Raz: autonomy and valuable choices

Any discussion of *The Morality of Freedom* normally includes some kind of disclaimer, suggesting something to the effect that the essay is far more sophisticated and nuanced than what the scope of the discussion can afford. What follows is no exception. I do not intend to evaluate all of the many arguments which Raz deploys concerning a wide variety of topics and issues in political philosophy and also in jurisprudence. My sole concern is the extent to which Raz’s perfectionism is able to make space for the importance of the virtues of empathy and benevolence.

Like Chan and Galston, Raz’s theory does not explicitly name the virtues of empathy and benevolence, and so does not meet 1). Again, our focus will therefore be on whether Raz’s theory is capable of meeting the requirements of 2). We may first note that, in contrast to Galston, Raz’s perfectionism seems not to be committed to the moral interpretation. In spite of the substantial rhetoric around the ideal of autonomy, Raz explicitly denies that autonomous choices have any particular value in and of themselves, nor do citizens in a liberal society have anything like a right to autonomy. For Raz, autonomous choices are valuable *if and only if they are good choices*. As Raz puts it,

> Autonomous life is valuable only if it is spent in the pursuit of acceptable and valuable projects and relationships. The autonomy principle permits and even requires governments to create valuable opportunities, and to eliminate morally repugnant ones.

Raz defends his claim that autonomous choice is not valuable in and of itself by appealing to the way in which we regard our reasons for our choices. Our choices are fundamentally reason-dependent. This means that:

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345 Raz, *The Morality of Freedom*, 417
any person who has a goal or desire believes, if he has minimal understanding of their nature, that if he came to believe that there were no reasons to pursue the goal or the desire, he would no longer have them.\footnote{Raz, The Morality of Freedom, 140-141}

It is on these grounds that Raz criticises ‘welfarism’ – the view that all that matters is the satisfaction of preferences. People have their preferences for reasons, and if these reasons turn out to be mistaken, people would lose, or at least alter their preference. Therefore, ‘want-satisfaction as such cannot be an intrinsic good.’\footnote{Raz, The Morality of Freedom, 142}

One might complain, however, that political liberals can also accept this argument, or at least allow for the possibility that it might be sound. If this is the case, how can it be that political liberals are committed to the moral interpretation, whereas Raz is not? The answer, as we saw in chapter 7, lies in the political liberal concept of reasonableness. Although political liberals need not hold that want-satisfaction has any value in and of itself, their principle of respect for reasonable people leads them to regard the choices of reasonable people as creating \textit{moral permissions} for them to pursue these choices. Furthermore, as we saw in 7.6, these moral permissions are prior to the actual reasons which reasonable people may offer on behalf of their choices, regardless of whether reasonable people think in this way or not. Raz’s theory lacks this particular foundational ideal of respect for reasonable people; to treat one with respect, for Raz, is to treat them in accordance with the correct moral considerations.\footnote{Raz, The Morality of Freedom, 157} For political liberals, on the other hand, to respect reasonable people is to treat their views as basic (7.5). Thus, Raz’s theory does not share the same commitment to the moral interpretation as political liberalism.

Now we may well ask: if Raz does not think that autonomous choices have any intrinsic value, to what extent does he think that the liberal state should promote autonomy at all? Raz’s response to this question is to present his own form of pluralism. Recall from 1.2 that Raz’s conception of \textit{value pluralism} differs from the political liberal idea of \textit{reasonable pluralism}, in that the former does not hold a similar idea of \textit{reasonable disagreement}. A fundamental aspect of Raz’s theory is the rejection of the idea that there is some form of

\footnotesize{\begin{itemize}
\item Raz, The Morality of Freedom, 140-141
\item Raz, The Morality of Freedom, 142
\item ‘One would be showing disrespect to one another if one ignored moral considerations in treating him.’ The Morality of Freedom, 157
\end{itemize}}
asymmetry between arguments about justice on the one hand, and arguments about the good life on the other:

Is there reason to think that one is more likely to be wrong about the character of the good life than about the sort of moral considerations which all agree should influence political action such as the right to life, to free expression, or free religious worship? I know of no such arguments.\(^\text{349}\)

For Raz, value pluralism does not imply reasonable pluralism about the good life. While the latter view stipulates that people may disagree about the good life without impugning their reasonableness, the former stipulates that the right exercise of reason requires people to acknowledge the value of a variety of potentially incommensurable goods. Take, for example, the contrast between a life that is devoted mainly to art on the one hand, and a life that is devoted mainly to friendship on the other. Political liberals will hold that people can disagree on which of these lives is better while remaining fully reasonable. Raz, on the other hand, will say that, insofar as art and friendship are both goods posited by reason, it is unreasonable to deny the value of either life. But our choice between the life of art and the life of friendship (or any other life characterised by other true goods) is not a choice dictated to us by reason. All reason does is identify these values; it does not choose between them. This is where the idea of autonomy comes in. We are autonomous if and only if we are able to apply our own preferences to choose between a plurality of forms of life, all of which are identified by reason as valuable. Hence, the value of autonomy is not only limited by the extent to which it is exercised in accordance with goods that are justified by reasons; autonomy requires the existence of a variety of goods, enabling people to make choices between valuable options (as opposed to choices between one valuable option and other non-valuable options).

In short, Raz’s idea of value pluralism means that an autonomous choice is valuable if it is a choice between a set of valuable forms of life. Hence, Raz is committed to the moral interpretation after all. This means that people are not only able to pursue their chosen conception of the good without fear of coercive intrusion; they are also morally entitled to do so. Note, however, that this commitment is somewhat limited in its scope. People are

\(^{349}\) Raz, The Morality of Freedom, 160
morally permitted to pursue their own choices *if and only if they have chosen from a set of good choices*. Political liberals, too, are committed to the moral interpretation in a limited way: for them, people are morally permitted to pursue their own choices *if and only if they are reasonable people*. But for both Raz and political liberalism, it seems doubtful that people’s choices can be morally criticisable when they fall within the relevant scope. Even if we suppose that empathy and benevolence are able to make it onto Raz’s list of good ways of life, it is simply not the case that anyone can regard themselves as morally obligated to pursue them. At best, they might happen to choose these virtues from this list of good ways of life, but there is no reason to think that they are likely to do so. In fact, given that the forms of empathy and benevolence which liberalism requires are strongly self-sacrificial virtues that go against many people’s common or natural preferences (as opposed to, say a minimalist conception of these virtues – see 6.4), and that choice between these good ways of life is a choice based on preferences, we should expect that citizens of a Razian liberal perfectionist society will not choose to pursue these virtues, at least, to the extent that liberal ends would require. Hence, despite its insistence upon the importance of reason-dependent choices, the distinctive way in which Raz’s theory is committed to the moral interpretation makes it a theory that is no more likely (and perhaps even less likely) than political liberalism to allow for the cultivation of the virtues of empathy and benevolence.

8.3.5 General

We have considered the theories of three different liberal perfectionists, and found that none of them are more suited than political liberalism to address liberalism’s reliance upon the virtues of empathy and benevolence. Firstly, we saw that Joseph Chan’s moderate perfectionism is fully consistent with the political liberal claim that the politicality of a virtue is permissible for its shareability among reasonable people; it is therefore likely that it shares an identical commitment to the moral interpretation, through an affirmation of the foundational importance of the views of reasonable people. Secondly, we saw that William Galston’s perfectionism includes certain non-instrumental goods which effectively commit his theory to the moral interpretation. And thirdly, Raz’s ideal of autonomous choice also commits his theory to the moral interpretation, albeit within a more limited scope.
From our examination of these three forms of liberal perfectionism, I think we can offer a general account of why any form of liberal perfectionism is unlikely to succeed in this respect. The kinds of goods that liberal perfectionists are wont to promote are inhospitable to the cultivation of the virtues of empathy and benevolence. Not only are empathy and benevolence generally absent from the liberal perfectionist accounts of the virtues we have considered here; the particular nature of these liberal perfectionist goods is such that they commit the theory to the moral interpretation. As we saw in 8.3.1, if a theory T, that does not prescribe a virtue V, is also committed to the moral interpretation, then it will be ill-suited to enabling the cultivation of V. This means that the kind of goods that liberal perfectionism promotes are actually hostile to any other form of perfectionism that regards the cultivation of certain virtues as morally obligatory, regardless of whether they are chosen as an expression of an agent’s individuality or autonomy.

To put it succinctly, the argument against the superiority of liberal perfectionism to political liberalism, as a means of allowing for the cultivation of empathy and benevolence, is as follows:

1) The kind of goods which liberal perfectionism typically promotes (e.g. Galston’s virtue of individuality; Raz’s idea of autonomy) entail a commitment to the moral interpretation.
2) The kind of goods which liberal perfectionism typically promotes DO NOT include the virtues of empathy or benevolence, in the form in which they are required for the attainment of liberal ends.
3) Liberal perfectionism cannot meet the criteria of 8.3.1 (from 1 and 2).

It might be objected that since liberal perfectionism is not restricted to the domain of the political, it can at least allow for the possibility that the liberal state might need to promote virtues which are not reasonably shareable. But this objection is mistaken on at least two counts. Firstly, it is not clear that liberal perfectionists reject the claim that the liberal state can only promote goods that are reasonably shareable. Chan’s perfectionism, for instance, clearly does not do so, in virtue of the fact that his form of perfectionism is centred on the intuitive plausibility of ‘local’, non-comprehensive forms of value judgements, many of which can be accommodated within a political liberal theory of the primary goods. Galston’s account is ambiguous, and any interpretation that suggests he does reject this claim is likely to be a matter of conjecture. Raz, as we saw, rejects the idea that there is any relevant kind of
asymmetry between arguments about justice and arguments about the good, and so holds that the goods which a liberal state may legitimately promote ought not to be any more controversial among reasonable people than our considered judgments about basic political rights and freedoms. This is a crucial point about the fundamental nature of liberal perfectionism: insofar as it concedes that the legitimacy of the perfectionist state hinges upon the absence of any relevant kind of asymmetry between questions of justice and questions of the good, it effectively affirms the essential political liberal premise that the activities of the state ought to be governed by the dictates of reasonable shareability. Liberal perfectionists may, of course, attempt to deploy a different conception of reasonable shareability (for example, that a virtue is reasonably shareable if and only if it can be demonstrated to be true, correct, or right); in doing so, they may hope to reconcile the requirements of reasonable shareability with the virtues required by liberal ends. However, they would still need an account of how empathy and benevolence can be regarded as uncontentiously true, correct, or right, in spite of the arguments of chapter 6. If this cannot be done, then it is possible for a reasonably shareable virtue to still be controversial. This, I take it, is an unacceptable outcome for liberal perfectionists, since it would render the perfectionist conception of reasonable shareability essentially meaningless. Hence, unless some account of how the virtues of empathy and benevolence can somehow escape controversy can be developed, they cannot be promoted by a liberal perfectionist state, any more than they can be promoted by a political liberal state.

Note that, according to this possible liberal perfectionist conception of reasonable shareability, the promotion of virtues that are controversial is problematic. This is different from the political liberal conception, according to which only reasonable controversy is problematic. Why is this the case? Suppose we take any conception of reasonable shareability, based on a conception of reasonableness $R$. Let us assume that any virtue that is $R$ shareable must also avoid $R$ controversy. But since, for this particular liberal perfectionist conception of reasonable shareability, $R$ is identifiable with what is true, correct, or right, it follows that, for such liberal perfectionists, what is true, right, or correct must be uncontentious simpliciter. Contrast this with the political liberal conception, according to which $R$ has been taken throughout this essay to refer to a certain conception of the
reasonable person as laid out by Rawls. According to this conception, \( R \) shareability implies an absence of \( R \) controversy – that is, controversy among \( R \) people.

Now suppose that the virtues which a liberal perfectionist state intends to promote (including empathy and benevolence) are either true, correct, or right. This means that, on the liberal perfectionist version of \( R \), they must be uncontroversial simpliciter. Hence, we may hold that if the virtues of empathy and benevolence should prove to be controversial, then this undermines the coherence of the liberal perfectionist conception of \( R \). And if this conception should prove incoherent, then it cannot be deployed as a way of allowing the liberal perfectionist state to promote the virtues of empathy and benevolence.

Secondly, even if liberal perfectionists do hold that the state can sometimes promote virtues which are not reasonably shareable, the promotion of such virtues will likely clash with the promotion of essential liberal perfectionist goods like individuality and autonomy. If the liberal state were to promote the virtues of empathy and benevolence, it would come at the cost of compromising the extent to which individuals are able to choose their own ways of life. It would be odd, for instance, if we imagine a Raz-type liberal state that instructed citizens to pursue the non-political virtues of empathy and benevolence, all the while informing them that they ought to choose freely between a set of equally justified goods. The liberal perfectionist, it seems, must choose between liberal goods and liberal justice. And yet what distinguishes liberal perfectionists from their political liberal counterparts is a refusal to prioritise the latter over the former.

It should be acknowledged that I have assumed that the outcomes of public justification and liberal distributive justice are just as necessary for liberal perfectionists as they are for political liberals. This assumption may be challenged, particularly in relation to the outcome of public justification and the subsequent necessity of the virtue of empathy. Whether or not this assumption is fully correct is not something I intend to explore further here. Yet even if the political liberal ideal of public justification should turn out to be dispensable for liberal perfectionists, it is at least plausible to suggest that some of the forms of exclusion discussed in Chapter 2 are equally troubling for liberal perfectionists, and cannot be properly remedied without the virtue of empathy. On this basis, I think we have good reason to suppose that

\[ ^{350} PL, 48-58 \]
liberal perfectionism falls victim to the same charge which I have made against political liberalism: it requires a conception of virtue which it cannot get.

8.4 Political philosophy beyond liberalism

If we claim that neither form of liberalism offers a way of providing the virtues necessary for attainment of the outcomes of public justification and distributive justice, what should we then expect from political philosophy? Given that the conclusions we have reached in this essay may seem overwhelmingly pessimistic, it is appropriate that some attempt should be made to at least point towards a constructive alternative. I will finish by making three observations concerning this issue.

Let us assume, first, that something like the ideal of public justification, and something like the ideal of liberal distributive justice, are both important outcomes for any particular form of political philosophy. This means, for instance, that a just society is one where the claims of marginalised people are heard and considered. It also means that steps are taken to eliminate absolute poverty, and that there are at least some limits set on the growth of social and economic inequalities. If this assumption is correct, then it follows that political philosophy must not be constrained by the requirements of reasonable shareability. What I have argued throughout this essay is that these outcomes cannot be obtained without the presence of virtues that are not reasonably shareable. Note that this amounts to a rejection of the liberal principle of legitimacy, at least in its political liberal form. Justice is inseparable from controversy and self-sacrifice; it places requirements on people that are neither clearly understandable nor clearly limited in scope.

Secondly, we might then ask if this conclusion should lead us to endorse some version of non-liberal state perfectionism, where the state promotes the virtues of empathy and benevolence, or any other virtues necessary to secure these outcomes. I think political

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351 This particular rejection of liberalism seems to work on the assumption that political liberalism and liberal perfectionism exhaust the range of forms of liberalism. I grant that there are other forms of liberalism, including (but not limited to) the comprehensive anti-perfectionism of Ronald Dworkin and Will Kymlicka alluded to in chapter 1. I do not discuss these alternatives here. However, the argument of this essay still applies to such forms of liberalism insofar as they require: i) the outcomes of public justification and liberal distributive justice; and ii) a commitment to the moral interpretation.
philosophy should be hesitant about endorsing such an option. While it may be true that there is nothing at all incoherent about such an idea (as we acknowledged in 6.1), there are nonetheless good reasons to doubt that the modern state is well-suited to such a task. Owing to its size, and reliance on popular will, it seems to take on a certain ‘unmanageable’ character, making it a most untrustworthy guardian of controversial virtues. As Alasdair MacIntyre suggests, ‘to empower even the liberal state as a bearer of values always imperils those values’.\textsuperscript{352} One might ask precisely what it is about virtues like empathy and benevolence that makes their status unstable in the hands of the state (as opposed to political virtues). I think the best explanation concerns the relationship between modern political activity and truth. As Hannah Arendt has observed, the modern state possesses the capacity to deceive its citizens not only in nuanced or complicated matters, but also to present blatant yet popular non-facts as true.\textsuperscript{353} This strongly suggests that it is ill-suited to the responsibility of promoting virtues whose value is never reducible to the popular will. While the state may be perfectly adept at promoting those virtues which enjoy a good measure of support among citizens (e.g. political virtues), it is likely that it is considerably less adept at promoting virtues that do not necessarily enjoy such support. Indeed, its penchant for misrepresentation suggests that any attempt to try to create a perfectionist state based around the promotion of controversial virtues may lead to the practices of compromise and self-deception not overly dissimilar to those discussed in 8.2. For this reason, I think political philosophy should be at least cautious about inferring, from the necessity of virtues that are not reasonably shareable, that the state should be charged with promoting them.

What this means, then, is that the key agents of justice are not political institutions, but people and associations that do not depend for their survival on the exercise of coercive state power. To the extent that political philosophy is concerned with creating just outcomes, it follows that it cannot be exclusively concerned with coercive institutions. While it certainly does not follow that the design of institutions ought to be of no concern for political philosophy, it is clear that it ought not to be its only concern, and perhaps not its primary concern. As we have seen throughout this essay, contemporary liberalism is willing to acknowledge this to some extent: today’s liberals reject the early modern idea that justice can


be secured solely through institutional design, without depending upon the virtuousness of citizens. *What they seem more reluctant to acknowledge, however, is that the essential responsibility for inculcating virtue does not lie with the state.* It is people and associations, not the state, who are the prime actors, not only in the struggle for a more just society, but also in the cultivation of those virtues which are necessary for such a society.

The resulting lack of a clear distinction between political philosophy and ethics should not be lamented. As we saw in 7.6, even that form of liberalism which claims to be restricted to the domain of the political carries with it a foundational ethical position – that of the status of reasonable people must be respected by treating their viewpoint as basic. As such, the reverse is likely to also apply: the various ways which people and associations pursue their ideas of the good life, even within the framework of the liberal state, may be such that they have political implications. For example, those who pursue virtues like empathy and benevolence for reasons that have nothing to do with their own preferences or life choices are acting in such a way as to undermine what I have called the moral interpretation, which, I have argued, is largely characteristic of both political liberalism and liberal perfectionism. Every time a person or association devotes themselves to a particular way of life because they believe it to be the right way for them to live, regardless of their choice, there is therefore a sense in which the politics of liberalism is subverted.

Given that the cultivation of these virtues by individuals and associations, independent of and perhaps even in spite of the exercise of state power, is a necessary prerequisite for the attainment of what I have assumed to be just outcomes, we should ask: what kind of ways of life are well-suited to this purpose? My third and final suggestion is that virtues like empathy and benevolence are best safeguarded, sustained, and cultivated, by *communities.* By community, I mean a group of people who share a certain idea of the good life that involves some form of regular interaction with each other. This is because those who try to pursue these virtues will likely do so amidst a political and social context that is anything but hospitable to such ways of life. As such, external pressure on these people is likely to be substantial and at times so overwhelming, that it can only be effectively countered with some form of internal support. Does this mean that political philosophy ought to return to the communitarian themes of the 1980s? I do not think so, for at least two reasons. Firstly, it does not follow from my suggestion here that community is in any way a good in and of itself; but rather, some form of community is likely to prove itself necessary to sustain
commitments to those ways of life which pursue those virtues necessary for attaining the outcomes of justice. Secondly, the framework through which communitarians typically advanced their claims – through the various activities of the nation-state – is a project which, as I have just indicated, I think we have good reason to be sceptical of. My prescriptions here may strike the reader as overly demanding, burdensome, and intrusive on the choices of everyday citizens, many of whom may wish to do no more than pay their taxes and keep to themselves. But if there is any truth in what I have argued throughout this essay, this will not do. To put it simply: justice requires more from us than what we are typically willing to admit.
Glossary

This is a list of abbreviations that have been used throughout this essay. I have presented them in the order in which they appear, with the exception of revised versions, which I have placed directly underneath the original version.

**SPJ (Scope of Political Justification):** The justification of political power ought to be acceptable to all reasonable people.

**FRP (Fact of Reasonable Pluralism):** reasonable people can disagree with each other on many matters without impugning their reasonableness.

**SJT (Shareable Justification Thesis):** The justification of political power ought to be acceptable to all reasonable people, who may reasonably disagree with each other.

**PJT (Perfectionist Justification Thesis):** The justification of political power ought to be acceptable to all competent reasoners, who can be expected to reach rational agreement insofar as they reason competently.

**AT (Acceptance of Political Values Thesis):** Political values, and only political values, can be accepted as very important values by people in a democratic society who may reasonably disagree on comprehensive matters.

\[ \text{AT}_1: \text{The existing set of liberal political values, and only these values, can be accepted as very important values by actual people in a democratic society who may reasonably disagree on comprehensive matters.} \]

**VT (Values of Public Reason Thesis):** The values that play a role in public reason, understood as those reasons that can be used in political justification, consist of the political values, and no other values.

\[ \text{VT}_1: \text{The values that play a role in public reason consist of the existing set of liberal political values, and no other values.} \]
DT (Dynamism of Public Reason Thesis): Our understanding of the meaning and proper ordering of the political values has changed over time, and is likely to continue to change.

ET (Exclusion Thesis): Political liberalism has excluded from political justification people whose claims it retrospectively acknowledges as legitimate, and is likely to do so again.

DR (The Demands Requirement): A reasonable person must be capable of clearly identifying the demands of a virtue.

RR (The Reciprocity Requirement): A reasonable person must be capable of telling whether or not other citizens are meeting the requirements of the virtue.

AR (The Application Requirement): The virtue must have clear guidelines as to the circumstances when it applies. These circumstances must be clearly identifiable by a reasonable person.

AR (revised formulation): the virtue must have clear guidelines that indicate the limited circumstances in which it applies. These circumstances must be clearly identifiable by any reasonable person.

JR (The Justification Requirement): The justification of the virtue must also be public. Hence, the justification of the virtue must be understandable and acceptable to reasonable people.

MPR (Moral Principle of Respect): The views of embodied reasonable people ought to be respected.

BP (Basic Principle): The views of embodied reasonable people are basic.
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