

Political Theory, Public Opinion and Real Politics

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Thesis submitted in partial fulfilment of the requirements for
the degree of DPhil in Politics in the Department of Politics
and International Relations at the University of Oxford

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Abstract

If we are interested in questions about how we ought to organize our political lives, what kind of weight, if any, should we give to evidence about what people actually think? The thesis explores this question about the role of public opinion in normative political theory. First, I disentangle a number of distinct justifications for taking account of public opinion. Specifically, the thesis evaluates four views of the status of public opinion: as an epistemic resource; a feasibility constraint; a means of democratizing political theory; or constitutive of moral and political ideals. I defend the epistemic argument, outlining two forms in which popular attitudes represent a valuable epistemic resource. The thesis criticizes the feasibility and democratic accounts of the role of public opinion as these are presented in the existing literature, but suggests more convincing ways of reconstructing these arguments. Finally, I reject the view that public opinion constitutes the ideal of justice, arguing that such an account is subject to a fundamental tension. As well as clarifying the status of popular attitudes, the thesis addresses the methodological difficulties that arise when we seek to bring public opinion to bear on ideas from political theory, whose meaning and status in everyday political thought and discourse is often limited or uncertain. I outline two approaches to integrating normative theory with the investigation of popular attitudes that mitigate the methodological problems that often confront such projects.

The second major aim is to situate the question of the role of public opinion in the context of wider debates about the aims and methods of contemporary political theory. In particular, I address recent demands for greater 'realism' in political theory, distinguishing two main strands of realist critique and drawing out their contrasting implications for the role of public opinion.

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Part I Political Theory and Public Opinion: Status and Methods

Chapter 1 Introduction

Political theorists address questions about the terms on which, and purposes for which, we should organize our collective lives. Under what conditions is the exercise of political power legitimate? What is a fair way of distributing social and economic resources? Do we owe special duties to our fellow citizens, or should we be equally concerned about poverty abroad? Under what circumstances, if any, are states justified in going to war? What role should religion play in public life? How a society deals with these questions has a profound impact on the lives of its members. Moreover, many citizens, not only professional political theorists, have views about these issues. This points to an important question about how political theorists should approach their discipline. Should they concentrate on developing and refining their own views, seeking feedback from academic colleagues? Or should they also give serious consideration to wider public attitudes? If so, how ought political theorists to go about this project of combining normative theory with the empirical investigation of public opinion?

Whilst appeals to ‘what people think’ are commonplace in political theory, systematic treatments of evidence about popular attitudes are rarer – as is deeper reflection on the value and purpose of engaging with public opinion.¹ The thesis seeks to fill this gap by addressing two central questions about the role of public opinion in political theory:

- o How should political theorists employ evidence about public opinion in the development of their normative theories and principles?
- o On what grounds, if any, should political theorists give weight to popular attitudes?

¹ Notable exceptions include David Miller, *Principles of Social Justice* (Cambridge: Harvard University Press, 1999), especially Chapter 3; Adam Swift, ‘Social Justice: Why Does it Matter What the People Think?’, in Daniel Bell and Avner de-Shalit eds., *Forms of Justice: Critical Perspectives on David Miller’s Political Philosophy* (Lanham: Rowman & Littlefield Publishers, 2003), pp. 13-28; Jonathan Wolff and Avner de-Shalit, *Disadvantage* (Oxford: Oxford University Press, 2007)

- o What methods should political theorists employ in integrating normative theory with evidence about public opinion?
- o What is the significance of the question of the relationship between political theory and public opinion to wider debates about the aims and methods of contemporary political theory? In particular, does engaging more closely with public opinion answer an important demand for greater 'realism' in political theory?

On the one hand, it has been argued that the task of the political theorist is fundamentally an interpretive one.² On this view political theory, properly practised, works entirely within the parameters of public opinion, seeking to provide a compelling reconstruction of popular views. At the other end of the spectrum, the task of working out what people *actually* think is seen as irrelevant to, even a dangerous distraction from, the project of developing political theories that seek to tell us what we *ought* to think or to do. The thesis defends a cluster of models of the relationship between political theory and public opinion that lie between these two poles. First, I argue that political theorists have epistemic reason to give weight to particular forms of public opinion. Specifically, I outline two fruitful ways of pursuing the integration of public opinion and political theory on epistemic grounds. On the one hand, political theorists can productively investigate public responses to unfamiliar hypothetical cases, as an input into the concrete judgements side of the process of reflective equilibrium. On the other hand, there is epistemic value for political theory in 'bottom-up' methods that reveal the details of people's lived experiences. Both of these approaches, I suggest, mitigate some of the methodological problems that commonly confront efforts to integrate political theory and public opinion.

Secondly, the thesis explores how the question of the role of public opinion is bound up with the demand for greater realism in political theory. Here public opinion is commonly invoked as

² See, in particular, Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books Inc., 1983) and 'Objectivity and Social Meaning', in his *Thinking Politically: Essays in Political Theory* (New Haven: Yale University Press, 2007), pp. 38-52.

a feasibility constraint: insofar as political theorists are interested in developing proposals with a realistic possibility of being realized they must attend to public opinion, since popular attitudes are a significant determinant of what is politically achievable in a democratic system. I endorse the feasibility argument in principle, whilst emphasizing the challenges involved in actually pursuing this model of the relationship between political theory and public opinion. Thus I suggest that some of the research agendas identified in the recent theoretical literature on feasibility are overly ambitious. For example, empirical evidence suggests that the political and policy impact of popular attitudes is complex, in ways that political theorists have tended not to recognize.

The thesis focuses in greater depth on two potential justifications for seeking a closer engagement between political theory and public opinion that raise interesting deeper theoretical problems. First, I argue that the democratic argument for giving weight to popular attitudes, whilst apparently straightforward, is misconceived as it has been presented in the existing literature. Specifically, I reject the idea that political theorists should democratize their practice by restraining their normative principles in light of evidence about public attitudes. Rather than representing a more democratic vision of political theory, this approach raises new problems about the status of political theory within a democracy and ultimately rests on a flawed conception of democratic legitimacy. Secondly, I explore what it would mean for public opinion to constitute or determine the demands of justice and I ask whether this is a convincing account of the status of public opinion. This account, if it is to be distinct from the epistemic and democratic arguments, unavoidably implicates political theorists in meta-ethical questions. Specifically, this view is most plausibly understood as a member of the broader family of ‘idealizing response-dependent’ theories of moral value. The fundamental challenge for such an account is to reconcile the critical role of political theory in relation to prevailing beliefs and practices with the claim that public attitudes fix the demands of justice. I trace

some strategies employed by Miller and Walzer in an effort to effect this reconciliation, but argue that they are ultimately unsuccessful.

1. Motivation and contribution to the literature

The project is motivated in part by my personal experience of opinion research meeting ideas from political theory, and reflecting on the practical challenges and deeper theoretical questions that such encounters raise.³ My interest in the question of the relationship between political theory and public opinion has also been stimulated by Jonathan Wolff and Avner de-Shalit's work, in which they seek to give popular attitudes a central role in the development of a theory of disadvantage. Whilst I am sympathetic to the motivation behind this project, I suggest that they leave some difficult questions unanswered: about why exactly political theorists should care about public opinion and how they should deal with the methodological difficulties involved in seeking to engage public opinion on the terrain of normative political theory.

The thesis seeks to build on the existing literature in three main ways. First, I address the relatively small body of research that has directly explored the central question that concerns me: what is the role of public opinion in normative political theory? I draw on Swift's framework, in which he identifies four main potential justifications for integrating political theory more closely with the study of public opinion: epistemic, feasibility and democratic grounds and the stronger claim that public opinion is constitutive of fundamental moral ideals.⁴ However, I argue that we need a more differentiated account of the role of public opinion than is currently offered, in at least two ways. First, I highlight the interconnections

³ I started thinking about these questions whilst working for a research agency. In particular, I was struck by the challenges facing colleagues involved in a project exploring public beliefs about capabilities. Amongst other issues, they were grappling with the problem of clearly conveying the idea of capabilities and the distinction between capability and functioning.

⁴ See Adam Swift, 'Public Opinion and Political Philosophy: The Relation between Social-Scientific and Philosophical Analyses of Distributive Justice,' *Ethical Theory and Moral Practice*, 2 (1999), pp. 337-363. In my close reading of *Disadvantage* I identify two further justifications.

between the status of public opinion and questions about research design and methods, which are underexplored in the existing literature. Secondly, where the current debate focuses in a general way on the role of popular attitudes in theorizing about social justice, I offer some ideas about how the contribution of public opinion depends on the nature of the problem at stake.⁵ Thus a central message of the thesis is that there can be no unified answer to the question of the role of public opinion in political theory. Rather, the picture is complex in three important, and interconnected, ways: why we care about public opinion; how we go about investigating it; and what kind of problem we are trying to solve.

Secondly, the thesis speaks to wider debates about method and approach in analytical political theory and, in particular, to the growing demands for greater ‘realism’ in political theory. A closer engagement with public opinion has seemed, to some, to offer an important route to a more realistic vision of political theory.⁶ I interrogate this view by outlining two distinct, and conflicting, visions of how to remake the relationship between political theory and real politics, in which public opinion is implicated in very different ways.

The third, and most important, way in which the thesis seeks to build on the existing literature is by bringing together bodies of research that have engaged related issues, but developed largely in isolation from one another. For example, practitioners of opinion research have long debated the democratic character of their discipline, with renewed interest in this question with the growth of various forms of deliberative research.⁷ Experimental philosophers puzzle over the status of ‘folk intuitions’.⁸ Political scientists are developing increasingly sophisticated

⁵ Particularly in chapters 3 and 4. The argument of part III is more general in form.

⁶ See, for example, David Miller, ‘Political Philosophy for Earthlings’, in David Leopold and Marc Stears, eds., *Political Theory: Methods and Approaches*, (Oxford: Oxford University Press, 2008), pp. 29-48.

⁷ See, for example, Michael A. Genovese and Matthew J. Streb, eds., *Polls and Politics: The Dilemmas of Democracy* (Albany, NY: State University of New York Press, 2004)

⁸ See, for example, Joshua Knobe and Shaun Nichols, eds., *Experimental Philosophy* (Oxford: Oxford University Press, 2008)

methods to test the responsiveness of politics and policy-making to public attitudes.⁹ Each of these debates is relevant to the political theorist who is interested in whether, why and how they should take account of public opinion. To address the question of the role of public opinion in political theory, I argue that we must look outwards, beyond disciplinary boundaries, in two directions. First, we should turn to empirical studies in the fields of public opinion research, political science and moral and political psychology. These disciplines are more than simply a source of raw data, or a way of finding out *what* people think. Empirical data about how people think, and how what they think influences politics, also bear, in a fundamental way, on the power of the four central justifications for engaging with public opinion. Secondly, the question of the status of public opinion in political theory is bound up with meta-ethical debates about the nature of moral values. Whilst political theorists have often been quick to applaud a closer engagement with social scientific evidence, there is greater reluctance to recognize the way in which debates about method and approach can implicate political theory in meta-ethical questions. Thus much of the work of this thesis involves establishing fruitful connections between bodies of academic research that have been divided by disciplinary boundaries and by their distinct conceptual landscapes.

2. What is public opinion?

Any account of the contribution of public opinion to political theory must come to terms with the elusive notion of public opinion. This concept is contested along multiple dimensions. For example, does 'public opinion' refer solely to the outputs of representative surveys, or also to the findings of qualitative research, or rather to mechanisms of political expression such as lobbying, petitions and protests? Does it concern expressed attitudes, or patterns of behaviour? Should we build quality criteria into the concept, using it, for example, to refer only to relatively reflective and informed views? Is there something problematic about the concept

⁹ A helpful overview is Paul Burstein, 'The Impact of Public Opinion on Public Policy: A Review and an Agenda', *Political Research Quarterly*, 56 (2003), pp. 29-40.

of public opinion itself?¹⁰ For example, does it falsely imply a consensual view among citizens? Perhaps most thorny of all is the question of the 'public in public opinion.'¹¹ What is it about the holder, the subject matter or the domain of action or expression, that makes opinion 'public'? There is an important tradition of critique that maintains that many purported studies of public opinion have, in fact, lost sight of the 'public'. For example, Sanders contends that 'survey research discourages the public, visible, and face-to-face generation of opinion. Public opinion researchers who use surveys paradoxically seek the opinions of citizens in private, non-political situations.'¹² Critics also object to the aggregative nature of much opinion research, in which the expressed views of isolated individuals are given equal weight. In a forceful early statement of this position, Blumer maintained that real public opinion emerges through the interaction of groups wielding unequal political power: 'the formation and expression of public opinion giving rise to effective public opinion is not an action of a population of disparate individuals having equal weight but is a function of a structured society, differentiated into a network of different kinds of groups and individuals having differential weight and influence and occupying different strategic positions.'¹³

The focus of this cluster of objections concerning the missing 'public' is the close identification of the concept of public opinion with the methodology of the representative sample survey: the view that "public opinion is what opinion polls try to measure," or "what they measure with modest error."¹⁴ Whilst it is true that 'Poll results and public opinion are terms that are

¹⁰ Slavko Splichal, *Public Opinion: Developments and Controversies in the Twentieth Century* (Lanham: Rowman & Littlefield Publishers Inc, 1999), p. 2.

¹¹ Andrew J. Perrin and Katherine McFarland, 'Social Theory and Public Opinion', *Annual Review of Sociology*, 37 (2011), pp. 87-107, at p. 89.

¹² Lynn M. Sanders, 'Democratic Politics and Survey Research', *Philosophy of the Social Sciences*, 29 (1999), pp. 248-80, at p. 248

¹³ Herbert Blumer, 'Public Opinion and Public Opinion Polling', *American Sociological Review*, 13 (1948), pp. 542-549, at p. 547.

¹⁴ Phillip Converse, 'Changing Conceptions of Public Opinion in the Political Process', *Public Opinion Quarterly*, 51 (1987), S12-S24, at S14.

used almost synonymously'¹⁵, this thesis resists identifying the concept of public opinion with any particular method of investigation. Rather, I draw on evidence from a range of approaches, including in-depth qualitative interviews, behavioural experiments, observational research and deliberative exercises. To the extent that these methods involve more public and interactive expressions of views, or more naturalistic settings, they answer some of the concerns that allegedly keep survey research from qualifying 'as a genuine form of public expression.'¹⁶ But there is also much that practitioners of standard surveys can say in response to the charge that they do not recognize the 'public' in opinion. Even if the survey experience itself is private, perhaps the results of polls can contribute to conversations among democratic citizens and between citizens and their representatives? As Converse notes, one of the bases on which Blumer contends that polling does not capture genuine *public* opinion – that the opinions expressed in response to surveys have no political significance – no longer holds. For better or worse, powerful political actors pay close attention to various measures of mass opinion.

The primary function of 'public' in this thesis, and in the wider literature on the role of public opinion in political theory, is to mark a distinction between citizens as a whole and the narrower community of political theorists. For what reasons, if any, should political theorists look beyond their own professional community and give a more systematic role to the views of their fellow citizens at large? I wish to be similarly open about the 'opinion' in public opinion, admitting intuitions as well as more reflective and considered beliefs.¹⁷ Thus rather than being settled conceptually, questions such as the priority of particular research methodologies and the political significance of mass opinion are treated instead as substantive issues to be engaged in the course of the thesis. For example, I discuss how political scientists are using

¹⁵ Benjamin Ginsberg, *The Captive Public: How Mass Opinion Promotes State Power* (New York: Basic Books, 1986), p. 60. Cited in George F. Bishop, *The Illusion of Public Opinion: Fact and Artifact in American Public Opinion Polls* (Lanham, Rowman & Littlefield Publishers Inc, 2005), p. 6.

¹⁶ Sanders, 'Democratic Politics', p. 249.

¹⁷ On this distinction see Shelly Kagan, 'Thinking about Cases', *Social Philosophy and Policy*, 18 (2001), pp. 44-63.

survey results to test the claim that the course of politics and policy-making is dominated by organized interest groups rather than mass opinion.

Motivating many of the objections that are cast in terms of ‘the loss of the public in opinion research’¹⁸ is the view that participating in surveys is an inadequate expression of democratic citizenship, or that survey research serves to undermine democratic politics. For example, Peters contends that ‘Public opinion research makes the public a demographic segment or data set rather than a realm of action. Citizens do not themselves produce public opinion today; it must be generated through the machinery of polling. The power to constitute the public space, then, falls into the hands of the experts, not of the citizens.’¹⁹ In this form, the objection relates specifically to the democratic aspirations of survey practitioners and will be revisited in Part II. I also want to avoid specifying the concept of public opinion too narrowly because some of the arguments I advance are quite general, and do not depend on the specific way in which public opinion is conceptualized or operationalized. In particular, I argue that Miller’s project to give popular attitudes, as measured through experimental studies and surveys, a deep role in theorizing about social justice faces the same challenge as Walzer’s appeal to ‘social meanings’ – although the latter idea is concerned less with expressed views and more with the commitments implicit in our social and political practices.

3. Is public opinion an illusion?

Whether citizens have the skills, knowledge and motivation to meet the demands of democratic citizenship is one of the oldest questions in political philosophy. In the pre-polling era, Lippman launched a forceful attack on the idea of government according to the will of the people, which ‘rests upon the beliefs that there is a public which directs the course of events. I

¹⁸ Sanders, ‘Democratic Politics’, p. 264.

¹⁹ John Peters, ‘Historical tensions in the concept of public opinion’, in Theodore L. Glasser and Charles Salmon, eds., *Public Opinion and the Communication of Consent* (New York: The Guildford Press, 1995), pp. 3-32, at p. 20

hold that this public is a mere phantom. It is an abstraction.’²⁰ Since the advent of survey research, this stance has been fuelled by extensive evidence of the instability and fragility of public attitudes. In the 1970s, Converse famously introduced the term ‘non-attitudes’, to describe the apparently random responses of a significant proportion of survey participants. Drawing on longitudinal data, he concluded that ‘large proportions of an electorate do not have meaningful beliefs, even on issues that have formed the basis for intense controversy among elites for substantial periods of time.’²¹ Instead Converse conjectured that respondents create attitudes in order to fulfil the social expectation within the interview situation that they express a view.

Over the last fifty years researchers have built on Converse’s work, consistently uncovering low levels of political knowledge and high levels of instability in expressed views over time. A significant proportion of citizens are willing to offer views on obscure political issues, about which they are highly unlikely to have any knowledge, and even on wholly fictitious matters. For example, in one well-known experiment, around a third of U.S. respondents offered a view about whether the fictitious 1975 ‘Public Affairs Act’ should be repealed. Over a fifth expressed an opinion about the non-existent 1995 ‘Social Security Reform Act.’²² Seemingly trivial and irrelevant modifications to the way in which issues or events are presented, including minor changes to question wording or order, can induce significant differences in responses.²³ Different views are elicited, depending on which subset of potentially relevant considerations are used to frame the political problem at stake. Famous cases here include whether the choice to permit a Klu Klux Klan rally is framed in terms of free speech or public

²⁰ Walter Lippman, *The Phantom Public* (New Brunswick, New Jersey: Transaction Publishers, 2009), p. 67.

²¹ Philip E. Converse, ‘The Nature of Belief Systems in Mass Publics’, in David E. Apter, ed., *Ideology and Discontent* (New York: Free Press, 1964), pp. 206-261, at p. 245. Converse coined the term ‘non-attitudes’ in 1970.

²² See Bishop, *The Illusion of Public Opinion*, pp. 30-32.

²³ For a classic account, see Howard Schuman and Stanley Presser, *Questions and Answers in Attitude Surveys: Experiments on Question Form, Wording and Context* (New York: Academic Press, 1981)

safety and whether respondents are faced with the choice to 'forbid' or 'not allow' a disliked political figure to give a speech. In the face of this accumulated evidence, some have concluded that public opinion is essentially an illusion; an artificial creation of opinion researchers, the media and political elites.²⁴

To understand what this implies for the political theorist who is interested in engaging in a serious way with evidence about public opinion, we should distinguish three, progressively stronger, forms of the charge that public opinion is illusory. Some accounts highlight the crude and misleading way in which the results of opinion research are often reported in the mass media. This pervasive misrepresentation of public opinion has important implications for how we think about the overall impact of the expansion of opinion research on the quality of democracy. However, the fact that media reports of survey results often create a misleading picture of a firmly opinionated public need not undermine the project of integrating public opinion and political theory. Rather, it suggests that political theorists should be cautious when selecting and evaluating secondary data sources. A second critique maintains that the illusion is created at deeper level: not merely by inaccurate media reporting, but by the practice of opinion research itself. Here critics have argued that standard polling techniques systematically misrepresent underlying public opinion in a variety of ways: studies often fail to measure what they intend to measure, or they measure different things for different respondents rendering overall results impossible to interpret. Forced choices and the practice of interviewers discouraging 'don't know' and 'no opinion' responses exacerbate the problem of opinion creation, as does the use of phrases such as 'as you may know' or 'as you may have

²⁴ See for example Bishop, *The Illusion of Public Opinion*, p. Xvi. The charge that public opinion is an artefact or illusion has stood for a complex bundle of claims, normative as well as empirical. For example, Bourdieu famously claimed that 'public opinion does not exist'. See his 'Public Opinion Does Not Exist', in Armand Matelart and Seth Siegelau, eds., *Communication and Class Struggle* (New York: International General, 1979). Bourdieu's critique, whilst drawing on empirical claims about citizens' lack of political knowledge, is primarily a normative one concerned with the way in which polling serves elite interests: masking social and political inequalities and reinforcing existing power relations by giving a false impression that all opinions count equally. I focus here on the empirically driven version of the non-attitudes critique, rather than these alleged dangers of the practices of opinion research.

heard' to introduce questions.²⁵ In response to these problems, researchers are engaging in experimental studies, varying their methodology in an effort to isolate underlying opinions from the influence of contingent features of the environment, interviewer and question construction. The routine inclusion of filtering questions for levels of political knowledge has been advocated, to screen out those with little engagement with an issue.²⁶ Others have turned away from standard polling techniques towards various forms of deliberative research, in which participants are provided with further information or exposed to competing points of view on the issue at hand.

The most radical form of the non-attitudes critique maintains that these increasingly sophisticated approaches to investigating public opinion are futile, since most people simply do not have meaningful political views. Insofar as political theorists give evidence about 'public opinion' a central place in their work they merely help, on this account, to perpetuate an illusion. Even the strongest critics of public opinion, however, acknowledge that polls have typically been highly successful in predicting election results. At least these minimal declarations of voting intentions seem to be genuine and meaningful. Moreover, it is unclear how much weight we should give to widely cited evidence of citizens' lack of political knowledge; some of these questions 'amount to little more than trivia quizzes. Others put a heavy premium upon knowledge of proper names and numbers that are of questionable value to ordinary citizens.'²⁷ But the most important issue in dealing with the charge that public opinion is illusory is the apparent pervasiveness of framing effects: the impact on expressed

²⁵ For a number of examples see Bishop, *The Illusion of Public Opinion*, pp. 9-13

²⁶ Respondents are often unwilling to admit they have no opinion unless they are explicitly offered the opportunity to do so. Research shows that 'no opinion' responses on many political issues are increased by 20-30% by including a filter question such as 'Do you have an opinion on this or not?' – see Bishop, *The Illusion of Public Opinion*, p. 23. An alternative proposal is to include an indicator of the robustness of opinion alongside the results, for example Yankelovich's 'mushiness index'. See Daniel Yankelovich, *Coming to Public Judgement: Making Democracy Work in a Complex World* (New York: Syracuse University Press, 1991), pp. 34-37.

²⁷ Benjamin I. Page and Robert Y. Shapiro, *The Rational Public: Fifty Years of Trends in Americans' Policy Preferences* (Chicago: University of Chicago Press, 1992), p. 12.

attitudes of the specific terms in which an issue, event or problem is characterized. These results have seemed fatal to some; suggesting that so-called 'public opinion' is in fact the result of arbitrary factors or the product of elite manipulation.

Studies of framing have been heavily influenced by Kahneman and Tversky's classic experiment, which showed that participants are likely to favour a risk-averse response to a disease outbreak when the policy is described in terms of the number of people who will be *saved*. When an identical choice is framed in terms of the numbers who will *die*, participants tend towards the risk-seeking strategy.²⁸ In other words, alternative framings lead people to construct significantly different responses to the same issue, seemingly undermining the notion of a genuine 'public opinion'. However, further research suggests that 'equivalency framing' effects, in which people respond differently to logically identical choices, occur only under quite specific circumstances and are not widespread in politics. For example, such effects are reduced or even disappear when respondents have more strongly held views or personal involvement in an issue, when the specific probabilities are changed or when the policies are identified with political parties. Moreover, one study found that when the 'Asian disease' experiment was described to respondents as a 'statistical research' problem, rather than a 'medical research' problem, no framing effects were apparent.²⁹

²⁸ Specifically, participants are presented with two possible responses to the 'outbreak of an unusual Asian disease, which is expected to kill 600 people.' They are told that: if Program A is adopted 200 people will be saved (or 400 people will die); if Program B is adopted, there is a 1/3 probability that 600 people will be saved (or nobody will die), and a 2/3 probability that no people will be saved (or 600 people will die). See Amos Tversky and Daniel Kahneman, 'The framing of decisions and the psychology of choice', *Science*, 211 (1981), pp. 453–458.

²⁹ Herbert Bless, Tilmann Betsch and Axel Franzen, 'Framing the framing effect: the impact of context cues on solutions to the "Asian disease" problem', *European Journal of Social Psychology*, 28 (1998), pp. 287–291.

Far more politically significant, indeed pervasive, are ‘emphasis framing effects’³⁰, in which ‘by emphasizing a subset of potentially relevant considerations, a speaker can lead individuals to focus on these considerations when constructing their opinions.’³¹ However, again a closer look at the data does not support the sweeping conclusion that citizens generally lack meaningful attitudes. There is growing evidence of the complexity of emphasis framing effects, in particular the extent to which they are mediated by the credibility of the source of the frame, respondents’ level of information³² and political predispositions, whether they have engaged in deliberation³³ and the presence of competing frames.³⁴ These findings challenge the pessimistic view that framing effects work through a subconscious process, in which people automatically reach for the most accessible or top of mind considerations. Rather than being subconsciously pulled from one direction to another, ‘Citizens appear to consciously weigh the considerations suggested by elite frames, compare these considerations to their predispositions and information, and contemplate about the source of the frame. This all suggests that citizens deal with elite frames in a relatively competent and well-reasoned manner.’³⁵

³⁰ For the distinction between equivalency framing effects and emphasis framing effects see James N. Druckman, ‘The Implications of Framing Effects for Citizen Competence’, *Political Behaviour*, 23 (2001), pp. 225-256.

³¹ Ibid, p. 230.

³² Here the evidence is mixed. In some cases, less informed respondents are more susceptible to framing effects. In other cases, political information seems to increase framing effects – challenging the straightforward interpretation of framing as evidence of arbitrary preferences or vulnerability to manipulation.

³³ See Vincent Price and Eun-Kyung Na, ‘Citizen Deliberation and Resistance to Framing Effects’, Paper presented at the annual meeting of the American Association for Public Opinion Research, Portland, Oregon (2000). Deliberation was found to reduce framing effects on some issues, but not others. See also James N. Druckman and Kjersten R. Nelson, ‘Framing and Deliberation: How Citizens’ Conversations Limit Elite Influence’, *American Journal of Political Science*, 47 (2003), pp. 729-745.

³⁴ On the reduction of framing effects in the presence of competing frames, see Paul M. Sniderman and Sean M. Theriault, ‘The Structure of Political Argument and the Logic of Issue Framing’, in Willem E. Saris and Paul M. Sniderman, eds., *Studies in Public Opinion: Attitudes, Nonattitudes, Measurement Error and Change* (Princeton, NJ: Princeton University Press, 2004), pp. 133–165. For the distinction between these five mediators of framing effects see Druckman, ‘The Implications of Framing Effects’, pp. 241-245.

³⁵ Ibid, p. 246.

Alongside this more positive reading of the implications of framing effects, another important response to evidence of the fragility of individual opinions emphasizes the orderly properties of public opinion as a *collective* phenomenon. On this account, 'there need be no conflict between the bleak survey findings about individuals and [a] much more benign view of collective public opinion. Even though individuals may often hold only weak and poorly informed opinions, subject to measurement error and random change due to new information, there can still exist a stable, meaningful public opinion based on the central underlying tendencies of individuals' opinions.'³⁶ Note, however, that although Page and Shapiro emphasize the distinctive characteristics of public opinion as a collective phenomenon, they also rely on the claim that *individuals* hold stable long-term views, underlying short-term fluctuations in expressed attitudes. Thus again public opinion, even at the individual level, although fragile and difficult to gauge, is not wholly illusory.

The overall message from recent research is that, although public attitudes are often ill-informed, unstable and vulnerable to framing effects, these patterns are complex in a way that does not support any generalized rejection of public opinion as meaningless, an artefact or 'phantom'. Rather than fundamentally undermining any serious attempt to integrate political theory with public opinion, I treat the extensive debates to which the 'non-attitudes' challenge has given rise as setting some important agendas and questions for that project. For example, there is evidence that the robustness of public attitudes and their vulnerability to different kinds of framing effects differ by issue: 'as a general proposition, it can be argued that the greater the ambiguity of the subject matter of a question, the more likely that responses to it will be influenced by such question-design features and data-collection methods. And, conversely, the more familiar, specific, and concrete the subject of the question, the less

³⁶ Page and Shapiro, *The Rational Public*, p. 26.

susceptible responses are likely to be to these influences.’³⁷ This highlights the need to explore the features of the issues and choices on which public opinion is more robust, and to consider what this implies for the terrain on which political theorists should seek to engage with public opinion. Another key message of the literature on ‘non-attitudes’ that I return to at several points concerns the fact that people often hold conflicting political views, particularly at different levels of generality. For example, it has been argued that many Americans are ‘philosophically conservative and operationally liberal’³⁸: affirming libertarian principles, whilst declaring strong support for specific government programmes. I will show that such complex patterns shape how we should think about and approach the task of connecting normative political theory with the study of public opinion.

4. Thesis outline

Part I explores in depth Wolff and de-Shalit’s study of disadvantage, considering it as a potential model for the integration of political theory with public opinion research. I identify three main difficulties with their account: ambiguity about the status of public opinion; methodological issues with the design and conduct of their interviews; and unanswered questions concerning the picture of realism implicit in their account. These three lines of critique set the agenda for the thesis, highlighting some difficult questions that must be addressed if we are to develop a theoretically and empirically more satisfactory account of the role of public opinion in normative political theory.

Wolff and de-Shalit offer the idea of ‘public reflective equilibrium’ as an overarching account of their approach.³⁹ **Chapter 2** suggests that in fact six distinct justifications for giving weight to public opinion emerge at various points in their text. By shifting between these different

³⁷ Bishop, *The Illusion of Public Opinion*, p. 17. In chapter 3, I distinguish between the characteristics of familiarity and concreteness, arguing for a productive engagement with specific, but unfamiliar cases.

³⁸ Benjamin I. Page and Lawrence R. Jacobs, *Class War: What Americans Really Think about Economic Inequality* (Chicago: University of Chicago Press, 2009), p. 3.

³⁹ Wolff and de-Shalit, *Disadvantage*, pp. 41-43.

arguments, they avoid confronting difficult questions about how deep their commitment to public opinion can really go, whilst seeming to lend greater force to the claim that it plays a central role in their theory. By distinguishing these different roles, I develop a map of the diverse grounds on which political theorists might want, or need, to take account of public attitudes.

The aim of **chapter 3** is twofold: to explore the methodological issues facing political theorists who seek a role for public opinion in their work and to make good on the suggestion that popular attitudes represent a valuable epistemic resource. I show that distinctive challenges arise when we try to engage public opinion on the terrain of ideas and concepts from political theory, whose meaning and status in everyday thought and discourse are often uncertain. In light of these difficulties, chapter 3 urges political theorists to confront a choice between top-down and bottom-up approaches to the investigation of popular attitudes. On the first approach, the engagement is driven by political theorists' own conceptual frameworks. This involves refining our research instruments to ensure that participants express their views in a way that respects key theoretical assumptions and distinctions. In particular, I suggest that public responses to unfamiliar cases, which have been carefully constructed to test rival normative principles, represent an important input on the 'considered judgements' side of the process of reflective equilibrium. In contrast, bottom-up approaches begin from respondents' own perspectives, allowing them a significant role in shaping the terms of the debate. This offers a deeper engagement with participants' own languages and experiences, but at the cost of losing some conceptual clarity; we may be unable to 'translate' our findings back into theoretical terms. Here, and in contrast to the first approach, it is the familiarity of the issues and their centrality to participants' own lives that gives public opinion its epistemic value. Each of these models has particular strengths and limitations and the choice should be guided by the aims of our inquiry.

Chapter 4 shows how my concern with public opinion fits into, and generates new perspectives on, recent debates about the meaning and value of realism in political theory. I argue that we can helpfully distinguish two key strands in recent realist thought, which I term the detachment and displacement critiques of normative political theory. Detachment realists claim that political theory is excessively abstract and infeasible and thereby fails adequately to inform actual political decision-making. Displacement critics, on the other hand, suggest that political theory threatens or disrespects real democratic politics. Not only are these visions of realism very different, there are also important tensions between them. Most importantly, from the perspective of this project, they suggest very different accounts of the place of public opinion. From the displacement perspective, the question is whether a closer engagement with public opinion can provide a corrective to political theory's alleged anti-democratic tendencies. From the detachment perspective, public opinion is crucial as a mediator of political feasibility. I interrogate this idea both theoretically (what do we mean by feasibility in political theory and what does this imply for the status of public opinion?) and empirically (what does empirical evidence tell us about the extent to which popular attitudes shape politics and policy-making?). I endorse the feasibility argument as a plausible theoretical account of the status of public opinion in normative political theory. At the same time, however, I emphasize some under-recognized challenges involved in actually pursuing this project and conclude that the growing literature on the concept of feasibility introduces its own problems of infeasibility.

Part II considers in greater depth the democratic case for a closer engagement between political theory and public opinion. It thereby also further explores and evaluates the displacement realist critique outlined in chapter 4. **Chapter 5** discusses how Klosko and Bertram, as well as Wolff and de-Shalit, use public opinion in an attempt to democratize political theory. These projects all exemplify a problematic model of the relationship between

political theory and public opinion that I term ‘democratic restraint’. On this approach, political theorists moderate their ideas in response to evidence about public opinion, in order to enhance the democratic legitimacy of their principles. This model falls prey to what is otherwise a misplaced objection to normative political theory advanced by displacement critics: that political theory seeks to pre-empt democratic politics.

Chapter 6 locates the problem with the democratic restraint model in its flawed underlying conception of democratic legitimacy: this model mistakenly treats democratic legitimacy as a matter of tracking citizens’ preferences, rather than honouring their decisions.⁴⁰ I then discuss the wider issues this critique raises for the democratic potential of opinion research. From the earliest days of opinion research, many practitioners have seen their discipline as a tool for enhancing democracy. Chapter 6 argues that in rejecting a preference-tracking view of democratic legitimacy we do not necessarily undermine the democratic aspirations of opinion researchers. However, I outline a number of conditions that opinion research must fulfil, if such research is potentially to serve a democratic purpose.

Part III further explores the idea of a constitutive role for public opinion in political theory. In particular, I evaluate the claim that when public opinion, under certain conditions or suitably corrected, holds that X is just, this *makes it the case* that X is just. Such an account, I argue, is best understood as a member of the broader family of idealizing response-dependent theories of moral value. Thus one objective of Part III is to situate the question of the status of public opinion in political theory more firmly in the context of contemporary meta-ethical debates.

The first aim of **chapter 7** is interpretive. I explore the status that Miller and Walzer accord to popular attitudes and ‘social meanings’ respectively in theorizing about social justice. I highlight the complexity of the role that public opinion plays in both of their accounts, in

⁴⁰ I take this distinction between two views of democratic legitimacy from David Estlund. See David M. Estlund, *Democratic Authority: A Philosophical Framework* (Princeton, NJ: Princeton University Press, 2009), pp. 76-78.

particular the uncertain relationship between three central commitments in Miller's work: fidelity to public opinion, feasibility and contextual pluralism. I then consider how both theorists seek to reconcile the critical purpose of a theory of justice with a deep role for public opinion. Walzer claims that the varied social meanings that constitute justice coexist with a universal 'thin' morality and he moralizes the idea of social meaning itself. More promising, I suggest, is Miller's account of the ways in which we must 'work up' public opinion, in particular his distinction between people's specific judgments and their more fundamental underlying principles. If we are committed to public opinion, surely what should count are people's deepest commitments not their more superficial beliefs?

Chapter 8 argues that Miller's initially appealing move to base justice on the general principles that structure popular attitudes is empirically problematic. Specifically, I consider recent research in moral psychology into the phenomenon of 'motivated moral reasoning'. This evidence undermines any general move to locate real public opinion in supposedly fundamental principles, rather than more concrete judgements. Secondly, chapter 8 uses this empirical evidence to intervene in an exchange between Enoch and Sobel, about whether idealizing response-dependent theories of moral value are subject to a fundamental tension.⁴¹ Can such theories fulfil their initial promise to combine the appeal of subjectivist and objectivist accounts? I argue that Sobel's defence of idealization is correct in principle. However, given a more empirically informed picture of the shape of public attitudes, Sobel's argument does not deliver what the response-dependent account needs.

The **conclusion** uses a case study of popular attitudes towards inheritance tax to review and illustrate my arguments about each of the four main potential justifications for engaging with popular attitudes. I also reiterate two wider messages of the thesis: the need for a

⁴¹ David Enoch, 'Why Idealize?', *Ethics*, 115 (2005), pp. 759-787; David Sobel, 'Subjectivism and Idealization', *Ethics*, 119 (2009), pp. 336-352.

differentiated account of the role of public opinion; and the importance of approaching the question of the role of public opinion in an interdisciplinary way.

Chapter 2 The Status of Public Opinion in Normative Political Theory: A Critical Study of *Disadvantage*

1. Introduction

Chapter 2 uses a critical reading of Wolff and de-Shalit's *Disadvantage* to highlight some central issues about the relationship between political theory and public opinion and to introduce ideas that will be developed over the course of the thesis. Wolff and de-Shalit's research is a helpful starting point for my project for two reasons. First, they argue for a closer engagement between political theory and public opinion research and also put this approach into practice in their study of disadvantage. Secondly, their interest in public opinion is bound up with a commitment to a more realistic and policy-oriented form of theorizing.

The chapter proceeds in two main parts. In section 2, I introduce the main elements of Wolff and de-Shalit's theory of disadvantage, and the picture of the aims and methods of political theory that underlies it. Section 3 focuses on the justification for according public opinion a central role in this project – highlighting the diverse ways in which Wolff and de-Shalit defend their empirically-based approach. I explore the idea of 'public reflective equilibrium' as an overarching account of their method and suggest that, in fact, six distinct roles for public opinion emerge at various points in the text. Of these roles, four are particularly important and map onto the framework developed by Swift. Should we take account of public opinion in order to democratize the practice of political theory? Does evidence about popular attitudes represent a valuable epistemic resource for political theorists? Does engaging with public opinion offer a more realistic approach to political theory – for example, an approach that is more attuned to issues of political feasibility? Most fundamentally, does public opinion constitute or determine the moral and political ideals with which political theorists are concerned? In this way, the discussion of *Disadvantage* provides a framework for the

remainder of the thesis, which further evaluates these very different ways of defending the integration of political theory with public opinion research.

2. Developing a theory of disadvantage

Wolff and de-Shalit seek to develop a theory of disadvantage that meets two conditions. First, it should fulfil a realism constraint: ‘it must provide a realistic and practically applicable account of what it is to be well-off or badly-off – advantaged or disadvantaged. Therefore it should be able to reflect the intuitive judgements we make about who in society is well-off or badly-off, at least to the extent that this is properly a matter of government or social concern. Similarly it should also enable us to provide an account of when a disadvantage has been rectified’.¹ Secondly, a theory of disadvantage must address the ‘indexing problem’, or be capable of identifying who the least advantaged groups in society are. Wolff and de-Shalit argue that only a pluralist theory can meet the first requirement of realism. Monist theories (i.e. theories that reduce all forms of disadvantage to a single dimension) lack any principled objection to remedying all forms of disadvantage with cash and are therefore committed to an intuitively implausible ‘compensation paradigm’. Pluralist theories, in contrast, face a difficulty about how to compare and weight individuals’ levels of disadvantage across different dimensions. Thus the two criteria for a theory of disadvantage with which Wolff and de-Shalit start – the requirement of realism and the need for an index of disadvantage – appear to point in different directions. They address this tension by emphasizing that disadvantage tends to cluster: even if we think that different spheres of disadvantage are not fully commensurable, we can still identify the *least* advantaged, since they are badly off across multiple domains. Thus, they argue, government policy should be directed towards de-clustering disadvantage. In other words, we should aim for a society in which it is no longer easy to identify who the worst-off are, because we have broken the link between different dimensions of disadvantage.

¹ Jonathan Wolff and Avner de-Shalit, *Disadvantage* (Oxford: Oxford University Press, 2007), p. 21.

Wolff and de-Shalit work within a capability framework, building on Nussbaum's account of central functionings. As well as adding four substantive categories to Nussbaum's list,² they emphasize the experience of risk as an important component of disadvantage. Thus they argue that disadvantage should be understood in terms of 'lack of genuine opportunities for secure functionings'³ across fifteen areas. As part of the process of refining Nussbaum's account, Wolff and de-Shalit conducted a series of in-depth interviews with individuals with personal experience of disadvantage and professionals working with disadvantaged groups. They also draw on a range of secondary data about the nature and effects of poverty and disadvantage.

We can view Wolff and de-Shalit's project from two perspectives. First, it offers a substantive account of the nature of disadvantage in contemporary western societies. For example, they make a strong case for considering the distinctive role of risk, illustrating how people in disadvantaged circumstances often have to jeopardize some functionings in order to secure their wellbeing in other domains. They also highlight how disadvantage clusters, and draw out some implications of this fact of clustering for theory and policy. Secondly, and most importantly for my purposes, we can see *Disadvantage* as offering a particular model of how, and why, to do political theory: an approach that emphasizes policy-relevance and the value of engaging with empirical evidence. Thus as well as contributing to substantive debates about inequality, *Disadvantage* is part of a disciplinary conversation about the aims and methods of political theory. The next section reflects further on the complex role that public opinion plays in Wolff and de-Shalit's project, viewed from this second perspective.

3. The status of public opinion

Wolff and de-Shalit argue that, whilst public opinion should be subject to critical scrutiny, 'people's intuitions, claims, and theories should be a fundamental point of input for a political

² Three categories (plus one dummy category) were added prior to the interviews and one in response to participants' views about the importance of being able to communicate in the local language.

³ Wolff and de-Shalit, *Disadvantage*, p. 182.

philosophy of democracy which seeks policy change.’⁴ They suggest a number of different ways in which evidence about public opinion contributes to their theory of disadvantage. However, there is a lack of systematic reflection on these different roles for public opinion, the relationships between them, and the implications of each for the type of evidence about public opinion that we should seek.

3.1. The method of public reflective equilibrium: a constitutive role for public opinion?

When characterizing their method, analytical political theorists often appeal to the idea of ‘reflective equilibrium’; a process in which we work back and forth between our normative principles and considered judgments about particular cases, revising them in order to develop the firmest possible system of mutual support between them.⁵ Wolff and de-Shalit argue for an alternative model of ‘public reflective equilibrium’, in which the theorist incorporates not only her own principles and considered judgements about particular cases, but also popular theories and judgements:

‘In a nutshell, the idea is that instead of using the well known ‘reflective equilibrium’ technique alone – trying to balance a particular philosopher’s theory and intuition – we brought these interviewees into the process. Accordingly we did more than simply learn about people’s attitudes and views. Instead, we consulted our interviewees about our views and we learnt from them. In this process we revised and modified our theory according to the theories and intuitions expressed by the interviewees.’⁶

This account of public reflective equilibrium contrasts with a view such as Daniels’, on which reflective equilibrium is an essentially personal process - involving an attempted reconciliation

⁴ Ibid, p. 43.

⁵ The idea of reflective equilibrium originated with Rawls. See his ‘Outline of a Decision Procedure for Ethics’, *The Philosophical Review*, 60 (1951), pp. 177-97; ‘The Independence of Moral Theory’, *Proceedings and Addresses of the American Philosophical Association*, 48 (1974-5), pp. 5-22, at pp. 7-9; *A Theory of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 1999), pp. 17-19, pp. 42-5 and pp. 507-8. See also Norman Daniels, ‘Reflective equilibrium in theory and practice’ and ‘Wide reflective equilibrium and theory acceptance in ethics’ in his *Justice and Justification: Reflective Equilibrium in Theory and Practice* (Cambridge: Cambridge University Press, 1996), pp. 1-17 and pp. 21-46.

⁶ Wolff and de-Shalit, *Disadvantage*, p. 12.

between an individual's own judgements and principled commitments. On the latter view, it is only afterwards that we might look for possible convergence between individual equilibria.⁷

The method of public reflective equilibrium seems to give public opinion a fundamental role in the justification of Wolff and de-Shalit's account of disadvantage. However, further work is needed to unpack this deceptively simple idea and to clarify precisely what kind of status it accords to public opinion. Wolff and de-Shalit are concerned to distinguish their approach from the idea of 'contextual reflective equilibrium', which they detect in Walzer's work. In Walzer's model, they suggest, the intuitions are those of the philosopher and the 'community's intellectuals', while theories are those of the philosopher alone. In contrast, in public reflective equilibrium, 'the theories considered are also those of the public, as well as the philosopher.'⁸ However, it is unclear how the process of public reflective equilibrium actually works, with these four sets of variables in play. For example, do we first try to integrate the theories of both the public and the political theorist, before weighing them against the combination of their considered judgements? Or should we undertake a process of reflective equilibrium within public opinion, before weighing public opinion against the theorist's own convictions? There is also a more fundamental question about whether public opinion, across many areas of inquiry in political theory, involves anything as structured as a 'theory'. Without an answer to these questions, public reflective equilibrium stands for a broad intention to take public opinion more seriously, rather than a more concrete method. We should also consider the extent to which this theoretical account of their approach captures how, in practice, Wolff and de-Shalit conduct their empirical research and employ its findings. Chapter 3 will suggest that

⁷ Daniels considers, and rejects, an alternative method on which we admit into the set of initial considered moral judgements only those on which there is widespread public agreement. He concludes that this would be to seek agreement too early in the process: it 'may shift, in too crude a fashion (losing too many possibilities), the intermediate conclusion of my procedure into the position of methodologically unwarranted starting points.' – see his 'Wide reflective equilibrium', p. 40. It is less clear in what senses reflective equilibrium is an individual or a collective process (or state) for Rawls. See chapter 3 for further discussion.

⁸ Wolff and de-Shalit, *Disadvantage*, p. 42.

Wolff and de-Shalit's description of the method of public reflective equilibrium suggests more openness and a greater symmetry to the research encounter than is actually realized.

Further factors complicate the task of interpreting and evaluating the kind of role for public opinion that is implied by the method of public reflective equilibrium. Consistent with their desire to speak to an audience outside of academic political theory, Wolff and de-Shalit's work is constructive rather than critical in focus. However, this makes it difficult to situate their approach in relation to existing debates about the role of public opinion. In particular, it would be useful to understand how they see the relationship between their account of public reflective equilibrium and Miller's argument that the role of a theory of social justice is to render popular views about justice consistent and coherent: that 'a theory of justice brings out the deep structure of a set of everyday beliefs that, on the surface, are to some degree ambiguous, confused, and contradictory.'⁹ The situation is further complicated by the fact that, where this prior debate about the role of public opinion has taken place largely on the terrain of social justice, Wolff and de-Shalit are concerned instead with the notion of disadvantage. This leaves a difficult question about the relationship between these ideas and what this implies for the respective roles of popular attitudes.

Moreover, Wolff and de-Shalit seek a role for public opinion in relation to several different questions about disadvantage itself. Their interviews focus primarily on the question of the *nature of disadvantage*. Here it is plausible that public opinion plays a deep role, because disadvantage seems to be an inherently social notion: what means to be badly off in a particular society is at least partly dependent on what the members of that society regard as disadvantageous. There are close parallels here with the concept of poverty, which many have argued should be understood in consensual terms, as an enforced lack of *socially perceived*

⁹ Miller, *Principles of Social Justice*, p. 51.

necessities.¹⁰ However, the weight of popular views seems to lessen when we move to the question of *what the government should do* to address disadvantage. Here a lack of empirical knowledge and experience of the policy-making process are more serious objections to according public opinion a fundamental role. It is therefore telling that, in practice, Wolff and de-Shalit appear to draw less heavily on their interview findings in relation to questions about government action. Thus, where they present public reflective equilibrium as an overarching account of their method, a unified view of the role of public opinion seems implausible when we consider the range of different questions that Wolff and de-Shalit's research seeks to address. This points, more generally, to an important question about how the status of public opinion might shift with the subject matter or aims of political theory.

In discussing the status of public opinion, I have thus far referred somewhat vaguely to evidence about popular attitudes playing a deep or a fundamental role. What, more precisely, does this mean? Swift draws a helpful contrast between the idea that public opinion provides 'food for thought', or an epistemic resource for political theorists, and the stronger claim that popular views are constitutive of the substantive content of ideals such as justice.¹¹ In other words, the view that public opinion helps us better to track the opinion-independent normative facts should be distinguished from the claim that it grounds or fixes those facts. Against the latter view, Swift objects that 'it seems impossible to see how, as a matter of basic moral epistemology, the correctness of a fundamental moral judgment could depend on other people's beliefs as to its correctness.'¹² In other words, isn't it implausible that the truth of fundamental moral ideals could be determined by the contingent content of public opinion? However, this is perhaps too quick, since there is a significant family of meta-ethical views that do make nuanced versions of that claim. Specifically, theorists of response-dependence claim

¹⁰ Joanna Mack and Stuart Lansley, *Poor Britain* (London: George Allen and Unwin, 1985), p. 39.

¹¹ Adam Swift, 'Social Justice: Why Does it Matter What the People Think?', in Daniel Bell and Avner de-Shalit eds., *Forms of Justice: Critical Perspectives on David Miller's Political Philosophy* (Lanham: Rowman & Littlefield Publishers, 2003), pp. 13-28.

¹² *Ibid*, p. 26.

that moral qualities are constituted by the disposition to give rise to specific responses in appropriate agents under particular conditions.¹³ Thus in order to assess how deep the commitment to public opinion should go – and specifically whether there is a plausible way of making sense of the claim that public attitudes constitute fundamental political ideals – we should situate this question more firmly in the context of parallel meta-ethical debates.

3.2. Democratic legitimacy

The idea that there is a democratic underpinning to the concern with public opinion is a strong theme throughout *Disadvantage*. However, this view is never fully developed, nor is it clearly distinguished from a range of other suggested reasons for attending more closely to popular attitudes. For example, in the following passage Wolff and de-Shalit move from a claim about the role of public opinion in correcting biases in the views of academics to an assertion that we should engage with public opinion for reasons of democratic legitimacy:

‘Of course academics in this area hardly aspire to the ‘pure’. Nevertheless their own life experience typically gives little reliable insight into the nature of disadvantage. Hence, as a matter of general reassurance, and, perhaps, to correct unnoticed bias, there seems an important need to validate the list perhaps by means of a cross-check with more empirical forms of enquiry: consultation with people from a wide variety of walks of life, analysis of surveys, and the like. Indeed engaging in these more empirical forms of research will allow us to achieve what we referred to in the Introduction as ‘dynamic public reflective equilibrium’ using both philosophical theory and public consultation to arrive at more democratically supported, and therefore, in some sense, legitimate, view.’¹⁴

It is important to see that the two arguments for engaging with public opinion that are closely linked here can come apart. We might think that there are legitimacy-based grounds for taking account of popular attitudes, even if we are convinced that these views are mistaken.¹⁵

¹³ For example, Mark Johnson, ‘Dispositional Theories of Value’, *Proceedings of the Aristotelian Society*, Supplementary Volume 63 (1989), pp. 139-74; John McDowell, ‘Values and Secondary Qualities’, in Geoffrey Sayre-McCord, ed., *Essays on Moral Realism* (Ithaca: Cornell University Press, 1988), pp. 166-80.

¹⁴ Wolff and de-Shalit, *Disadvantage*, p. 41.

¹⁵ Adam Swift, ‘Public Opinion and Political Philosophy: The Relation Between Social-Scientific and Philosophical Analyses of Distributive Justice’, *Ethical Theory and Moral Practice*, 2 (1999), pp. 337-63, at pp. 352-5.

Alternatively, we might see epistemic reasons to engage with public opinion, even if we are unconcerned with questions of democratic legitimacy, or unconvinced that drawing on popular views represents a more democratic way of proceeding.

What then of the suggestion that there is a distinctively democratic case for engaging with public opinion? Whatever else we think about the value of public opinion in political theory, surely a theory that reflects the views of a wide range of citizens is more democratic than an account based on the commitments of an individual political theorist? This deceptively simple idea in fact implicates us in some difficult theoretical problems. Specifically, in order to base a closer engagement between political theory and public opinion on the value of democratic legitimacy we need an account of the nature of that value and the conditions under which it is realized. This, in turn, directs our attention to questions of method: who must be involved and on what terms for a research exercise to claim democratic weight? These questions will be pursued in part II.

3.3. The epistemic value of public opinion

The third possible interpretation of the method of public reflective equilibrium is in epistemic terms. On this account, theorists should draw on public attitudes to try to get closer to the independently correct answers to their theoretical problems. This view, I have suggested, should be kept distinct both from the stronger constitutive account, on which public attitudes are prior to the right answers, and from the attempt to ground the role of public opinion in the value of democratic legitimacy. Wolff and de-Shalit sometimes characterize public opinion as an epistemic resource – a tool that enhances our knowledge of the opinion-independent truth about disadvantage. However, at other points they seem to imply that the project of truth-seeking in political theory is misguided or futile and we should strive *instead* for legitimacy or for practical relevance. For example, they argue that:

‘we are not, at this point, looking for a definition of the least advantaged in the sense of a philosophical analysis. Rather we want to offer a philosophically grounded mechanism which provides confidence in the judgement that a group is among the least advantaged, for it may seem obvious that there is no one ‘true’ answer. As children we may have asked: what is worse, being blind or being deaf? To such questions we do not expect that there is a metaphysically true answer. Despite this, many people are in no doubt about the correct answer. And it may be that there is something to be gained by comparing such answers, for it may turn out that there is some sort of broad consensus. *Whether or not this consensus implies anything about the ultimate truth of that answer, it could help to initiate and legitimize policies.*’¹⁶

Thus, there is some uncertainty about whether legitimacy displaces truth-seeking as the goal of Wolff and de-Shalit’s empirically informed approach. However, to the extent that they do appeal to public opinion as an epistemic resource, the main way in which Wolff and de-Shalit develop this argument is in terms of ‘bias correction’. For example, they note that ‘Imaginative though they are, philosophers are an unusual sociological and psychological group, and we can hardly expect their concerns, and still less their intuitions, to be representative, at least without further investigation. Therefore these discussions, we hope, corrected biases in our own concerns and perspectives.’¹⁷ We might object here that egalitarian political philosophers interviewing, for example social workers, will not necessarily produce more ‘representative’ views. Wolff and de-Shalit’s focus on engaging the views of ‘experts’ in disadvantage seems appropriate if they want to explore the nature of the experience of disadvantage, the forms it takes and what it means for people’s lives. On the other hand, the idea of using public opinion specifically to challenge the biases of political philosophers, or to gather a more ‘representative’ set of views, suggests that they should interview a wide cross-section of people, or perhaps even choose participants whose perspectives are likely to differ from their own. This is another example of the more general point that an account of the role of public opinion in political theory must address the interconnections between the status of public opinion and the research design and methods.

¹⁶ Wolff and de-Shalit, *Disadvantage*, p. 98.

¹⁷ *Ibid*, p. 12.

However, Wolff and de-Shalit's general point that reflecting on evidence about public opinion may alert political theorists to ways in which their agendas or beliefs have been shaped by their particular social, economic or cultural backgrounds is surely correct. Chapter 3 will build on this suggestion about the epistemic value of public opinion. One important question to be addressed concerns whether the inputs of the political theorist and of evidence about public opinion (when viewed in epistemic terms) are identical, or whether they differ – either in terms of their weight or the type of ideas or evidence they contribute. Wolff and de-Shalit's general characterization of the method of public reflective equilibrium, in which we balance the theorist's principles and considered judgements against the principles and judgements of the wider public, suggests a symmetrical view. However, their description of the epistemic role of public opinion in terms of bias correction implies that the theorist's contribution is prior to that of popular attitudes, with the latter playing a useful cautionary role. Similarly, in Swift's 'food for thought' description, public opinion is a helpful input – an imaginative resource for theorists to draw on – but does not seem to play an essential role in theory building. In order to pursue these questions about the nature of the epistemic contribution of public opinion, it is important to consider how the value of public opinion might turn on the kind of issue at stake. Perhaps there are questions in relation to which public opinion represents more than 'food for thought' or a check on potential bias, and others in which even these relatively weak claims overstate the epistemic value of public opinion?

3.4. A realistic approach

Wolff and de-Shalit are critical of the level of abstraction at which many contemporary political theorists have engaged with issues of equality and social justice and of their tendency to reach for hypothetical examples, rather than tackling more complex real world cases. The result, they feel, is that 'political philosophy, and especially now egalitarian political philosophy, has

seemed oddly disengaged from the real world.’¹⁸ *Disadvantage* is an attempt to model an alternative approach, in which the theorist seeks to ‘maintain contact with empirical reality, and its complexities, throughout.’¹⁹ This, they hope, will enable political theorists to speak more directly to real world political debates and to the policy-making process in particular. In this way, Wolff and de-Shalit’s interest in public opinion is closely linked to a broader aim to exemplify a more realistic approach to political theory. They are not alone in seeing public opinion as central to the issue of the relationship between political theory and real world politics. For example, Swift notes that ‘It is frustrating, and to some extent humiliating, to sit in seminars run by think-tanks or government agencies and have brought home to one the chasm that exists between the world of cutting-edge journal articles about justice and the real world of practical politics, *a large part of which is due to the gap between political philosophy and public opinion.*’²⁰

Is a disconnect with popular attitudes the source of a more general (and problematic?) divide between political theory and real world politics? If so, how can we use evidence about public opinion to close this gap? One central way of understanding the demand for greater realism in political theory is in terms of political feasibility. From this perspective, political theorists should engage with evidence about public opinion in order to fashion ideas that might command support, and thus have the potential to be implemented, in the real world. For example, Wolff and de-Shalit suggest such a feasibility role for public opinion when they describe their aim as to ‘fashion a version of egalitarian theory that is responsive to the

¹⁸ Ibid, p. 111.

¹⁹ Ibid, p. 3.

²⁰ Swift, ‘Social Justice’, p. 19. Emphasis added.

concerns of a wide range of individuals, and *thereby has some chance of gaining their allegiance.*²¹

However, to the extent that their interest in popular attitudes is driven by a concern with political feasibility, Wolff and de-Shalit face a number of further questions. For example, the feasibility rationale has important implications for *whose* opinion we seek: rather than understanding ‘what the people think’, perhaps we need to know what those with political power *think* that the people think, or will tolerate?²² Thus the focus on engaging the views and perspectives of disadvantaged people, whilst understandable if our aim is to understand experiences of disadvantage, is less obvious if our concern is instead to tailor our theory to what is politically achievable. The feasibility case for engaging with public attitudes also raises issues of political strategy and framing, concerning how meaningful or convincing people find alternative ways of presenting or defending political ideals or proposals. Wolff and de-Shalit bring to the fore questions of political persuasion when they argue that we should be looking for a theory that ‘reflects the actual philosophical needs of the public, of people who seek to convince others by appealing to practical issues, and not necessarily the philosophical needs of the philosopher, who convinces colleagues by appealing to consistency and simplicity.’²³ Here they acknowledge that the forms of argument that are most powerful in the philosophical domain may not be the same techniques that are most effective in real world political contestation. However, in practice Wolff and de-Shalit do not seem to be centrally concerned

²¹ Wolff and de-Shalit, *Disadvantage*, p. 12. This statement seems to suggest a concern with feasibility, which is the interpretation I adopt here. However, we might also plausibly read this as a claim about legitimacy.

²² See Converse’s claim that ‘It goes without saying that the political impact of public opinion data would be quite muffled indeed if politicians themselves gave such data no credence.’ Phillip Converse, ‘Changing Conceptions of Public Opinion in the Political Process’, *Public Opinion Quarterly*, 51 (1987), S12-S24, at S16.

²³ Wolff and de-Shalit, *Disadvantage*, p. 43. This passage is suggestive of the kind of vision of political theory put forward by James Tully, in which theorists should be concerned with ‘the concrete struggles, negotiations, and implementations of citizens who experiment with modifying the practices of governance on the ground’. See James Tully, ‘Political Philosophy as a Critical Activity’, *Political Theory*, 30 (2002), pp. 533-55, at p. 535.

with the persuasiveness of the presentation of their ideas. For example, they do not modify the terms in which the key capabilities are characterized when Nussbaum's language fails to resonate with participants.²⁴ Thus taking seriously Wolff and de-Shalit's emphasis on the strategic needs of the public and political activists would require a reorientation of their research practice. These questions, about whose opinion counts and the importance of framing, are just two among several issues that point to the complexity of the connections between public opinion and political feasibility. Thus if we are to rest the commitment to public opinion on grounds of political feasibility, political theorists must engage with some neglected empirical issues.

3.5. Addressing stigma

Wolff and de-Shalit draw on evidence about public opinion in part to address what they identify as the potentially stigmatizing nature of their project. Specifically, they argue that the participation of disadvantaged people themselves in the task of identifying the least advantaged group in society ameliorates the potentially 'stigmatizing, pitying and patronizing overtones of such an idea.'²⁵ One way of understanding this argument is in terms of the negative impact on people of being identified as disadvantaged – and the potential to alleviate these effects by involving (some of) them in the process of determining what counts as disadvantage. Alternatively, we might understand the argument in less consequentialist terms: perhaps it is disrespectful to identify people as disadvantaged without consulting them on the propriety of that label, independently of the effects on them of being so labelled.²⁶ In this way,

²⁴ For example, they retain the term 'bodily integrity', despite noting that participants fail to connect with this language – see Wolff and de-Shalit, *Disadvantage*, p. 53.

²⁵ *Ibid*, p. 88.

²⁶ I thank Adam Swift for drawing my attention to the distinction between these two interpretations of the anti-stigma argument. There is a further issue about whether the anti-stigma argument rests on the fact of participation, or on a claim about how involving disadvantaged people shapes the content of their theory. Wolff and de-Shalit do not seek to show that listening to the views of disadvantaged people enabled them to remove particular stigmatizing elements from their account of disadvantage, perhaps pointing to the former interpretation.

Wolff and de-Shalit's broad claim that participation has the power to de-stigmatize their project requires further development.

There is a sense in which this fifth role for public opinion is particular to the nature of Wolff and de-Shalit's project – specifically that it involves the labelling of particular groups. However, the anti-stigma argument also serves to highlight some more general issues about the relationship between political theory and public opinion research. In particular, it again points to the interconnections between the status of public opinion and questions of research methodology, since the force of the anti-stigma argument must depend in part on the nature of the research: on who was involved and on what terms. Moreover, it is important to design and conduct research such that the interview encounter itself does not feel stigmatizing or humiliating to individual participants.

3.6. Intrinsic value of participation

The final justification that Wolff and de-Shalit offer for the empirical element of their study concerns the intrinsic value to interviewees of participating in the research process. They emphasize that 'we did not regard it as a process whereby we, the scholars, learnt the attitudes of the people. Instead, we addressed this as an exercise in joint learning, in which both sides learn from the other – ourselves from the interviewees and the interviewees from us. In particular, many learnt a new way of thinking about their roles and responsibilities or about their situation as disadvantaged people.'²⁷ This is a different sort of claim to the arguments outlined above. Rather than highlighting the benefits that drawing on public opinion affords their theory, it concerns the positive effects on participants of an encounter with ideas from political theory.

This argument raises some interesting questions about how people respond and relate to ideas from political theory. In particular, does an introduction to political theory have the power to

²⁷ Wolff and de-Shalit, *Disadvantage*, p. 12

shape how people think about their own political lives?²⁸ Again, however, the force of this claim turns on the way in which the interviews are conducted and participants' experiences of the research process. In the absence of any examples of how respondents rethought their roles or situations in response to the research encounter, and with little verbatim data to draw on, it is difficult to assess this claim.

4. Conclusion

Wolff and de-Shalit offer several plausible justifications for political theorists to engage more closely with evidence about public opinion. Of these, four arguments potentially have wide significance for the practice of political theory and merit further independent exploration. Thus the remaining parts of the thesis reflect on the suggestion that evidence about public opinion is a valuable epistemic resource for political theorists; provides a way of making good on the aspiration for greater realism in political theory; represents a means of democratizing political theory; or determines fundamental moral and political ideals.

This chapter has suggested that the lack of clarity in Wolff and de-Shalit's work about why public opinion matters is particularly problematic, because the status of public opinion is interconnected with questions of empirical research methodology. Thus although these distinct ways of justifying the integration of political theory with public opinion research are not necessarily incompatible, they call for different forms of evidence. They also place different demands on public opinion; they differ with respect to the characteristics that public opinion must exhibit in order for the argument to go through. For example, the feasibility argument turns only on whether public opinion is politically efficacious, not on whether it is normatively appealing. In contrast, the epistemic case directs our attention towards issues

²⁸ On this question, see Avner de-Shalit, 'Political Philosophy and Empowering Citizens', *Political Studies*, 52 (2004), pp. 802-18.

about the quality of public opinion. Moreover, the plausibility of alternative justifications for engaging with popular attitudes is bound up with the nature of the issue at stake.

Thus as well as evaluating the force of the four main arguments for giving weight to public opinion, subsequent chapters seek to make good on the suggestion of a more differentiated account of the role of public opinion in normative political theory. I begin this task in chapter 3, where I reflect further both on the epistemic argument and on the methodological challenges involved in employing evidence about public opinion in political theory. In response to these difficulties, I propose two fruitful ways of pursuing the integration of public opinion research with political theory on epistemic grounds.

Chapter 3 Methodological Considerations for Political Theorists

1. Introduction

Chapter 3 explores the methodological challenges and choices facing political theorists who seek to engage with evidence about public opinion. I highlight the issues that arise when we endeavour to bring public opinion to bear on ideas and principles from political theory, whose purchase on everyday thought and discourse about politics is often limited or uncertain. Political theorists frequently see crucial distinctions where no consistent lines are marked in popular thought, for example between the values of justice and humanity or between questions of desirability and feasibility. Theoretical debates are typically conducted in terms much more abstract than those in which people formulate their political views. In light of this divide, political theorists face an important choice about how they approach the study of public opinion: Do they seek to devise sophisticated research instruments that enable, and constrain, philosophically untrained participants to express their views within established theoretical frameworks? Or do they instead sacrifice philosophical clarity and rigour in order to start from participants' own experiences and discourses?

Chapter 3 considers this methodological problem in the context of the epistemic case for engaging with popular attitudes. Thus the aim of the chapter is twofold: as well as reflecting at greater length on the methodological issues facing attempts to integrate normative theory with the empirical investigation of public attitudes, I also seek to make good on the suggestion that (in some forms) evidence about public attitudes constitutes an important epistemic resource for political theory. I argue that both top-down and bottom-up approaches to the study of public opinion are valuable from an epistemic perspective, but that they involve very different methodologies and political theorists should distinguish sharply between them. First, if we are serious about reflective equilibrium as an approach to justification, we should also take seriously public responses to thought experiments about concrete cases that are carefully

constructed to test alternative normative principles.¹ On this approach, it is in part the unfamiliar nature of the examples that gives public opinion its epistemic significance. Secondly, political theorists can productively engage with empirical research that starts from participants' own lives and terms of reference. This kind of evidence can be particularly valuable as a source of research agendas and alternative framings for problems in political theory. Thus chapter 3 presents an argument for regarding the wider public, in limited cases, as moral experts – or, at least, as relatively *more* expert than the narrower community of political theorists. In the first form, this is because public opinion better answers the demand of the method of reflective equilibrium for judgements about particular cases that are untainted by wider principled commitments. In the second case, public opinion is privileged because of the proximity of (some sections of) the public to the phenomena with which political theorists are concerned. Both of these approaches utilize the strengths of public opinion whilst mitigating its weaknesses. Thus rather than treating the contributions of philosophy and public opinion as symmetrical, political theorists should draw on public opinion in ways that capture its distinctive value.

1.1. Chapter Outline

The chapter proceeds in two main parts. First, I discuss Wolff and de-Shalit's approach to the investigation of views about disadvantage in order to highlight the methodological challenges involved in integrating opinion research with political theory. Specifically, I identify a tension running through their study, between a top-down and a bottom-up approach to the study of popular attitudes. Section 3 offers some positive ideas about how to proceed in the face of this

¹ Note that in discussing the epistemic role of public opinion within reflective equilibrium, I treat reflective equilibrium as a truth-tracking, not a truth-making procedure. Cf. Norman Daniels, 'Wide reflective equilibrium and theory acceptance in ethics' in his *Justice and Justification: Reflective Equilibrium in Theory and Practice* (Cambridge: Cambridge University Press, 1996), pp. 21-46, at p. 35.

tension. I sketch, with examples, two contrasting methods of engaging with public opinion that I suggest are particularly fruitful from an epistemic perspective.²

2. Investigating public views about capabilities

‘Few deny that a theory of political philosophy should relate to real cases and be relevant to real life. We seek a methodology for achieving this aim. To do this, it should also arise from practice. *The best way to do so would be to start with the general public, activists and individuals who are engaged in moral reasoning and political activism and their dilemmas, alongside the theory and reasoning of the political philosopher.*’³

Wolff and de-Shalit argue that political theory should build out of the standpoints of the public and political activists, as well as from the theoretical commitments of the philosopher. This chapter will ultimately affirm this suggestion. However, rather than seeking to begin *both* from the perspectives and needs of the public and from their own theoretical frameworks, as suggested here, I will argue that political theorists must make a *choice* between theory-driven and participant-driven approaches to engaging with public opinion.⁴ By failing clearly to identify and confront this choice, Wolff and de-Shalit’s research results in an unhappy compromise, in which neither of these approaches is adequately realized. The research does not engage as deeply as it might have done with participants’ lived experiences: to develop a rich picture of what, in reality, it means to be disadvantaged. However, nor are the key theoretical concepts and distinctions conveyed clearly enough for participants to respond consistently within the parameters set by the capabilities framework.

² My discussion does not take a stand on whether political theorists should engage in primary empirical research, or instead utilize secondary public opinion data. Thus the arguments presented here are intended to speak both to the methodological choices political theorists must make in the course of investigating public opinion, and to how they employ existing data.

³ Jonathan Wolff and Avner de-Shalit, *Disadvantage* (Oxford: Oxford University Press, 2007), p. 43. Emphasis added.

⁴ There is a sense in which we might usefully combine bottom-up and top-down approaches, as different activities or stages within a single research project. This is a suggestion commonly made about how to carry out mixed methods research: using qualitative methods as a first stage to frame a problem and generate hypotheses, then employing quantitative research to test the hypotheses. My argument does not rule out such a staged approach – only the possibility of try to realize at once a theory driven and a participant driven approach.

2.1. A participant driven approach?

The interviews for Wolff and de-Shalit's study were conducted in two main parts. First, participants were asked for their unprompted views about 'the basic categories for essential functionings'. Secondly, they were presented with a modified version of Nussbaum's list of key capabilities, with the following instruction:

'Dear Sir/Madam,

Below is a list of 14 categories in one's life, which might seem vital for any person's flourishing. They can be described as things which one would like to do or be. Please go through them and comment on them. In particular we would like to know how you would consider failing to achieve each of them.'⁵

Wolff and de-Shalit claim that 'we were open to be influenced by the interviewees, we were not assuming particular conceptions and understandings of these concepts; rather we wanted to reach full understanding on both sides – interviewer and interviewee.'⁶ This description of their approach suggests significant openness to the research encounter and a willingness to rethink their ideas in response to alternative views from participants. However, this perspective is not carried through in Wolff and de-Shalit's research practice. The important theoretical commitments are made *before* they engage with public opinion, and they are unwilling to disrupt their framework in significant ways. For example, they express concern about instances in which participants trespass on the theoretical boundary between capabilities and apparently more resourcist ideas, such as housing, clothing or education. If we were to adopt a more participant-driven approach, we might instead see these responses as reason to reconsider the value of a resource-based account of disadvantage, or to question the importance of the resource-capability distinction.

It is not simply the general form of the capabilities framework that Wolff and de-Shalit are committed to preserving. They also appear resolved to stay close to the specific capability

⁵ Wolff and de-Shalit, *Disadvantage*, p. 190.

⁶ *Ibid*, p. 44.

dimensions and terminology of their modified version of Nussbaum's list. The most significant change to their theory is the introduction of an additional category of functioning, in response to the emphasis that some participants placed on the importance of being able to communicate, including being able to speak the dominant local language. More typically, Wolff and de-Shalit seek to fit the empirical data into their pre-existing theoretical categories, rather than reorganising or reframing their theory in response to participants' views. For example, they discuss how respondents' emphasis on a 'home', although not explicitly included in their list, is nevertheless adequately reflected within the existing categories:

'[Respondents] concern for housing, for example, seems to go beyond 'adequate shelter' included under the head of 'bodily health' but neither is it captured by the idea of 'private property' included under 'control over the environment'. Rather, for most interviewees, the salient idea is a 'home' rather than shelter or property. Arguably, this is best understood in terms of 'control over one's environment.''⁷

In other words, respondents' idea of a home is broken down into various parts, each of which is allocated into one of Wolff and de-Shalit's pre-existing categories. In this way, Wolff and de-Shalit are willing to take significant interpretive steps to redescribe participants' responses and accommodate them within their prior theory. Education provides another example of this approach. Participants strongly affirmed education as a key capability, lack of which constitutes an important disadvantage. However, Wolff and de-Shalit acknowledge that participants' understandings of education were not always well captured by Nussbaum's idea of 'sense, imagination and thought'; education was often valued in a more instrumental way, as a means to employment and social and political participation. They suggest, however, that these perspectives on education 'could be seen as a concern for affiliation and control over the environment'⁸ and are therefore already reflected in their capability list. There is a danger here that by treating ideas such as 'control over the environment' as elastic categories,

⁷ Ibid, p. 105.

⁸ Ibid, p. 106.

capable of absorbing a wide range of ideas that were originally expressed in very different terms, we lose the nuances of respondents' views.

This distancing from the form in which participants express their views is also problematic in light of Wolff and de-Shalit's concern with the issue of substitutability between capability dimensions. In one account of their project, they suggest that 'The particular form that the resulting pluralist view [of capabilities] should take can be developed by considering when substitute goods are, and are not, acceptable to remedy a loss or shortfall. Some substitutions are likely to be better than others and this should allow us to cluster different goods into groups or dimensions of advantage or disadvantage.'⁹ However, if the aim is to develop a list of key capabilities that are substitutable within, but not between, categories, we should not be so quick to disaggregate participants' responses and reallocate them across multiple categories. Moreover, the concern with the question of substitutability does not seem to be captured in the research exercise *as it was presented to participants*. Participants were asked to weigh the importance of different capabilities and to judge whether anything important was missing. However, there is no indication that they were directed to consider whether the elements within a single capability category are more substitutable than cross-category items. Thus it is not clear that Wolff and de-Shalit can legitimately interpret their empirical findings as affirming a particular way of dividing the capabilities that implies substitutability within, but not between, categories.

The limited extent to which participants' views and experiences shape Wolff and de-Shalit's theory is further evident in their treatment of the issue of stigma. The risk of stigmatizing recipients of welfare benefits has been explored by Wolff in previous research, and is again emphasized in *Disadvantage*.¹⁰ Given that they deliberately select participants who have direct

⁹ Ibid, p. 84

¹⁰ See Jonathan Wolff, 'Fairness, Respect and the Egalitarian Ethos', *Philosophy and Public Affairs*, 27 (1998), pp. 97-122.

experience of disadvantage and have used a range of welfare services, it is perhaps surprising that Wolff and de-Shalit do not take the opportunity to investigate whether and how their respondents have experienced this kind of shame or stigma. Similarly, they do not explore the role of risk in disadvantage, another of their key theoretical contributions, with participants. Thus again we have a sense that Wolff and de-Shalit's main theoretical commitments and innovations are prior to, and not vulnerable to challenge from, their empirical findings.

2.2. A theory driven approach: communicating the capabilities framework

I have suggested that the way in which Wolff and de-Shalit characterise their approach to the study of popular attitudes suggests a degree of openness that is not reflected in their research practice. However, the observation that they start from, and hold firm to, their capabilities framework is not necessarily a criticism. After all, any research exercise must start somewhere and Wolff and de-Shalit may have good reasons for their commitment to the capabilities perspective. However, this leads to a new set of challenges concerning how to convey this unfamiliar theoretical idea to participants and to ensure that their responses respect the key commitments of the capabilities framework.

Wolff and de-Shalit report that, although many participants offered strong views about the proposed capabilities list, some were unable or unwilling to engage with this task and 'for these the interview took a less structured turn.'¹¹ It is useful to distinguish two kinds of difficulty that can arise when, as in this case, people are asked for their views about abstract and unfamiliar issues. The first, and most straightforward, problem occurs when participants cannot understand, or they misinterpret, unfamiliar or technical terms and phrases. It may only be a chance comment that reveals that these kinds of misunderstandings are at work. For example, a participant in another study of public views about capabilities remarked, in response to the idea of 'equality before the law': 'Equality before the law I think nothing

¹¹ Wolff and de-Shalit, *Disadvantage*, p. 50.

should come before the law, it should always be first'.¹² The obvious response to this kind of issue is for interviewers and interview materials to use clear and non-technical language. Wolff and de-Shalit describe how they edited Nussbaum's list before presenting it to participants, simplifying some of the categories. However, there are some ways in which they might have gone further to ensure that the language used to describe the capability dimensions was accessible to participants. For example, the 'social bases of self-respect' is a semi-technical term that might better be elaborated in terms of more familiar ideas of self-confidence and the feeling that one is living a good or worthwhile life.

However, substituting complex or technical terminology with more everyday language leaves a second and deeper problem concerning the difficulty of conveying unfamiliar ideas in a research setting. In other words, the challenges involved in integrating political theory with public opinion research arise not only because the language of political theory is sometimes unfamiliar to outsiders, but also because political theory has its own conceptual landscape. In particular, political theorists often want to mark key theoretical distinctions where no clear or stable lines exist in popular thought. In order to illustrate the challenges this creates, I will briefly discuss three areas in which difficulties arise for Wolff and de-Shalit around the communication of theoretically important ideas and distinctions.

Capabilities versus functionings

It is essential to the theory of capabilities that capability, as an opportunity concept, is distinguished from functioning, as an outcome-based idea. In the theoretical part of their work, Wolff and de-Shalit discuss the complexities involved in moving from an account of disadvantage based around achieved functionings to one concerned with capabilities. However, there is little reflection on how they will deal with the distinction between the ideas

¹² Ipsos MORI, *Consulting for a Capability List: Research study conducted by Ipsos MORI for the Equalities Review* (Yorkshire: Communities and Local Government publications, 2007), p. 47.

of capability and functioning in their research practice. Should we expect this distinction to make intuitive sense to participants? How can we tell when participants' responses are driven by their views about capabilities and when they are based on attitudes towards functionings? What do we do if it becomes apparent that participants are blurring this philosophically important distinction?

Consistent with the generally top-down character of their approach, Wolff and de-Shalit treat the fact that participants do not draw a sharp distinction between capabilities and functionings as a problem or failing, rather than as food for thought. For example, they observe confusion between capabilities and functionings in responses to the idea of involvement in politics: '[this] cannot be essential, it was said, as many people have no interest in politics. This may be true but brings out the difficulty of conveying the options properly in the interview setting. For the proper contrast would be, not those who take no interest in politics, but those who are not permitted to take an interest in politics. This, no doubt, would be much more troubling.'¹³ Unfortunately, however, Wolff and de-Shalit do not always frame the discussion in such a way that a clear distinction between capabilities and functionings is communicated to participants. For example, the direction to consider 'things one would like to do or be' (not things one would like *to be able* to do or be) seems to encourage participants to think in terms of functionings. Moreover, although the individual capability dimensions are framed mainly in opportunity terms, at times more outcome-focussed language is used. For example, respondents are asked to reflect on the importance of 'Understanding the law. Having a general comprehension of the law, its demands, and the opportunities it offers to individuals. Not standing perplexed before the legal system.' This might reflect a deeper theoretical issue, rather than simply an issue of research design. In particular, there seem to be some important dimensions of well-being that cannot easily be expressed in capability terms, not simply

¹³ Wolff and de-Shalit, *Disadvantage*, p. 57.

because the language needed to do this is clumsy, but rather because they are essentially outcome focussed ideas. For example, as part of the capability of ‘affiliation’ Wolff and de-Shalit include ‘Not being discriminated against on the basis of gender, religion, race, ethnicity and the like.’¹⁴ This seems right: what we want is not to be discriminated against, not merely to have the opportunity not to be discriminated against. More generally, some dimensions of well-being that concern how others treat us, and some aspects of understanding – such as not being perplexed before the law – do not seem to fit into capability terms. This observation suggests a further role for empirical research in political theory: when we seek to operationalize our ideas, this can help to force theoretical problems or ambiguities into the open.¹⁵

It is perhaps unsurprising then that participants sometimes slide between opportunity and outcome-based ideas, probably without recognizing the distinction. In order to mitigate this blurring of the lines between capabilities and functionings the terms of the discussion would need to be much more tightly controlled. For example, interviewers could begin by explaining the distinction between opportunities and outcomes, and emphasizing their interest in what people should have the *chance* to do, not what they actually choose to do. They could also call to participants’ attention instances in which they appear to be appealing to beliefs about outcomes rather than opportunities, and ask them to clarify their views in light of this distinction. This should go some way towards mitigating the problem of confusion between capabilities and functionings. However, such an approach is also likely to bring its own costs; conversations will be more stilted and respondents may feel frustrated or even threatened when challenged in this way. This speaks to the wider point that both theory-driven and participant-driven methods have their own drawbacks and limitations, as well as distinctive advantages.

¹⁴ Ibid, p. 191.

¹⁵ I thank Adam Swift for this point. See section ‘Definition versus measurement’ for further discussion.

The nature of disadvantage versus the justification of government action

A parallel set of difficulties arises around the distinction between the question of the relative importance of different capabilities within an account of disadvantage and the issue of priorities for government action. When participants were asked to 'name what they thought the basic categories for essential functionings',¹⁶ it is not clear whether a distinction was made between these two questions. In the absence of such direction, it seems likely that responses will reflect a mixture of views: both beliefs about what people need to lead good or fulfilling lives and ideas about how far government can, and should, go to ensure that we all enjoy these capabilities. After they had given their views about the modified version of Nussbaum's list, participants were given a further task: 'to name the three most important categories among their new list, and to say whether there were areas in which the government should spend more than it currently does, whether there were areas in which the government should spend less, and why. We also asked them whether the showcard failed to mention any category they found important.'¹⁷ This account moves very quickly from the question of which capabilities are most important, to the question of priority areas for government spending, without explaining whether and how this distinction was conveyed to participants.

At a theoretical level, there are several distinct components of an all-things-considered view about what the government should do to support capabilities: not only the relative importance of different capabilities, but also trade-offs between capabilities and other values and feasibility considerations. For example, we might regard family relationships as a crucial area of functioning, but see principled reasons for government to limit its interventions in this domain. We might think that there are efficiency reasons for government to increase its spending in support of capabilities which we do not regard, in themselves, as the most important. Perhaps we have general concerns about waste or corruption that dominate our

¹⁶ Wolff and de-Shalit, *Disadvantage*, p. 188.

¹⁷ *Ibid*, p. 188.

views about what the government should do across many areas, including in relation to capabilities.

As with the distinction between capabilities and functionings, even with explicit direction we might still be unable to get people consistently to hold these things apart and to express their views in ways that respect these distinctions. However, without more careful control over the research design, we cannot even begin to unpack participants' views into these different elements. One reason to try to use theoretical distinctions, such as that between the question of the relative importance of different capabilities and of priorities for government action, to structure discussions is to pinpoint more clearly the areas of agreement and disagreement between participants. In the case of Wolff and de-Shalit's study, disagreement is perhaps less likely to concern 'what makes life go well and badly' (although there will of course be different perspectives here) and more likely to concern what and how much should and can be done to help those whose lives look to be going badly. For example, whilst most people will agree that having adequate shelter is an important functioning, they are still likely to disagree about how far the government should go to ensure that nobody is deprived of adequate housing. Conversely, there are cases in which we might agree about policy, despite disagreeing at the level of more fundamental values.¹⁸

Definition versus measurement

A third area in which difficulties arise around how theoretically important ideas are communicated to participants concerns the distinction between questions of definition and measurement. When Wolff and de-Shalit claim to be investigating participants' views about how capabilities should be *measured*, it is not clear that their questions in fact constrain

¹⁸ On the possibility of agreement on practical issues despite deeper value disagreement, see Cass Sunstein, 'Incompletely Theorized Agreements in Constitutional Law', *Social Research: An International Quarterly*, 74 (2007), pp. 1-24. On public agreement and disagreement about capabilities at different levels see Ipsos MORI, *Consulting for a Capability list*, p. 12.

participants to respond at this level.¹⁹ They report that ‘we asked our interviewees what three key questions the government should ask in order to know who are the least advantaged within this interviewee’s special area of expertise, and we did this referring to a problem with a particular functioning (health, affiliation, use of imagination and reason, and so on).’²⁰ This approach seems to open the way to both conceptual and measurement-focussed responses, and their discussion suggests that some participants did indeed respond at the former level. For example, they describe how ‘A blind student who was interviewed suggested three questions which need to be asked in order to know who are the least advantaged among the blind. The first is the degree to which they are autonomous. The second is their bodily and mental health. The rationale for this is that a significant number of blind people have an additional health problem which is related to the fact they are blind. For example, many find concentration very difficult, which obviously affects their studies. The third is a subjective measure: whether they feel they have reached ‘self fulfilment’ in any way.’²¹ These are interesting ideas, but they are not proposals for measurement, since it is still an open question what would constitute appropriate indicators of autonomy, bodily and mental health and self-fulfilment.

There is a further difficulty concerning the fact that whilst Wolff and de-Shalit seek to gather participants’ views about measurement in relation to their own ‘special area of expertise’²², these areas of expertise cut across the capability dimensions. Again, we can see a difficult choice here. Do we allow participants’ own experiences to set the terms of the conversation?

¹⁹ In addition, it isn’t clear, even in principle, what public opinion of the kind that Wolff and de-Shalit explore can tell us about the partly technical issue of developing indicators to measure capabilities. Perhaps Wolff and de-Shalit need a different kind of expertise here, including knowledge about the availability of data and the technical properties of robust indicators. This speaks to a wider point made in this thesis concerning the need for a differentiated account of the role of public opinion that is sensitive to the relationship between the nature of the issue under consideration and methodological decisions, such as whose opinion to seek.

²⁰ Wolff and de-Shalit, *Disadvantage*, p. 113.

²¹ *Ibid*, p. 114.

²² *Ibid*, p. 189.

Or do we instead use our prior theoretical framework to structure the discussions? Wolff and de-Shalit seek to do both: to collect views that map onto their theoretical framework and to start from interviewees' perspectives. The result is that participants are set the difficult task of thinking at once about their own experiences *and* focussing on one of the unfamiliar capability dimensions. This compromise does not seem successful and there is a sense that the attempt to engage public opinion on the question of measurement adds little to Wolff and de-Shalit's initial proposal in this area – involving a combination of one subjective and two objective indicators, similar to the York model of poverty measurement.

Finally, Wolff and de-Shalit's discussion of measurement raises some interesting questions about the extent to which the capabilities approach retains its theoretical distinctiveness once we seek to operationalize it. They consider the problem of accessing data to measure capabilities, given that most research seems to have focussed on either resources or preference satisfaction. They suggest, however, that 'in some surveys ... categories of functionings might be latent, but can be drawn out of the data.' Furthermore, 'a number of important recent studies do use the language of functionings, or something very close to it.'²³ As examples, Wolff and de-Shalit point to measures of friendship (interpreted, in capability terms, as indicators of affiliation) and powerless and voicenessness (interpreted as indicators of lack of control over environment). However, we might question whether it is not so much that recent research has started to focus on capabilities or functionings, but rather that it is difficult to draw a sharp line between indicators for measuring resources and functionings. For example, in discussing research by Wilkinson and Marmot, Wolff and de-Shalit suggest that: 'clustering occurs between bodily health, housing, and whether one uses hard drugs, which arguably can be seen as, or can lead to, lack of control over environment.'²⁴ Here indicators of

²³ Ibid, p. 122.

²⁴ Ibid, p. 124.

housing, earlier cited as a ‘resourcist’ idea invoked by participants, are claimed for the capability approach.

Difficulties in keeping apart resources and capabilities at the level of measurement suggest a deeper problem with capability theory itself, and not just Wolff and de-Shalit’s attempt to operationalize it. In other words, it is often unclear what would *count* as measuring capabilities as distinct from resources. This, in turn, points to a further valuable role for empirical research in political theory: it can serve to expose theoretical ambiguities or weaknesses and force political theorists to specify or clarify their ideas. In this case, exploring what people think about capabilities and developing proposals for measuring capabilities are good ways of revealing underlying fuzziness about what does, and does not, constitute a capability.

3. When political theory meets public opinion

I have summarised the central methodological choice for political theorists as a decision between top-down and bottom-up approaches to engaging with public opinion. Do we try to force our key conceptual categories and distinctions onto participants and get them to reason and respond in these unfamiliar terms? Or do we allow respondents more freedom to set the terms of the debate, with the probability that they will run together what theorists regard as importantly different questions and concepts? A tension between these two perspectives runs through Wolff and de-Shalit’s exploration of public opinion about capabilities. They do not structure, explain and control the terms of debate carefully enough to facilitate a conversation in which participants are able consistently to employ the philosophical ideas around which Wolff and de-Shalit’s theory is built. However, despite some claims to the contrary, nor do they fulfil the promise of a bottom-up approach, which starts with participants’ own experiences, priorities and languages.

If this represents an unhappy middle ground, which approach then should we take? This section will seek to show that both top-down and bottom-up approaches to the study of public

opinion have epistemic value, if carefully practised. However, rather than seeking a ‘balance between openness and discipline,’²⁵ we should make a *choice*, guided by the subject matter and aims of our enquiry. The discussion focusses specifically on how we should approach the study of public opinion from an epistemic perspective. Chapter 2 noted that reflecting on evidence about public attitudes might alert political theorists to biases or limitations in their own perspectives. In this sense, public opinion represents a valuable source of moral advice for political theorists:

‘Moral advice is extremely important, as moral questions are often difficult to decide, not just because they are inherently hard but also because your own desires, interests, and emotions can bias you and lead you astray. Advice from others, who can put forward another point of view, make salient the interests of others, and try to help you to see more clearly, is often essential to your gaining genuine moral understanding.’²⁶

This is a fairly weak, even uncontroversial, view of the role of public opinion. If we are dealing with complex moral issues, where our own experiences are particular or limited and self-interest can intrude, surely it makes sense at least to review our judgements against alternative points of view? As Hills emphasizes, we can look to others for *advice* without *deferring* to their views. However, this broad notion of public opinion as moral advice leaves further important questions to be addressed. In particular, we need to clarify the forms or areas in which public opinion constitutes less or more credible advice for political theorists. Relatedly, how should we go about investigating public opinion if we are interested in public attitudes as a source of moral advice? These are the questions addressed in the remainder of this chapter.

3.1. Methodological challenges in empirical justice studies

I have emphasized the challenges Wolff and de-Shalit face in seeking to convey the unfamiliar capabilities framework in an interview context. These issues, however, are not unique to Wolff

²⁵ Jennifer Hochschild, *What’s Fair? American Beliefs about Distributive Justice* (Harvard, Mass: Harvard University Press, 1986), p. 22.

²⁶ Alison Hills, ‘Moral Testimony and Moral Epistemology’, *Ethics*, 120 (2009), pp. 94-127, at p. 123.

and de-Shalit's study. Similar difficulties have confronted the broader field of empirical justice studies, where efforts to integrate normative political theory with the investigation of popular attitudes have been furthest advanced. Researchers have employed a range of methods to uncover people's justice related beliefs, including surveys, qualitative interviews and behavioural experiments that investigate how people allocate resources in micro-level contexts. Describing the aims of their cross-national survey of popular beliefs about justice, Kluegel et al. also provide a manifesto for the wider field: 'we assess "what the people think" about such normative justice concepts as entitlement, equality of opportunity, and desert. In other words, we study the general public "as normative theorists," examining their justice norms or beliefs about what "ought to be."' ²⁷ Amongst the complex, and sometimes conflicting, results of studies in this area, there are two fairly consistent findings. First, citizens of advanced industrial societies tend to think that inequality is too great and should be reduced. However, they are more reluctant to support policy measures aimed at reducing economic inequality. For example, 78% of respondents to the British Social Attitudes survey in 2009 said that the gap between those with low and high incomes is too great – slightly more than in 2004. Moreover, 57% agreed that the government has a responsibility to reduce the income gap. However, only 36% said that the government should redistribute income from the better off to the less well off. ²⁸ A second common empirical finding concerns public affirmation

²⁷ James R. Kluegel, David S. Mason and Bernd Wegener, 'The International Social Justice Project', in Kluegel, Mason and Wegener, eds., *Social Justice and Political Change: Public Opinion in Capitalist and Post-Communist States* (Berlin: De Gruyter, 1995), pp. 1-12, at p. 4. Note the authors' identification of 'justice norms' with 'beliefs about what ought to be' – see this section for further discussion.

²⁸ Although this is greater than the 34% who disagreed. See Karen Rowlingson, Michael Orton and Eleanor Taylor, 'Do we still care about inequality?', in Alison Park, John Curtice, Elizabeth Clery and Caroline Bryson, eds., *British Social Attitudes the 27th Report: Exploring Labour's Legacy* (London: Sage, 2010). The authors note that responses are somewhat sensitive to wording – specifically that terms such as redistribution, poverty and poor tend to reduce support for redistributive measures.

of some notion of desert: people tend to think that differential effort, contribution or ability should attract unequal reward.²⁹

Thus there is a long-standing tradition of empirical research that has uncovered public attitudes that bear on key questions in normative political theory. Moreover, these studies sometimes take their agendas directly from developments in political theory. For example, there is emerging evidence about the relationship between attitudes towards inequality within nations and popular support for international assistance, with research drawing on theoretical debates about global justice.³⁰ However, it is essential to recognize that although the public do have relevant opinions, they are not *participants* in these theoretical debates; they do not adhere to the same conceptual or argumentative rules as political theorists and their views are not organized and structured in the same ways. This was evident, for example, in one study exploring public perceptions of citizenship in relation to liberal, cultural pluralist and communitarian models.³¹ It was found that although people understand the idea of citizenship, the concept has limited resonance in everyday political thought and discourse, especially in the UK. Thus, the researchers conclude, 'The concept of "citizen" may, by itself, have considerably less psychological and behavioural bite than we have assumed in academic reviews of the subject.'³²

²⁹ On uncertainty within public opinion between different notions of desert, see David Miller, *Principles of Social Justice* (Cambridge: Harvard University Press, 1999), p. 67. Miller also emphasizes that the weight of desert considerations differs by context.

³⁰ Alain Noël and Jean-Philippe Thérien, 'Public Opinion and Global Justice', *Comparative Political Studies*, 35 (2002), pp. 631-55. The authors report a negative correlation between the perceived importance of redistribution at home and support for foreign aid. This finding is interpreted in relation to a thermostatic model of public opinion – in which public opinion responds to policy developments, so that the perceived importance of redistribution decreases as redistributive policies succeed.

³¹ Pamela Conover, Donald D. Searing and Ivor Crewe, 'The Elusive Ideal of Equal Citizenship', *The Journal of Politics*, 66 (2004), pp. 1036-68.

³² *Ibid*, p. 1051. This conclusion is based in part on evidence from focus groups and in part on the lack of correlation, in their survey data, between conceptions of citizenship (specifically whether people say that the notion of citizen brings to mind someone who has 'legal rights and duties' or is 'a member of the community') and other attitudinal measures that, from a theoretical perspective, we would expect to be related. Together these findings suggest that the notion of citizenship does not run very deep in popular thought.

In relation to questions of distributive justice, the crucial disjunction between theory and public opinion concerns the relationship between the demands of justice and the question of what we ought, all things considered, to do. For most political theorists, justice, or what we owe to each other, is distinct both from other moral values that bear on how we should treat each other, such as generosity or humanity, and from pragmatic considerations concerning what constitutes a workable policy. Thus from a theoretical perspective, many survey questions unhelpfully elide the distinction between justice and a range of non-justice based considerations.³³ For example, questions about what ‘the government should do’, which are commonplace in surveys, do not allow us to distinguish what people believe to be just from their beliefs about what the government can legitimately or competently do. Similarly, Miller notes that many questions designed to elicit people’s distributive preferences fail to distinguish between desert and incentive-based arguments for inequality: ‘people may be asked to respond to statements such as “It would be a good thing if everyone received the same income regardless of the job they do”: if someone disagrees with this, there is no way of telling whether desert considerations, or efficiency considerations, or other considerations still are uppermost in his mind.’³⁴

A similar problem arises in research that seeks to gauge popular views about justice by examining micro-level allocation decisions. One common study design gives individuals an initial endowment of resources and then asks them to choose a final distribution between themselves and the other participants. In the four person dictator version of this game, each individual is allocated some resources and is also informed of the allocations of the other three participants. They are then asked to choose a final allocation, with the proviso that the total

³³ For helpful discussion of the difficulty of measuring popular views *about justice*, see Adam Swift, ‘Public Opinion and Political Philosophy: The Relation between Social-Scientific and Philosophical Analyses of Distributive Justice’, *Ethical Theory and Moral Practice*, 2 (1999), pp. 337-63, at pp. 342-44. Of course there is no consensus among political theorists about how justice relates to other moral values and to feasibility considerations. However, there is general agreement that what is just is distinct from what we ought to do all things considered in the non-ideal here and now.

³⁴ Miller, *Principles of Social Justice*, p. 47.

must equal the sum of the initial endowments. The actual awards are determined by a lottery among the decisions of the four participants. Researchers vary the way in which initial endowments are generated, in order to explore the effects on final allocation decisions. In particular, a number of studies have compared decisions under randomly determined initial endowments with choices when initial awards are based on individual performance in a routine, but effortful, task. These experiments consistently report an ‘earned endowment effect’: ‘in sharing and bargaining games, the allocations that participants make to themselves and others reflect initial endowments considerably more when those endowments are earned rather than when they are pure windfall gains.’³⁵

The stated aim of these experimental studies is often to gauge the role of desert in popular beliefs about justice. However, from a theoretical perspective participants’ allocation decisions potentially reflect a combination of factors, including kindness, social desirability effects and self-interest – as well as ‘individual notions of distributive justice.’³⁶ Findings suggest that self-interest does not dominate completely, since most individuals do not allocate all the available money to themselves (although most do allocate relatively more to themselves). Moreover, to the extent that different experimental designs hold other considerations – of generosity, self-interest and social desirability – constant, we can be more confident in regarding the earned endowment effect as reflecting beliefs about justice. Such experiments are also one-off, meaning incentive-based considerations should be less likely to intrude. For these reasons, experimental studies seem to do better than many survey questions in isolating justice from other considerations. However, they also face their own difficulties, notably the problem of how far findings from micro-level allocation games are applicable to macro political contexts.

³⁵ Abigail Barr, Justine Burns, Luis Milller and Ingrid Shaw, ‘Individual notions of distributive justice and relative economic Status’, Nuffield Centre for Experimental Social Sciences Discussion Paper Series (2011), p. 4. Available at: http://cess-wb.nuff.ox.ac.uk/documents/DP2011/CESS_DP2011_005.pdf Where most research has been limited to student populations, this study recruited a wider range of participants and found that EEE is in fact dependent on relative economic status.

³⁶ Ibid.

The tendency in empirical research to equate people's preferences for distribution with their principles of justice is troubling for the political theorist, who sees a number of crucial intervening factors between these two sets of beliefs. From a survey perspective, there is no easy solution to this problem. Simply asking people explicitly 'what is just' does not guarantee that they are thinking about justice as most philosophers do – as distinct from other values and from feasibility considerations. As Miller notes, 'If we want to get at beliefs about justice, it may help if we phrase our questions in such a way that "justice" features prominently in them, but even so we cannot be sure that the responses people give are being guided exclusively by their sense of what justice requires, as opposed to some broader notion of "what is right" or "what I would like to see happen"' ³⁷ We are not simply facing a technical challenge here: to develop research instruments that effectively isolate beliefs about justice from other considerations. More fundamentally, it is unclear to what extent crucial theoretical distinctions are actually present in popular attitudes. In other words, there may simply be no answer to the empirical justice researcher's quest for 'what constitutes distributive justice in the minds of ordinary people,' ³⁸ – at least as the concept of distributive justice is understood by philosophers.

Moreover, to the extent that we *can* successfully isolate popular principles of justice, there is a remaining question about how much credence we should give them. First, as noted in chapter 1, there is evidence of a troubling disjunction, in many cases, between the general values

³⁷ Miller, *Principles of Social Justice*, p. 48. Swift also reports that participants in the International Social Justice Project pilot study found it difficult to engage with questions framed in terms of justice. Questions about fairness were more accessible, but face the objection that they are biased towards a particular conception of justice – see Swift, 'Public Opinion and Political Philosophy', footnote 3 to p. 343. Further research is needed to test whether and how survey responses are sensitive to variations in wording. For example, one study found similar results when respondents are asked whether a distribution is 'fair' and whether it is 'deserved' – see Christopher Freiman and Shaun Nichols, 'Is Desert in the Details?', *Philosophy and Phenomenological Research*, 82 (2011), pp. 121-33, at p. 129.

³⁸ Barr et al. 'Individual notions of distributive justice', p. 2. One response to this problem would be to teach people some political philosophy. In particular we might first introduce and discuss the relationship between justice and other kinds of political values and considerations, before exploring people's views about distributive justice. In other words, we might deliberately engage in the kind of 'opinion creation' of which opinion researchers are sometimes accused. For this suggestion, see Swift, 'Public Opinion and Political Philosophy', pp. 345-6.

people espouse and their more specific policy commitments. How seriously should political theorists take people's declarations of support for the principle of equality of opportunity, for example, if they are unwilling to endorse measures to advance it? Secondly, the credibility of public attitudes is threatened by long-standing evidence of a process of system justification, in which popular beliefs about justice bend to prevailing practice. In other words, there is a tendency to believe that people get what they deserve and deserve what they get. Recent empirical evidence suggests that this 'belief in a just world' (BJW) may serve a number of important psychological needs. Moreover, people are often resistant to challenges to the belief that the world is fundamentally fair, even reporting a *stronger* attachment to BJW when they are confronted with evidence that threatens its credibility.³⁹ I noted in chapter 2 that what properties we require in public opinion depends on why we are interested in popular attitudes. For example, the phenomenon of BJW is unproblematic if we are concerned with public opinion for feasibility reasons. From the feasibility perspective, these findings simply alert us to the power of the status quo in the formation of popular attitudes. In contrast, evidence of the adaptive nature of public attitudes is deeply troubling if we see public opinion as an epistemic resource that might inform the project of working out what justice ideally demands.

3.2. Taking reflective equilibrium seriously: public opinion and unfamiliar cases

Thus far the message of this chapter has been somewhat pessimistic. Efforts to integrate public opinion and normative political theory are plagued by serious methodological problems. Moreover, popular beliefs about fairness and distribution appear to be fragmented and biased, in a way that suggests that political theorists should give them little credence. However, I

³⁹ The concept of Belief in a Just World was introduced by Melvin Lerner – see his 'Evaluation of performance as a function of performer's reward and attractiveness', *Journal of Personality and Social Psychology*, 1 (1965), pp. 355–60. For a useful overview of the field, see Adrian Furnham, 'Belief in a just world: Research progress over the past decade', *Personality and Individual Differences*, 34 (2003), pp. 795–817.

believe that an answer to at least some of these difficulties lies in rethinking a little commented on feature of most studies that seek to bridge the gap between political theory and public opinion: namely that they are engaged in a search for general normative principles that structure public attitudes. At times this principled focus is implicit; sometimes it is explicitly endorsed. For example, Miller argues that: ‘the evidence [about public opinion] helps to confirm the theory *by revealing which principles people do in fact subscribe to*. The aim is to achieve an equilibrium whereby the theory of justice appears no longer as an external imposition conjured up by the philosopher, but as *a clearer and more systematic statement of the principles that people already hold*.’⁴⁰ Chapter 2 noted that political theorists often characterize their method in terms of the idea of reflective equilibrium: a process of moving back and forth between principles and case-specific judgments, seeking the firmest possible system of mutual support between them. Further reflection on the method of reflective equilibrium highlights the opportunity for an alternative approach to public opinion: rather than searching for normative *principles* in popular thought, we might instead employ public opinion as an input on the concrete judgements side of the process. This will involve presenting the wider public with specific, typically unfamiliar and hypothetical, examples that are carefully constructed to pit alternative normative principles against each other.

What is the value of such a case-specific approach to public opinion, if we are interested in public attitudes as an epistemic resource? Crucially, principles and judgements are meant, in the first instance, to represent *independent* inputs into the process of justification:

‘What is required is that the judgment not be determined by a systematic and conscious use of ethical principles. The reason for this restriction will be evident if one keeps in mind the aim of present inquiry, namely, to describe a decision procedure

⁴⁰ Miller, *Principles of Social Justice*, p. 51. See part III for further discussion of Miller’s emphasis on uncovering general normative principles that underlie public attitudes. Interestingly, at one point Miller suggests something closer to the approach I advocate here, when he puts forward the ‘requirement that there should be a reasonably close fit between the theory and our pre-theoretical considered judgements.’ – see his ‘Two ways to think about justice’, *Philosophy, Politics & Economics*, 1 (2002), pp. 5-28, at p. 6. However, Miller does not discuss the difference between drawing on popular principles and judgements.

whereby principles, by means of which we may justify specific moral decisions, may themselves be shown to be justifiable ... It is clear that if we allowed these judgments to be determined by a conscious and systematic application of these principles, then the method is threatened with circularity. We cannot test a principle honestly by means of judgments wherein it has been consciously and systematically used to determine the decision.’⁴¹

Thus from the perspective of reflective equilibrium, the largely pre-theoretic character of public judgements about philosophical thought experiments is an asset. In contrast, it is much more difficult for the theorist, who is acutely aware of the relationship between thought experiments and various candidate normative principles, genuinely to separate their case specific judgements from their principled leanings. I draw here on an observation made by Doris and Stich in relation to the question of the appropriate audience for thought experiments in ethics: ‘if the responses are to help adjudicate between competing theories, the responders must be more or less theoretically neutral, and this sort of neutrality, we suspect, is rather likely to be vitiated by philosophical education ... with increasing philosophical sophistication comes, very likely, philosophical partiality.’⁴²

In this way, a case-specific approach to public opinion turns what is otherwise a problem – that public views on unfamiliar theoretical issues are insufficiently informed or reflective – into an asset. In other words, there is a sense in which some popular judgements count for *more* because the public have thought about the issues *less*; public judgements enjoy a special status within the process of reflective equilibrium by virtue of their relative philosophical naivety.⁴³ I noted in chapter 2 that Daniels rejects the suggestion that the process of reflective

⁴¹ John Rawls, ‘Outline of a Decision Procedure for Ethics’, *The Philosophical Review*, 60 (1951) pp. 177-97, at p. 183

⁴² John Doris and Stephen Stich, ‘Moral Psychology: Empirical Approaches’, *The Stanford Encyclopedia of Philosophy* (Winter 2012 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2012/entries/moral-psych-emp/>.

⁴³ Compare: ‘since the philosopher’s reasons for endorsing a particular view are invariably rather complicated and have taken a great deal of thought to assemble, it would be surprising if ordinary people, not necessarily less intelligent but in all probability having devoted less time to the exercise of that intelligence, arrived at similarly measured conclusions.’ Adam Swift, Gordon Marshall, Carole Burgoyne, and David Routh, ‘Distributive Justice: Does It Matter What the People Think?’, in James R.

equilibrium should be expanded to include the judgements of a broader public. In other words, for Daniels the appropriate audience for thought experiments is the individual philosopher, who seeks to reconcile her principled commitments with her *own* judgements about concrete cases.⁴⁴ However, Rawls has, in places, suggested an account of reflective equilibrium that resonates with the view defended here. For example, he suggests that ‘the considered judgements of competent judges are the most likely repository of the working out of men’s sense of right and wrong, a more likely one, for example, than that of any particular individual’s alone.’⁴⁵

Public opinion answers the demand of the method of reflective equilibrium for principle-independent judgements about cases, but this does not make popular judgements sovereign or decisive. As Rawls emphasizes, neither particular judgements nor principles are beyond revision in an ongoing process of reflective equilibrium: ‘Although in order to get started various judgments are viewed as firm enough to be taken provisionally as fixed points, there are no judgements on any level of generality that are in principle immune to revision.’⁴⁶ Thus it is important to emphasize the limited nature of the claim being made for public opinion here. My suggestion is that, if we are serious about reflective equilibrium as a method of justification, then public opinion should take precedence over philosophical opinion when it

Cluegel, David S. Mason and Bernd Wegener, eds., *Social Justice and Political Change: Public Opinion in Capitalist and Post-Communist States* (Berlin: De Gruyter, 1995), pp. 15-47, at p.17.

⁴⁴ Note that Daniels also emphasizes the distinction between narrow and wide reflective equilibrium. See ‘Wide reflective equilibrium and theory acceptance in ethics’ in his *Justice and Justification: Reflective Equilibrium in Theory and Practice* (Cambridge: Cambridge University Press, 1996), pp. 21-46. I set this issue aside, since it does not affect the central claim of this section: that the purity of public judgements about concrete cases gives them a special status within the process of reflective equilibrium.

⁴⁵ Rawls, ‘Outline of a Decision Procedure’, p. 187. Interestingly, Rawls makes this suggestion in his earliest account of reflective equilibrium, not just as a result of the political turn in his later work. But compare: ‘If we can characterize one (educated) person’s sense of justice, we might have a good beginning toward a theory of justice. We may suppose that everyone has in himself the whole form of a moral conception. So for the purposes of this book, the views of the reader and the author are the only ones that count. The opinions of others are used only to clear our own heads.’ *A Theory of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 1999), p. 44.

⁴⁶ John Rawls, ‘The Independence of Moral Theory’, *Proceedings and Addresses of the American Philosophical Association*, 48 (1974-5), pp. 5-22, at p. 8.

comes to case-specific judgements; it is not that the political theorist should necessarily revise her theory to accommodate all such judgements. However, if she does hold firm in the face of contrary public judgements, this helps to reveal something about the nature and basis of the political theorist's position: she should at least recognize that her theory has suffered a counterexample, because it runs contrary to the most reliable source of case-specific judgements.⁴⁷ Moreover, if she *consistently* refuses to accommodate her theory to public judgements, this starts to reveal something more general about the political theorist's method. If we are *never* prepared to reconsider our principles in the face of contrary public judgements, on the account presented here this suggests we are not really serious about the method of reflective equilibrium itself. In other words, thinking about public opinion in the way suggested here might play a valuable role in forcing political theorists to consider how deeply they are committed to their professed mode of justification, with its central role for judgements about concrete cases. Thus the central claim of this section, that public case-specific judgements enjoy priority by virtue of their relative philosophical naivety, points to one of two possible conclusions: either political theorists must sometimes revise their principled positions to accommodate contrary case-specific public judgements; or the method of reflective equilibrium, with its justificatory role for case-specific judgements, is not born out in philosophical practice.⁴⁸

It might be objected here that reflective equilibrium is not concerned with all and any beliefs or intuitions about cases, but rather with a subset of appropriately robust or reliable judgements. However, the question then arises how we determine which beliefs fall into this subset of 'considered judgements.' First, it cannot be the case that a 'considered judgement' is

⁴⁷ Cf. Doris and Stich, 'Moral Psychology': 'If an appropriate audience's ethical responses to a thought experiment conflict with the response a theory prescribes for the case, the theory has suffered a counterexample.'

⁴⁸ For the related argument that philosophers do not, in fact, rely on intuitions despite claiming to do so, see Herman Cappelen, *Philosophy without intuitions* (Oxford: Oxford University Press, 2012). Cappelen claims that 'Philosophical practice treats unjustified judgments about philosophical cases as worthless', p. 223.

simply whatever belief coheres with our preferred normative principle: that would be to eliminate any independent role for case-specific judgements within the process of reflective equilibrium.⁴⁹ Rather, there must be independent grounds on which we can assess whether a judgement counts as considered or not. Minimally, we must have understood the case and our responses cannot be simply random. We should also feel reasonably confident about our judgement and we ought not to be influenced by any personal stakes in the decision.⁵⁰ Once we set aside the problematic view that considered judgements are to be defined in terms of their fit with certain principles, I see no reason to think that the judgements of philosophers will in general be more considered than those of a wider public. Thus there is both a positive and a negative component to the defence of public opinion here. Positively, I have argued that there is, from the perspective of the process of reflective equilibrium, good reason to treat public judgements as more reliable than philosophical ones. Negatively, there is no general reason to treat public judgements as less reliable. Absent any specific grounds the philosopher cannot, in the face of contrary public judgements, maintain that her response simply *is* more considered.⁵¹

Secondly, as Miller argues, empirical investigation of public attitudes plays a crucial role in addressing the question of which judgements are considered: ‘can we decide whether a judgement is considered simply by scrutinizing it in solipsistic fashion, relying only on internal evidence to establish how much confidence we should place in it, or whether it has been influenced by one the distorting factors that Rawls mentions? It is surely of the greatest

⁴⁹ Cf. Rawls’ claim that ‘we cannot define a competent judge, at least at the beginning of our inquiry, as one who accepts certain principles’ – ‘Outline of a Decision Procedure’, p. 180.

⁵⁰ On the characteristics of considered judgements, see Rawls, ‘Outline of a Decision Procedure’, pp. 181-83 and *A Theory of Justice*, p. 42. Note that one of Rawls’ conditions is the exclusion of judgements on hypothetical cases. I will go on to defend the use of hypothetical cases, in part because they better meet some of the Rawls’ other conditions – in particular that judgements should not be driven by self-interest.

⁵¹ Interestingly, empirical research has found similar size order effects on the judgements of professional philosophers and non-philosophers about a range of thought experiments. See Eric Schwitzgebel and Fiery Cushman, ‘Expertise in Moral Reasoning? Order Effects on Moral Judgment in Professional Philosophers and Non-Philosophers’, *Mind and Language*, 27 (2012), pp. 135-53.

relevance to see whether the judgments we make are shared by those around us, and if they are not, to try to discover what lies behind the disagreement.⁵² In other words, we need a programme of empirical research to investigate the kinds of cases in which public attitudes are strongly influenced by normatively irrelevant differences in description, or closely linked to respondents' socio-economic or cultural backgrounds. We should:

‘subject philosophical thought experiments to the critical methods of experimental social psychology. If investigations employing different experimental scenarios and subject populations reveal a clear trend in responses, we can begin to have some confidence that we are identifying a deeply and widely shared moral conviction. Philosophical discussion may establish that convictions of this sort should serve as a constraint on moral theory, while responses to thought experiments that empirical research determines to lack such solidity, such as those susceptible to framing effects or admitting of strong cultural variation, may be ones that ethical theorists can safely disregard.’⁵³

We can look to the field of experimental philosophy for examples of how to develop a case-specific approach to the study of public attitudes. Experimental philosophers have gauged public responses to a range of thought experiments designed to elicit judgements that cohere with one or another candidate principle in philosophical debate. Perhaps most notably, public views have been sought in relation to various versions of the trolley problem, designed to pit consequentialist against deontological principles.⁵⁴ Similar approaches might be applied in the domain of political theory. Indeed a case-based approach has uncovered some interesting evidence about the shape of public attitudes towards desert. Earlier I noted that research has found widespread public support for desert as a principle of distribution, contrary to the

⁵² Miller, *Principles of Social Justice*, p. 55.

⁵³ Doris and Stich, ‘Moral Psychology’. Such an empirical programme is ongoing, but largely outside of the domain of political philosophy. See, for example, Stacy Swain, Joshua Alexander and Jonathan M. Weinberg, ‘The Instability of Philosophical Intuitions: Running Hot and Cold on Truetemp’, *Philosophy and Phenomenological Research*, 76 (2008), pp. 138-55.

⁵⁴ For example, Fiery Cushman, Liane Young and Marc Hauser, ‘The Role of Conscious Reasoning and Intuition in Moral Judgment: Testing Three Principles of Harm’, *Psychological Science*, 17 (2006), pp. 1082-89.

resistance to desert in much contemporary political theory.⁵⁵ But a recent study suggests that public attitudes towards desert may, in fact, have a more complex structure. Freiman and Nichols set out to test whether people believe that individuals deserve rewards on the basis of lucky talents. Half of their participants were presented with the following general statement: 'Suppose that some people make more money than others solely because they have genetic advantages.' The remaining respondents were given concrete cases in which one individual performs better and receives more income than another solely because they are more naturally talented. All the participants were then asked whether the extra money is deserved. Respondents tended to endorse desert in the concrete cases of genetic advantage, but to reject, as a matter of abstract principle, the idea that people deserve rewards on the basis of genetic endowment.⁵⁶

This conflict between popular attitudes at abstract and concrete levels initially looks troubling for the political theorist who is interested in employing public opinion in her work: it seems to reinforce the view that public opinion is insufficiently coherent or reflective to make this project viable. However, if we take public opinion as an input into one side of the process of reflective equilibrium, as suggested in this chapter, the tension between different elements of popular thought can be viewed more positively. The fact that people tend to favour desert in concrete cases, whilst rejecting desert as a matter of principle, suggests that they are, at least, responding in a direct way to the cases; their case-specific judgements are not simply determined by a prior principled commitment. In contrast, the political theorist is likely already

⁵⁵ On the gap between the public and philosophers when it comes to desert, see Samuel Scheffler, 'Responsibility, Reactive Attitudes, and Liberalism in Philosophy and Politics', *Philosophy & Public Affairs*, 21 (1992), pp. 299-323.

⁵⁶ Freiman and Nichols, 'Is Desert in the Details?', pp. 128-9. Freiman and Nichols are building on a growing body of work in psychology and experimental philosophy, showing that people's expressed beliefs are often sensitive to how abstractly the issues are presented. For example, research has shown that that people tend to be compatibilist about free will and determinism at the concrete level and incompatibilist at the principled level – see Shaun Nichols and Joshua Knobe, 'Moral Responsibility and Determinism: The Cognitive Science of Folk Intuitions', *Noûs*, 41 (2007), pp. 663-685.

to be aware of, and to hold a view about, alternative distributive principles and thus her response to Freiman and Nichols's cases is more likely to be contaminated by theoretical bias.

Freiman and Nichols go on to pose the question, in the face of this conflict between public opinion at principled and concrete levels, 'which judgements should guide our theorizing about justice?'⁵⁷ In reflecting on this question, they note that responses to concrete scenarios may be more emotionally driven. However, to the extent that there is a difference between principled and concrete judgements in terms of levels of affect, it is not immediately clear what conclusion we should draw. This turns on a much broader issue about the role of the emotions in moral judgement: Is reliable moral judgement a detached and disinterested process? Or is emotional engagement instead an essential element of proper moral judgment? A second question concerns whether case specific judgements should be treated as less reliable because they are less clean; concrete examples typically include additional details that might serve to distract us from the relevant moral issues. My aim is not to address the broader question of the relative weight of case-specific versus abstract commitments in moral and political reasoning, or the related issue of the role of emotions in moral judgement. Instead, my question is conditional in form: *If* we think there is a role for both forms of judgement in theory building, as the method of reflective equilibrium suggests, how, if at all, should we input public opinion? Thus the objective has been to show how we might utilize public opinion as an input into the process of reflective equilibrium, rather than directly to defend that method.⁵⁸ In other words I have focussed on the question of whose case-specific judgements count, rather than the more basic question of whether we should use intuitions about cases at all. In response to the narrower question, I have made two key claims: First, once we think

⁵⁷ Freiman and Nichols, 'Is Desert in the Details?', p. 129.

⁵⁸ Broader objections to reflective equilibrium come from two directions – from the moral particularist and, conversely, from those who see no role for case specific intuitions in moral reasoning. For the particularist position, see Jonathan Dancy, *Ethics Without Principles* (Oxford: Oxford University Press, 2004). For the radical rejection of a role for case-specific intuitions, see Peter Singer, 'Ethics and Intuitions', *The Journal of Ethics*, 9 (2005), pp. 331-52.

about public opinion specifically as an input into the process of reflective equilibrium, we can view the relatively unreflective nature of public attitudes and the existence of conflict between principled and concrete aspects of popular thought in a positive light. Secondly, we should prioritize public case-specific judgements over philosophical judgements.

Approaching public opinion in the way outlined above also mitigates some of the problems that have commonly confronted empirical justice studies. First, considerations of self-interest and beliefs about what is feasible or practical are less likely to shape responses to hypothetical and unfamiliar examples. Although we cannot guarantee that such considerations play no role in shaping people's judgements about hypothetical cases, their impact is likely to diminish the further removed thought experiments are from respondents' own lives and everyday political experiences.⁵⁹ Thus the method of investigating public opinion outlined in this section will go at least some way towards isolating views about justice from other considerations. However, the problem remains of how we distinguish beliefs about justice from other *moral* values such as compassion. We might instruct people to focus on what would be a 'just' response to a particular case, but, as discussed earlier, with no guarantee that they share our understanding of justice. Alternatively, we could give up on trying to isolate judgements of justice from other moral considerations, and simply ask people what would be the right thing to do in specific cases. Either way, it remains open to the defender of a particular principle of justice to argue that a contrary case-specific judgement is not relevant, since what is just may differ from what we ought all things considered to do. Yet we should be suspicious of a principle of justice that consistently forces us to adopt this response; surely a plausible principle of justice at least *sometimes* coheres with our case-specific judgements about what we ought to do, at least when those cases have been designed to exclude many real world empirical considerations.

⁵⁹ For a suggestion about how to control for respondents' real world expectations in studies involving unrealistic hypothetical scenarios, see Joshua D. Greene, Fiery A. Cushman, Lisa E. Stewart, Kelly Lowenberg, Leigh E. Nystrom and Jonathan D. Cohen, 'Pushing moral buttons: The interaction between personal force and intention in moral judgment', *Cognition*, 111 (2009), pp. 364-71.

Thus the accumulation of contrary case-specific public judgements would give us good reason to revisit and to question our principled commitments about justice, even if those judgements are not assuredly judgements of justice.

Another difficulty noted earlier concerned evidence of the adaptive nature of popular beliefs about justice. This issue too is mitigated by engaging public opinion on the terrain of hypothetical cases. When people have not previously encountered, thought about or been taught about the cases they are asked to judge, their attitudes are less likely to bend to prevailing practice. Kagan makes a related point in his discussion of the role of ‘never before considered’⁶⁰ cases in philosophy:

‘Such cases are highly stylized, and unlike anything most of us have ever faced in real life, read about, or even imagined before being introduced to them for the first time as adults. Yet once the given case is described, we typically find ourselves with a moral intuition about it. I think it highly implausible, accordingly, to suggest that what happens here is that some vestige of a (perhaps forgotten) religious teaching now comes into play. No one is taught about trolley problems in childhood – nor even anything remotely similar to them – and yet we still find ourselves with intuitive reactions to the cases once they are described. Thus, whatever the actual origins of these case specific intuitions, we cannot dismiss them as artefacts of outmoded or unjustified teaching and accidental historical influences.’⁶¹

In other words, the unfamiliarity of philosophical thought experiments counts in favour of the reliability of public responses, in the sense that public attitudes are less easily dismissed as an expression of prevailing social norms or the result of false consciousness.

I want briefly to consider a possible objection to this line of argument. I argued earlier in the chapter that efforts to integrate normative theory with public opinion face significant methodological challenges, stemming from the gap between theory and everyday political thought. Yet here I am advocating investigating public opinion on the *even more* unfamiliar ground of philosophical thought experiments. However, whereas questions about normative principles are both abstract and typically somewhat unfamiliar, thought experiments are

⁶⁰ Shelly Kagan, ‘Thinking about Cases’, *Social Philosophy and Policy*, 18 (2001), pp. 44-63, at p. 58.

⁶¹ *Ibid*, p. 58.

unfamiliar but highly concrete. As Freiberg and Nichols note, ordinary moral thought typically takes place at a relatively concrete level: ‘ordinary moral agents may be more competent in making judgments in concrete cases because our normal capacity for making judgments of desert is directed at these sorts of cases. It is only in very special contexts that we discuss abstract principles of desert.’⁶² On this account, the *cases themselves* may be unfamiliar, but the process of forming moral judgements about particular cases is a relatively familiar one. In contrast, abstract principles are both unfamiliar in themselves and demand that people *think in a way* that is out of the ordinary. We can draw a useful analogy here with grammatical judgements and principles, where ‘linguists take the basic data to be pretheoretical intuitions about concrete sentences, not pretheoretical intuitions about abstract principles.’⁶³ Thus I believe that unfamiliarity is not a significant barrier to the effective investigation of public opinion, if we introduce a sufficient degree of concreteness into our examples. For example, the complex philosophical issues of free will and determinism look like areas where we are likely to struggle to uncover robust or meaningful public views. Yet researchers have succeeded in constructing a range of concrete cases, involving individuals inhabiting hypothetical deterministic worlds, in order to explore popular views.⁶⁴ The idea that concreteness can compensate for unfamiliarity also fits with my personal experience of talking to non-philosophers about issues in political theory: it is often easier for people to grasp and to formulate views about cases than it is for them to engage with principled debates.

At the same time as being optimistic about people’s capacity to engage with unfamiliar, even bizarre, examples so long as they are sufficiently concretely described, I want to acknowledge that there may be a limit to how far we can productively take these examples beyond the realm of real experience. The notion of hypothetical cases covers a wide range of different

⁶² Freiman and Nichols, ‘Is Desert in the Details?’, p. 131.

⁶³ Ibid, p. 131.

⁶⁴ For example, Eddy Nahmias, Stephen Morris, Thomas Nadelhoffer and Jason Turner, ‘Surveying Freedom: Folk Intuitions about free will and moral responsibility’, *Philosophical Psychology*, 18 (2005), pp. 561-84.

types of examples, some of which are only contingently hypothetical, whereas others involve ‘modally bizarre situations, i.e., situations that are not possible in worlds nearby to ours.’⁶⁵ I have argued that there is epistemic value to seeking public views in relation to unfamiliar cases. But is there also a point at which examples become so ‘outlandish’⁶⁶, or removed from real experience, that our intuitions start to fail? In particular, it has been suggested that we are unable properly to imagine some of the most bizarre thought experiments dreamt up by philosophers and we therefore cannot reliably answer questions about what morality demands in these contexts.⁶⁷ It is beyond the scope of this chapter to address this question of the limits, if any, of productive or legitimate thought experiments. However, it is not clear to me that there is any *general* way of characterizing what constitutes an excessively ‘outlandish’ case, in which our moral competence will fail.⁶⁸ Instead, a process of trial and error may be required, in which we gauge our capacity to bring these contexts to mind. Moreover, I do not see any reason to assume that there is a *distinctive* problem for public opinion when it comes to outlandish thought experiments; if there are limits to our capacity properly to imagine these cases, these limits are likely also to apply to professional philosophers.

In chapter 2, I discussed how Wolff and de-Shalit see a role for public opinion (alongside philosophy), in a process of ‘public reflective equilibrium.’ They describe a collective mode of justification, in which both the public and philosophers contribute theories and judgements and attempt to work these materials into a coherent whole. Both this notion of public reflective equilibrium and the account defended in this chapter depart from the view of

⁶⁵ Adrian Walsh, ‘A Moderate Defence of the use of Thought Experiments in Applied Ethics’, *Ethical Theory and Moral Practice* 14 (2011), pp. 467-481, at p. 473.

⁶⁶ For this description of some thought experiments, see Jakob Elster, ‘How Outlandish Can Imaginary Cases be?’, *Journal of Applied Philosophy*, 28 (2011), pp. 241-58.

⁶⁷ Ibid, p. 241. A different kind of objection sees something *morally* objectionable or corrupting in approaching serious ethical questions through frivolous examples - see Walsh, ‘A Moderate Defence’, p. 476-78.

⁶⁸ For a related argument, see Walsh, ‘A Moderate Defence’. Walsh argues that when assessing thought experiments as legitimate or illegitimate, we should focus not on properties of the cases themselves, but rather on the arguments in which they are deployed.

reflective equilibrium as a purely individual process and achievement. However, the approach to public opinion outlined in this section is in an important way less ambitious than Wolff and de-Shalit's method, since it sees public opinion as playing a significant role only on one side of reflective equilibrium. It is also more fully top-down, in the sense that the process of reflective equilibrium is owned and controlled by the theorist; the public themselves do not actually engage in reflective equilibrium, rather they provide material that assists the theorist in undertaking that process. To that extent, reflective equilibrium is still an intra-personal process on the account presented here. The relatively modest role for public opinion defended in this chapter also contrasts with Miller's account of the relationship between public opinion and political theory. In Miller's view: 'empirical evidence should play a significant role in justifying a normative theory of justice, or to put it another way, that such a theory is to be tested, in part, by its correspondence with our evidence concerning everyday beliefs about justice. Seen in this way, a theory of justice brings out the deep structure of a set of everyday beliefs that, on the surface, are to some degree ambiguous, confused, and contradictory.'⁶⁹ I endorse the first part of Miller's claim, but reject the second suggestion that we should try to render public opinion as a whole consistent. In other words, popular beliefs can play an important epistemic role in theorizing about justice, but this involves using public judgements in a piecemeal way as selected inputs into the process of reflective equilibrium, rather than seeking a coherent overall pattern within public opinion.

3.3. Participant driven approaches: shaping agendas and framing problems

Walter Lippman, in his famously critical discussion of the contribution of public opinion to politics, draws a distinction between insiders and outsiders, whose 'relations to a problem are radically different. Only the insider can make decisions, not because he is inherently a better man but because it is so placed that he can understand and can act. The outsider is necessarily

⁶⁹ Miller, *Principles of Social Justice*, p. 50.

ignorant, usually irrelevant and often meddlesome, because he is trying to navigate the ship from dry land.⁷⁰ Lippman's contrast between insiders and outsiders is also helpful for thinking about the role of public opinion in political theory. I have argued that there is one form in which public opinion has epistemic value precisely because the public are outsiders to the terms of theoretical debate: it is in part the novel character, for most participants, of the cases with which they are confronted that gives weight to popular responses. This section will suggest, more intuitively, that people's views and experiences should also be given weight when they are insiders to the phenomena with which political theory is concerned.

In order to clarify the contribution of public opinion to political theory, it is important that we distinguish genuine philosophical expertise from those areas in which philosophers' training does not give their views any special weight:

‘The specialized training received by philosophers makes them experts at moving moral concepts around and drawing out the unexpected implications of those concepts. *But to understand the moral value of many experiences, a different kind of training is required. That training often consists of living a life in which experiences of the sort in question have a central place.* There is no guarantee that the life course that leads one to become a professional philosopher will include many of those kinds of experiences (indeed it may necessarily preclude some of them). The point is not that people who do political philosophy, in order to do philosophy well, must actually have had experiences ... [such as] becoming a parent, joining a campaign or owning a business. The point, rather is that if one has not had experiences such as these (or if one has personally eschewed the sort of life that might include them), there exists a danger that one might be insufficiently sensitive to the moral role such experiences play in the lives of other people. If many people in one's professional cohort have followed a similar pattern of eschewal, the danger of such distortions may be enhanced.’⁷¹

By studying public opinion, political theorists can learn from others' experiences. In particular, they can alert themselves to key features of phenomena that they themselves have not directly experienced. This kind of learning is best achieved if we approach the study of public attitudes in such a way that the details of people's experiences are conveyed: for example

⁷⁰ Walter Lippman, *The Phantom Public* (New Brunswick, New Jersey: Transaction Publishers, 2009), p. 140.

⁷¹ John Tomasi, *Free Market Fairness* (Princeton, NJ: Princeton University Press, 2012), p. 67.

through observational methods, in-depth interviews and the gathering of first person narratives. Such approaches to the study of public opinion, which stay close to the complexity of people's lived experiences, offer a valuable alternative to the dominant approach to empirical issues in political theory. Even in areas in which theory most directly connects with real world phenomena, such as the literature on multiculturalism, the drive for theoretical simplification often results in 'a kind of philosophical politics in which actual events [resonate] more as exemplars than actual objects of investigation.'⁷²

By engaging public attitudes in the highly controlled manner suggested in the previous section, we obtain data that bears directly on established theoretical debates. However, we also miss out on something important that a more open approach to the investigation of popular beliefs can offer political theory: namely fresh perspectives that might challenge theoretical frameworks or assumptions in unexpected ways.⁷³ Participant-driven approaches seem most promising in areas in which political theory is directly concerned with questions about the meaning and value of human experiences or relationships; Tomasi cites the examples of political involvement, business activity and becoming a parent. However, bottom-up approaches might also successfully be applied in less obviously promising areas. For example, one study set out to explore 'what does free will mean to ordinary people when they reflect on their own lives and experiences?'⁷⁴ Participants were invited to write first person narratives, describing an action in their own lives that they considered to have been taken by their own free will (or not), with the aim of 'obtaining genuine, naturally occurring experiences from people's lives and assessing how people have interpreted them in their own thoughts and

⁷² John G. Gunnell, 'Dislocated Rhetoric: The Anomaly of Political Theory', *Journal of Politics*, 68 (2006), pp. 771-82, at p. 777.

⁷³ For a related suggestion, see Colin Bird, 'Political Theory and Ordinary Language: A Road Not Taken', *Polity*, 43 (2011), pp. 106-27. Bird calls, more specifically, for a revival within political theory of Austinian approaches that attend to the intricate details of ordinary language use.

⁷⁴ Tyler F. Stillman, Roy F. Baumeister, and Alfred R. Mele, 'Free Will in Everyday Life: Autobiographical Accounts of Free and Unfree Actions', *Philosophical Psychology*, 24 (2001), pp. 381-94, at p. 381.

words'.⁷⁵ Thus although participants were asked to engage with the philosophical issue of free will, they did so in a way that revealed 'the cognitive structures in their mind'⁷⁶, rather than demanded that they define their views in relation to pre-determined theoretical categories.

In the previous section, I argued that, if reflective equilibrium is the method by which normative political theories are justified, then public case-specific judgements play an important justificatory role: they are data points against which normative principles can be tested. Not only is the kind of evidence about public opinion highlighted here very different, it will typically also play a different kind of epistemic role. We can, I think, distinguish at least two important roles for participant-driven approaches to the study of public opinion. First, such methods can help to set agendas in political theory. In particular, they can reveal how values cluster or conflict in the real world and therefore raise important questions about how we should trade-off different goods. For example, in her observational study of the relationship between social class and parenting practices in the US, Lareau highlights how the 'concerted cultivation' approach of middle class parents better prepares children to engage effectively with authority. It leaves them more able and willing to express their views, with the expectation that they will be listened to. Yet, in contrast to the model of 'accomplishment of natural growth' observed in working class families, it results in children missing out on distinctive childhood experiences, such as unstructured play and relationships with other children that are unregulated by adults.⁷⁷ Thus Lareau's data suggests a trade-off between the opportunity to enjoy certain intrinsic experiences of childhood and childhood viewed as a period of preparation for success in adult life. This, in turn, raises interesting normative questions about how we weigh these different values.

⁷⁵ Ibid, p. 382.

⁷⁶ Ibid, p. 393.

⁷⁷ Annette Lareau, *Unequal Childhoods: Class, Race, and Family Life* (Berkeley: University of California Press, 2003)

Secondly, data from participant-driven approaches can more generally play an important creative role in political theory. In this form, rather than offering evidence against which to test the claims of a candidate normative theory, public opinion constitutes ‘a creative starting point.’⁷⁸ Cappelien draws a helpful distinction in this regard between the ‘context of discovery’ and the ‘context of justification’ in ethics.⁷⁹ The top-down approach to public attitudes outlined in the previous section functions primarily as the latter – as a way of justifying our normative theories, rather than as a description of the process by which we actually discover them.⁸⁰ In contrast, the more open approach to the investigation of popular attitudes advocated here describes a path by which political theorists might actually discover new ideas or reshape existing commitments.

Tomasi provides an example of an attempt to ground political theory more firmly in the nature of everyday experience, but he also inadvertently illustrates the potential pitfalls of such an approach. Tomasi appeals to the value of ‘the personal exercise of economic liberty’, as revealed in people’s everyday experiences, in making a case for the justice of free market capitalism. Thus he sees his theory as capturing an important dimension of human experience that has been neglected or suppressed by liberal egalitarian theory. Specifically, he claims that the ‘experience of risk seems to be an essential precondition of the sort of self-respect that [left] liberals value’⁸¹ – in a way that left-liberals themselves have failed to appreciate. Tomasi employs some vignettes to support this argument. However, a much more extensive engagement with empirical evidence about the range and complexity of the experience of risk

⁷⁸ Cappelien, *Philosophy without Intuitions*, p. 230.

⁷⁹ Ibid, p. 230.

⁸⁰ Cf. Rawls on reflective equilibrium: ‘The manner of describing the decision procedure here advocated may have led the reader to believe that it claims to be a way of discovering justifiable ethical principles. There are, however, no precisely describable methods of discovery ... Therefore it is best to view the exposition as a description of the procedure of justification stated in reverse.’ ‘Outline of a Decision Procedure’, p. 196.

⁸¹ Tomasi, *Free Market Fairness*, p. 80. As well as self-respect, Tomasi also appeals to the value of ‘responsible self-authorship’. His argument resonates with a broader tradition of critique of welfare policies, for their allegedly damaging or disabling effects on recipients.

is needed to support his claim about the value of economic risk. We need to consider the different types of costs and benefits that risk might bring, and also how the value or disvalue of risk differs according to context. For example, qualitative research does suggest that voluntary risk-taking can bring a sense of control and self-improvement.⁸² But does this support Tomasi's account of the importance of risk to self-respect, or does his argument involve an extension of these findings to contexts in which they do not apply?⁸³ Despite his claim to draw on observations of everyday experience, Tomasi's selective approach to the empirical evidence raises the suspicion that his arguments are in fact driven by prior theoretical commitments. The wider implication here is that approaches that claim to be built out of the reality of lived experience must take account of the breadth and diversity of that experience.

The message of this brief discussion is not that we should abandon top-down approaches to the investigation of public opinion, but rather that we should weigh the costs and benefits and choose our methods in light of the subject matter and aims of our inquiry. Participant-driven approaches do not involve studying the public 'as normative theorists' in the way envisaged by Kluegel et al. and thus they avoid the attendant problems of properly conveying complex theoretical ideas and nuanced distinctions. However, these approaches bring their own drawbacks, most notably the loss of precision and the possibility that we will be unable to analyse our empirical findings in terms that speak to theoretical debates. In explaining her use of in-depth interviews to investigate views about fairness, Hochschild emphasizes the virtue of openness: 'Topics as complex and slippery as beliefs about income, property, justice, equality, and the role of the government in the economy and vice versa require a research method that

⁸² Deborah Lupton and John Tulloch, 'Life would be pretty dull without risk': voluntary risk-taking and its pleasures', *Health, Risk and Society*, 4 (2002), pp. 113-24.

⁸³ I noted earlier that one of Wolff and de-Shalit's contributions is to highlight the distinctive burdens of risk. This is an interesting counterpoint to Tomasi's emphasis on the benefits of risk. For further discussion, see Jonathan Wolff, 'Disadvantage, Risk and the Social Determinants of Health', *Public Health Ethics*, 2 (2009), pp. 214-23.

permits textured idiosyncratic responses. The research must permit – even induce – people to speak for themselves and must be wary of channelling their thoughts through his or her own preconceptions about what question to ask, how answers should be shaped, and what coding categories best subdivide the responses. The channelling comes later.’⁸⁴ Hochschild is right to point to the value of approaches that do not tightly constrain the expression of public views. But she is perhaps also too optimistic about the prospects subsequently for fitting these ‘textured idiosyncratic’ responses into the terms of established theoretical frameworks. However, if we will sometimes be unable to translate our findings back in established theoretical frameworks, we may instead find valuable new ways of thinking about our problems.

4. Conclusion

This chapter has sought to fulfil two aims: to explore the methodological challenges involved in integrating normative political theory with the study of public opinion and to show that public attitudes, in specific forms, constitute a valuable epistemic resource for political theory. I began by suggesting that Wolff and de-Shalit are caught between two approaches to the exploration of public views about disadvantage: one in which we start from participants’ own experiences and terms of reference and a second in which we force respondents, as far as possible, to express their views within a prior theoretical framework. More generally, political theorists face a choice between a top-down and bottom-up approach to the investigation of public opinion. The chapter went on to defend a version of each of these approaches. First, we can productively investigate public judgements about carefully constructed thought experiments and thereby utilise public opinion as an input into the concrete judgements side of the process of reflective equilibrium. Secondly, I suggested more briefly that there is also value for political theory in qualitative methods that reveal the details of people’s lived

⁸⁴ Hochschild, *What’s Fair*, p. 21.

experiences. The wider message of this chapter is that it is a mistake to think about the task of integrating political theory and public opinion as involving posing to the public the same questions that we ask ourselves as political theorists. Instead, we should be sensitive to the differences between philosophical and popular attitudes and seek to capture the particular strengths and weaknesses of each.

Chapter 4 Public Opinion and Realisms in Political Theory

1. Introduction

Chapter 4 explores how the question of the role of public opinion is bound up with debates about the need for ‘realism’ in political theory. I outline two very different versions of the demand for greater realism, which I term the detachment and displacement¹ critiques of normative political theory. Detachment critics emphasize the practical role of political theory. They argue that political theorists should pay closer attention to the complexities and constraints of real politics in order to do more to guide or inform actual political decision-making. Displacement realists, on the other hand, claim that the practice of normative political theory disrespects or threatens politics. They depict a competition between theory and democratic politics and a dangerous tendency for theorists to seek to resolve political questions through theoretical means.

Thus the first aim of this chapter is to offer an organizing perspective on the recent complex, and often confusing, debates about realism in political theory. Secondly, getting clear about what it is to be realistic is the first step in assessing whether giving a greater role to public opinion is a means of answering a justified demand for greater realism in political theory. The two strands of realist thought identified here point to two very different potential roles for public opinion. On the first detachment critique, evidence about public attitudes represents a tool to enable political theory to deliver more in the way of guidance for policy or political action. From the displacement perspective, the question is whether a closer engagement with public opinion can alleviate the alleged tension between political theory and democracy.

¹ I borrow Honig’s language to characterize the idea that political theory disrespects or threatens politics. See her *Political Theory and the Displacement of Politics* (Ithaca, NY: Cornell University Press, 1993) In this chapter and in part II I will go on to argue that this charge involves a number of distinct ideas and I do not suggest that Honig herself endorses all of these various objections.

The second question – whether and how public opinion can be used to democratize political theory – is taken up in part II. The remainder of this chapter seeks to clarify the relationship between feasibility, political theory and public opinion that is brought to the fore by the detachment critique. More specifically, I interrogate the idea that political theorists should give an increased role to evidence about public opinion as a way of enhancing the feasibility of their normative theories. This proposal immediately raises further problems, both theoretical and empirical: it requires us to establish the meaning and status of feasibility considerations in political theory, as well as to gauge the significance of public opinion as a determinant of political feasibility.

On the theoretical side, this chapter endorses the broad claim that feasibility considerations have a role to play in the practice of political theory. As a number of theorists have emphasized, we can attend to issues of feasibility without lapsing into an uncritical conservatism, as long as we are clear about the level at which feasibility considerations enter into normative theory and we are not too quick to give ground to constraints that might be amenable to change. However, I argue that feasibility is only one aspect of the demand for politically meaningful or relevant modes of theorizing and should not be over-emphasized. On the empirical side, chapter 4 highlights the barriers to actually taking up the research agendas suggested in the recent literature on feasibility. In particular, it emphasizes the empirical complexities involved in resting the case for a closer engagement between political theory and public opinion on feasibility grounds. I conclude that the empirical evidence base is insufficient, in most cases, to justify a concessionary approach to public attitudes. However, I suggest a more promising approach to questions of feasibility, involving the experimental testing of specific behavioural predictions.

1.1. Chapter outline

The chapter proceeds in five main parts. I begin, in section 2, by outlining the contrast between two forms of realism in political theory and explaining how these distinct critiques imply very different roles for public opinion. Section 3 further considers the meaning and status of feasibility considerations in political theory, as a central component of the first detachment critique. Here, I briefly discuss two main theoretical issues: how deep the concern with feasibility should go and whether public attitudes are, in principle, relevant to assessments of feasibility. Section 4 considers the empirical issues raised by the feasibility argument for engaging with popular attitudes, emphasizing the complex connections between mass opinion and political outcomes. Section 5 draws together the foregoing discussion to emphasize the demandingness of the recent ‘feasibility agenda’ in political theory. Section 6 reflects on the extent to which the focus on feasibility captures the fundamental motivations of the detachment critic, who is concerned to make political theory more politically relevant. In conclusion, I give a limited endorsement to the feasibility case for attending to public opinion. The broad terms of this argument are both theoretically and empirically plausible. However, I emphasize that the strength of the feasibility argument is variable, it is difficult to pursue and represents an incomplete response to the demand for greater realism in political theory.

2. Two forms of realism in political theory

Political theory, it is alleged, is insufficiently realistic: it is excessively abstract and irrelevant to real world political decision-making;² it is insensitive to history and context;³ it neglects the

² On the role of abstraction in normative theory, see Lisa Schwartzman, ‘Abstraction, Idealization and Oppression’, *Metaphilosophy*, 37 (2006), pp. 565-88 and Laura Valentini, ‘On the Apparent Paradox of Ideal Theory’, *Journal of Political Philosophy*, 17 (2009), pp. 332-55.

³ For a range of recent perspectives see Jonathan Floyd and Marc Stears, eds., *Political Philosophy versus History? Contextualism and Real Politics in Contemporary Political Thought* (Cambridge: Cambridge University Press, 2011). For critical discussion of this charge see also Jonathan Floyd, ‘Is political

importance of judgement in political conduct⁴ and denies the fact that politics is primarily about conflict and the exercise of coercive power.⁵ Among the complex set of ‘realist’ claims, of which these are just a few, we can helpfully isolate two distinct strands of critique. Detachment realists start by affirming the view that political theory is a practical discipline: one that ultimately seeks to guide political action.⁶ However, they suggest that in order to take this practical orientation seriously, we must reconsider the abstraction and lack of engagement with empirical details that is characteristic of much analytical political theory. Political theorists, on this view, have a responsibility to face outwards towards real politics, rather than absorbing themselves in technical and abstract theoretical debates, without regard for the political payoffs. The detachment charge has found its strongest target in luck egalitarian theories, with critics highlighting the gap between the terms in which this theoretical debate has been conducted and the real challenges and realistic possibilities for egalitarian politics. As discussed in chapter 2, Wolff and de-Shalit’s project is in part motivated by such concerns about the political detachment of egalitarian political theory. In a related vein, David Miller has argued that political theorists should propose principles that it is feasible for citizens to act on, ‘where feasibility in turn depends not just on physical and sociological laws, but on what, empirically, [citizens] would regard as an unacceptable outcome.’⁷

philosophy too ahistorical?’, *Critical Review of International Social and Political Philosophy*, 12 (2009), pp. 513–33.

⁴ On judgment and political conduct see Mark Philp, *Political Conduct* (Cambridge, MA: Harvard University Press, 2007)

⁵ For a helpful discussion of the realist emphasis on coercion see Marc Stears, ‘Liberalism and the Politics of Compulsion’, *British Journal of Political Science*, 37 (2007), pp. 533–53.

⁶ See Adam Swift and Stuart White, ‘Political theory, social science and real politics’, in David Leopold and Marc Stears, eds., *Political Theory: Methods and Approaches* (Oxford: Oxford University Press, 2008), pp. 49–69, at p. 5. and David Miller, ‘Political Philosophy for Earthlings’, in David Leopold and Marc Stears, eds., *Political Theory: Methods and Approaches* (Oxford: Oxford University Press, 2008), pp. 29–48, at p. 44. Thus detachment realists would resist the following, more pessimistic, assessment of the practical role of political theory (and ethics): ‘I don’t see political philosophy as having much to contribute to political practice. One would no more seek the advice of a political philosopher in designing political institutions or crafting public policy than one would consult a moral philosopher if one were confronted with an ethical dilemma.’ Chandran Kukathas in M. E. J. Nielsen, ed., *Political Questions: 5 Questions on Political Philosophy* (Automatic Press/VIP, 2006), pp. 63–73, at p. 68.

⁷ Miller, ‘Political Philosophy for Earthlings’, p. 47.

Wolff and de-Shalit and Miller, along with a number of other theorists, suggest that political theory has become too distant from, and thus has offered too little to, real politics. This broad critique clearly raises further questions, which are currently being debated in the rapidly developing literature on methods and approaches. Should intellectual work be assessed solely in terms of its practical value?⁸ To what extent should normative theorists, who are interested in how we *ought* to organize our political lives, be constrained by facts about how the world *is*? Much of this debate has taken the form of a conversation about the meaning and status of feasibility considerations in political theory.⁹ One of the most important ideas to emerge from this literature concerns the need to think about feasibility in dynamic terms. Given that what is feasible is not fixed, but subject to change over time, we should recognize ‘dynamic duties’:¹⁰ obligations to promote conditions under which previously unattainable ideals become more feasible. There is also growing attention to the way in which feasibility judgements may be sensitive to the nature of the subject at stake: whether we are concerned with the feasibility of

⁸ For the argument that political theory has value beyond the practical, see David Estlund, ‘What Good Is It? Unrealistic Political Theory and the Value of Intellectual Work’, *Analyse & Kritik*, 33 (2011), pp. 396–416. The significance of the detachment critique lies in large part in the growing methodological discussions it has provoked – much of which seeks, to various extents, to resist that critique. Thus many of the contributors to the debates about feasibility and ideal/non-ideal theory, including Estlund, are not detachment realists, but rather are taking up a set of research agendas suggested by that critique.

⁹ There is a growing literature on this question. Important contributions include: Tyler Cowen, ‘The Importance of Defining the Feasible Set’, *Economics and Philosophy*, 23 (2007), pp. 1–14; Mark Jensen, ‘The Limits of Practical Possibility’, *Journal of Political Philosophy*, 17 (2009), pp. 168–84; Andrew Mason, ‘Just Constraints’, *British Journal of Political Science*, 34 (2009), pp. 251–68; Juha Räikkä, ‘The Feasibility Condition in Political Theory’, *Journal of Political Philosophy*, 6 (1998), pp. 27–40. Pablo Gilabert has written a series of articles exploring the concept of feasibility and its place in political theory: ‘Global Justice and Poverty Relief in Nonideal Circumstances’, *Social Theory and Practice*, 34 (2008), pp. 411–38; ‘The Feasibility of Basic Socioeconomic Human Rights: A Conceptual Exploration’, *Philosophical Quarterly*, 59 (2009), pp. 659–81; ‘Debate: Feasibility and Socialism’, *Journal of Political Philosophy*, 19 (2011), pp. 52–63; ‘Comparative Assessments of Justice, Political Feasibility, and Ideal Theory’, *Ethical Theory and Moral Practice*, 15 (2012), pp. 39–56.

¹⁰ Gilabert, ‘The Feasibility of Basic Socioeconomic Human Rights’, p. 676. For further discussion of the dynamic character of feasibility judgements see Jensen, ‘The Limits of Practical Possibility’, p. 176.

ideals, institutional schemes, or political strategies¹¹ and with questions of justice, rights or democracy.¹²

Closely related to the feasibility issue is a debate about the respective roles of 'ideal' and 'non-ideal' theory.¹³ Here the discussion has centred on two issues. First, how is the distinction between ideal and non-ideal theory most helpfully understood? This debate has been conducted in the shadow of Rawls, who distinguishes two cases in which non-ideal theory applies: in the context of certain unfavourable conditions or 'natural limitations', and in the absence of general compliance with principles of justice.¹⁴ Non-ideal theory as partial compliance theory points to an important set of research agendas, concerning how we ought to behave in various kinds of cases in which others do not behave as they ought.¹⁵ The second key question concerns the value of ideal theory under non-ideal conditions. Notably, Amartya Sen has argued that ideal theory is neither necessary nor sufficient for the evaluation of real world alternatives.¹⁶ Sen's work has been subject to a number of powerful responses,

¹¹ See Pablo Gilabert and Holly Lawford-Smith, 'Political feasibility: a conceptual exploration', *Political Studies*, 60 (2012), pp. 809-25, at pp. 819-22.

¹² For the argument that feasibility considerations play a more fundamental role in theorizing about democracy than justice see Patrick Tomlin, 'Should We be Utopophobes about Democracy in Particular?' *Political Studies Review*, 10 (2012), pp. 36-47.

¹³ On ideal and non-ideal theory see the special issue of *Social Theory and Practice*, 34 (2008). See also Alan Hamlin and Zofia Stemplowska, 'Theory, Ideal Theory and the Theory of Ideals', *Political Studies Review*, 10 (2012), pp. 48-62; A. John Simmons, 'Ideal and Nonideal Theory', *Philosophy and Public Affairs*, 38 (2010), pp. 5-36; Zofia Stemplowska and Adam Swift, 'Ideal and Non-ideal Theory', in David Estlund, ed., *The Oxford Handbook of Political Philosophy* (Oxford: Oxford University Press, 2012); Lea Ypi, 'On the Confusion between Ideal and Non-ideal in Recent Debates on Global Justice', *Political Studies*, 58 (2010), pp. 536-55.

¹⁴ John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 1999), pp. 215-17. For a recent defence of the full compliance/partial compliance interpretation of the ideal/non-ideal distinction, see Robert Jubb, 'Tragedies of non-ideal theory', *European Journal of Political Theory*, 11 (2012), pp. 229-46.

¹⁵ On the question of individual duties under conditions of partial compliance, see David Miller, 'Taking up the Slack? Responsibility and Justice in Situations of Partial Compliance', in Zofia Stemplowska and Carl Knight, eds., *Responsibility and Distributive Justice* (Oxford: Oxford University Press, 2011), pp. 230-45.

¹⁶ Amartya Sen, 'What do we want from a theory of justice?', *Journal of Political Philosophy*, 103 (2006), pp. 215-38. See also his *The Idea of Justice* (London: Allen Lane, 2009)

challenging both his interpretation of prevailing practice and his proposed 'comparative' approach.¹⁷

In light of these burgeoning discussions, the observation that a lack of methodological reflectiveness is characteristic of analytical political theory no longer seems accurate. The next section will further consider the meaning and status of feasibility considerations in political theory in specific relation to the question of the role of public opinion. Here I want briefly to highlight just three unresolved questions, involving important junctures at which the detachment critique can be developed in different directions. First, there is more than one way in which political theory might seem to fall short of fulfilling its practical role. Is the primary problem one of abstraction and thus *indeterminacy* with respect to practical problems, or of excessively *ambitious* demands for social and political change?¹⁸ Relatedly, should we locate the problem of detachment primarily in the way in which political theorists frame their problems, or in the idealistic or utopian character of the answers that they give? Secondly, it is helpful to distinguish two ways in which political theory might help us to think about what we ought, politically, to do. Theorists might seek to play a direct prescriptive role: to offer more concrete guidance for policy development, institutional design or individual action. This seems to be what some detachment critics have in mind. However, theory might also perform a less direct, clarificatory role for democratic politics: helping us to see more clearly what is at stake in complex political debates and sharpening the conceptual tools at our disposal.¹⁹ The call for less detached, more politically engaged, forms of theory can plausibly be understood in both of these ways.

¹⁷ For critical discussion of Sen see Martijn Boot, 'The Aim of a Theory of Justice', *Ethical Theory and Moral Practice*, 15 (2012), pp. 7-21; Gilabert, 'Comparative Assessments of Justice'; Adam Swift, 'The Value of Philosophy in Nonideal Circumstances', *Social Theory and Practice*, 34 (2008), pp. 363-87, at pp. 372-5.

¹⁸ Perhaps both of these criteria are too demanding? Section 6 will suggest that there is a looser sense in which political theory can be politically relevant without meeting either of these conditions of determinacy and moderate ambition.

¹⁹ For the distinction between these two roles see Swift and White, 'Political theory, social science and real politics', p. 54.

Finally, and most fundamentally, when detachment critics emphasize the importance of attending to real-world political complexities and constraints this can appear as a less or more radical challenge to the practice of normative political theory. In its weaker form, detachment realism demands a shifting of emphasis: that we devote more attention to difficult questions about whether and how our normative ideals might be realized and relatively less to the continual refinement of the ideal theories themselves. On this account, political feasibility is an important and neglected lower level consideration in political theory, but one that cannot bear on the most fundamental normative questions.²⁰ In other hands, the detachment critique represents a claim about the fundamental ideals themselves. For example, Miller characterizes the ‘circumstances of social justice’ as ‘the circumstances in which social justice can function as *an operative, policy-guiding ideal, an ideal with political relevance rather than an empty phrase.*’²¹ In other words, for Miller, an ideal that fails to show *us* how we could make our society at least somewhat more just is not a conception *of social justice* at all. Even more strongly, Colin Farrelly has alleged that ‘theorising about justice at the level of ideal theory is *inherently flawed.*’²²

Even with these questions in mind, however, the general form of the detachment critique remains clear. The claim is that normative political theorists do not pay adequate attention to the factors that constrain political decision-making here and now and this leaves them either silent or making excessive demands in the face of the real world political problems that

²⁰ For the argument that feasibility considerations cannot bear on justice at the deepest level, see Mason, ‘Just Constraints’. I take it to be uncontroversial that even fundamental normative principles must respect ‘ought implies can’, in the minimal sense of not involving logical and physical impossibilities (although note that even this minimal feasibility requirement may not apply to evaluative principles – for further discussion see Gilabert, ‘Debate: Feasibility and Socialism’, pp. 55-9.). Thus the controversy here concerns the status to be accorded to a range of factors that determine what is politically achievable, such as public attitudes and institutional dynamics. See the next section for further discussion.

²¹ David Miller, *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 1999), p. 2. See also ‘A Tale of Two Cities; Or, Political Philosophy as Lamentation’, in his *Justice for Earthlings: Essays in Political Philosophy* (Cambridge: Cambridge University Press, forthcoming 2013)

²² Colin Farrelly, ‘Justice in Ideal Theory: A Refutation’, *Political Studies*, 55 (2007), pp. 844-64, at p. 845. Emphasis added.

confront us. I now want to contrast this claim with a strand of realist thought which, I think, is somewhat more elusive. This is the idea that we need to reshape the relationship between theory and real politics, not because theory is insufficiently useful, but in order to resolve a tension between theory and politics. Theory in some way threatens or competes with politics – and with democratic politics in particular. Displacement critics articulate a vision of democratic political life, which, they suggest, is undermined by the practice of normative political theory. They emphasize the centrality of conflict and contestation to democratic politics and contend that normative political theory often seeks to suppress or deny this inevitable and ongoing contest. The characteristic claims of this body of thought are that analytical political theory is anti-political or anti-democratic, aspires to pre-empt or to end politics, or treats politics as applied ethics. Bonnie Honig offers a particularly powerful statement of this form of critique: ‘Most political theorists are hostile to the disruptions of politics ... They assume that the task of political theory is to resolve institutional questions, to get politics right, over, and done with, to free modern subjects and their sets of arrangements of political conflict and instability.’²³

What, more precisely, is the nature of this alleged tension between theory and politics? In seeking to clarify the objection, I think we can usefully draw a further distinction within the displacement critique. Sometimes the claim is that political theorists overreach themselves and thereby express insufficient respect for the proper place of democratic politics. At other times, the displacement critique takes a more consequentialist form – highlighting the potential negative political effects of political theory.²⁴ Rather than exploring the displacement critique any further here, I want instead to highlight the overall contrast with the detachment concern for political relevance. Although both bodies of thought demand a more ‘realistic’

²³ Honig, ‘Political Theory’, p. 2.

²⁴ For further discussion, see Alice Baderin, ‘Two Forms of Realism in Political Theory’, *European Journal of Political Theory* (2013), doi: 10.1177/1474885113483284. There I consider four features of political theory that might be seen to pose political dangers: utopianism; the drive to sharpen disagreement; systematization and abstraction. More generally, I emphasize that displacement realism involves a range of views about the aspect of political theory that competes with democratic politics and the features of politics with which theory is in tension.

political theory in some sense, the failures of realism to which detachment and displacement critics direct our attention are quite different. Furthermore, the remedies they suggest are in direct tension. In the former case, 'getting real' involves delivering more in the way of practical guidance for political action, or at least clarifying the terms of everyday political argument. In the latter, it means recognising, if not celebrating, the perpetual role of conflict in politics and refraining from seeking to resolve that conflict through theoretical means. The answer to the problem of detachment is for political theorists to extend or to reorient their normative ambitions towards real world political problems: to offer more detailed prescriptions that speak directly to the concrete political choices that confront us. The displacement critique, on the other hand, suggests a competition between theory and democratic politics and a tendency for theorists to be dangerously overambitious about the possibilities of their discipline. The implication is that normative theory should pull back and cease seeking to occupy territory that rightly belongs to real politics. Thus the search for more specific and determinate principles to guide political action is in tension with the displacement warning against the false aspiration to certainty and closure. Not only will attempts to address the detachment problem fail to address displacement concerns, they appear, from the latter perspective, to reinforce the pathologies of political theory. Moreover, in its second consequentialist form, the displacement critique rests on a denial of the detachment worry that political theory is politically irrelevant. Political theory can be politically damaging only to the extent that political theorists, either directly or indirectly, make important interventions in real politics. Detachment critics are sceptical about this assumption, at least as long as theory operates at some distance from the complexities and constraints of real politics. Thus we must weigh the charge that political theory is useless against the fear that it is dangerous.

The contrast between detachment and displacement realism is not intended as a comprehensive account of all the various claims that have been advanced under the banner of

realism or associated with that critique. However, it captures one important and interesting fault line within the recent literature. First, it illuminates a neglected issue about the relationship between two bodies of thought that are united by a rejection of utopianism and a call for more realistic approaches, but rooted in quite different theoretical traditions. On the one hand, as discussed above, there is an increasing emphasis within analytical political theory on the role of feasibility considerations, the importance of engaging with social scientific evidence and the priority of ‘non-ideal’ theory. At the same time, a number of theorists, including Geuss, Newey and Williams,²⁵ have argued that mainstream normative political theory fatally misunderstands politics, and should be replaced by a ‘realist’ alternative. Both groups of thinkers call for political theorists to renew or remake the relationship between their discipline and the world of real politics. However, they have quite different visions of the failings of political theory and thus of the appropriate remedies. Secondly, the distinction between detachment and displacement critiques is valuable in revealing some under recognized tensions within recent realist thought: not only are these perspectives very different, they involve some incompatible claims and demands. Moreover, these tensions sometimes emerge within the work of individual realist thinkers, as they seek to press both forms of critique without noticing, or reflecting on, the distinction between them. In other words, although each of these critiques can be associated primarily with a particular body of literature – the detachment critique with the growing emphasis within analytical political theory on questions of feasibility and the role of social scientific evidence, the displacement critique with the external ‘realist’ challenge to analytical approaches – theorists who call for greater realism cannot be divided neatly into two camps. Honig has rejected the call for

²⁵ Raymond Geuss, *Philosophy and Real Politics* (Princeton, NJ: Princeton University Press, 2008); Glen Newey, *After Politics: The Rejection of Politics in Contemporary Liberal Philosophy* (Basingstoke: Palgrave, 2001); Bernard Williams, ‘Realism and Moralism in Political Theory’, in Geoffrey Hawthorn, ed., *In the Beginning was the Deed* (Princeton, NJ: Princeton University Press, 2005), pp. 1-17. Geuss, Newey and Williams use the language of realism to characterize their approaches. However, as with most traditions of thought, not all of those associated with this critique self-identify as realists – notably Bonnie Honig.

greater relevance in political theory,²⁶ whilst strongly advancing the argument that the practice of political theory generates tensions with democratic politics. However, in many other places these two lines of thought are intertwined.²⁷ For example, Sen argues that theory should do more to help us address political problems as they actually confront us here and now. At the same time, however, he sees a competition between theory and democratic politics that is characteristic of the displacement critique.²⁸ Thus the distinction I draw between two forms of realism is intended to speak to competing strands within the work of individual theorists, as well as to the relationship between the concerns of different thinkers. Theorists who are drawn to both of these kinds of worries about the relationship between theory and real politics should reflect more carefully on potential tensions among their 'realist' commitments.

The distinction between detachment and displacement critiques is also helpful in understanding some features of realism that otherwise appear puzzling – in particular, the relatively abstract and inaccessible character of some realist writing.²⁹ If the aim is to be more realistic, shouldn't we be producing work that speaks to audiences beyond academic political theory and that engages more directly with concrete political issues? In light of the picture developed here, however, these senses in which some realist literature remains 'unrealistic'

²⁶ And in academic work more generally. See her 'Against Relevance', Paper presented at the Perestroika reception during the annual meeting of the American Political Science Association, Boston, MA, 2002.

²⁷ For example, both strands run through Galston's influential overview of realism. See William Galston, 'Realism in Political Theory', *European Journal of Political Theory*, 9 (2010), pp. 385-411.

²⁸ In particular, Sen has argued that theory should leave open-ended an account of the basic capabilities, to be filled in by the democratic process. See Amartya Sen, 'Capabilities, Lists, and Public Reason: Continuing the Conversation', *Feminist Economics*, 10 (2004), pp. 77-80, at p. 78. See chapter 5 for further discussion.

²⁹ For the observation that realists often theorize at some distance from the concrete realities of politics, see Simone Chambers, 'Review of Newey, *After Politics*', *American Political Science Review*, 96 (2002), pp. 808-9. Part II will argue that the way to render political theory more democratic is to focus on producing work that makes sense to a wider public (rather than bringing theory more closely into line with the substantive content of public attitudes). Thus, insofar as the displacement critic is concerned about the relationship between political theory and democracy, she ought to be more attentive to the accessibility of her work. See chapter 5 for further discussion.

are no longer surprising. It reflects the fact that the motivation for the displacement critique is not a concern about the lack of a practical orientation in normative political theory. It is a more complex worry that the theoretical enterprise disrespects or threatens politics.

By distinguishing between its detachment and displacement forms, we ensure that the realist critique does not gain plausibility by trading on ambiguities about what it means to be realistic. Most importantly for the purposes of this thesis, these two forms of realism point to different roles for public opinion in rendering political theory more realistic. From the detachment perspective, the question is whether and how public opinion can be employed to make political theory more useful, feasible or relevant. From the displacement perspective, we should consider whether public opinion can alleviate a supposed tension between theory and democratic politics. If there is something arrogant, overambitious or politically threatening about the practice of political theory, perhaps giving greater weight to public attitudes is a way of reining in these tendencies? This second question is taken up in part II, where I both further interrogate the displacement critique and consider whether a commitment to democracy should lead political theorists to accord public opinion a more central place in their work. The remainder of this chapter focuses on the role of public opinion from the perspective of detachment realism. In particular, I reflect further on the place of feasibility considerations in political theory and what this implies, in turn, for the role of public attitudes.

3. The meaning and status of feasibility considerations in political theory

In the broadest sense, the demand for feasibility is for normative ideals or principles that have some reasonable probability of being realized. To be realistic, in this sense, is ‘to propose a vision that we believe can be actualized.’³⁰ Discussions of feasibility often start from the principle that ‘ought implies can’, in the narrow sense that moral imperatives must be formulated within the limits of logical and physical possibility: it cannot be the case that we

³⁰ Jenson, ‘The Limits of Practical Possibility’, p. 170.

ought to X and not X, or that we ought to defy the laws of gravity. They then go on to explore whether we should strengthen this demand, and incorporate into normative theory some thicker assessment of what is politically possible, given our history, culture, resources and institutions, as well as prevailing public attitudes. Cohen draws a useful distinction between two key dimensions of such assessments: accessibility and stability. The former concerns whether there is a path from where we are now to the implementation of an ideal. The latter concerns whether, if we *could* get there, a particular scheme for implementing the ideal would be sustainable: it ‘brackets the question of the political achievability of the proposed alternative under existing historical conditions, focusing instead on the likely dynamics and unintended consequences of the proposal if it were to be implemented.’³¹

This points to two potential feasibility roles for public opinion: first, the way in which public attitudes constrain the political trajectories open to us; secondly, how people’s beliefs and commitments contribute to the stability, or otherwise, of particular institutional schemes or social arrangements. It is also important to note that different *kinds* of public attitudes may be implicated in feasibility assessments: notably beliefs about what is politically achievable, as well as judgements of desirability.³² Thus, the ‘social limits of possibility are not independent of beliefs about limits.’³³ For example, both Cohen and Wright emphasize the politically constraining effects of the widespread belief that socialism is infeasible.³⁴ More generally, much in politics is won and lost in battles, sometimes explicit, sometimes hidden, about what

³¹ Erik Olin Wright, ‘Guidelines for envisioning real utopias’, *Soundings*, 36 (2007), pp. 26-39, at p. 28. Wright’s distinction between achievability and viability parallels Cohen’s between accessibility and stability. For a similar distinction, between ‘prospective’ and ‘retrospective’ constraints, see also Jurgen De Wispelaere and Jose A. Noguera, ‘On the Political Feasibility of Universal Basic Income’, in Richard Caputo, ed., *Basic Income Guarantee and Politics: International Experiences and Perspectives on the Viability of Income Guarantees* (New York: Palgrave/Macmillan, 2012), pp. 17-38, at p. 20. Available at: <http://works.bepress.com/dewispelaere/41>

³² Note that I do not treat feasibility itself as a normative ideal. Thus, on the view adopted here, normative considerations enter into feasibility assessments only via people’s *beliefs* about what is valuable or desirable. An alternative approach treats x as feasible to the extent that x is achievable without excessive cost in terms of other values.

³³ Wright, ‘Guidelines for envisioning real utopias’, p. 32.

³⁴ G.A. Cohen, *Why Not Socialism?* (Princeton, NJ: Princeton University Press, 2009), p. 56.

is achievable and what is excessively idealistic. And important periods of political change can be understood partly in terms of shifting views and discourses around what is feasible. For example, through an analysis of the language of New Labour, Fairclough shows that there was an important shift towards portraying processes of globalization and their consequences as inevitable and unstoppable.³⁵

In outlining the detachment critique, I noted that a central question concerns how *deeply* considerations of feasibility should enter into normative political theory. This issue is crucial for understanding what kind of status the feasibility argument can, in turn, confer on evidence about public opinion. As a number of theorists have emphasized, we should not confuse the issue of the moral appeal of a political ideal or proposal with the question of the feasibility of its realization. To do so would be to illicitly tailor our beliefs about what ought to be to the facts about what is politically achievable:

‘Intellectually it is important to be able to distinguish between claims about a mode of social life being morally unattractive or unjust and claims about its being infeasible. Desirability and feasibility are not co-extensive. We can imagine social arrangements that are desirable but infeasible and social arrangements that are feasible but undesirable.’³⁶

In light of this crucial observation that feasibility considerations do not go all the way down, the task of specifying a multi-level model of political theory has received significant attention in the recent literature. On this view, we can divide political theory into different tasks, with the facts on the ground impinging differently at different stages. For example, Estlund distinguishes between ‘aspirational’ and ‘concessive’ theory, Mason offers a four part model of political theory (with three levels and two stages in the third level) and Barry and Gilabert

³⁵ Norman Fairclough, *New Labour, New Language?* (London: Routledge, 2000). Fairclough describes how the language of New Labour cumulatively built an image of ‘cascades of change’.

³⁶ Gilabert, ‘Debate: Feasibility and Socialism’, p. 54.

distinguish between the ‘principle level’ and the ‘application level’ in political thought.³⁷ More important for present purposes than the details of these models is the basic point that they all have in common: a political ideal does not lose its status as an ideal simply because its implementation is infeasible, for example because it is contrary to popular beliefs.

However, there is a potentially more convincing way of reading the suggestion that public opinion, as a feasibility consideration, does touch our normative ideals at the deepest level. We might think that certain features of *human nature* – features that mean *we will never be able to bring ourselves to meet certain standards* – go all the way down in political theory, even if contingent attitudinal barriers to political action do not. As David Miller has argued, surely we want political theory to be for, or about, ‘earthlings’?³⁸ And doesn’t this imply that some basic facts about what makes us recognizably human, including facts about our motivational capacities, should enter into political theory at the deepest level? Agent-centred prerogatives might seem to represent such a concession to characteristic features of human nature: shouldn’t *the ideal of justice itself* make space for the deep and permanent facts that we tend to form special relationships and to identify with personal projects?

The thesis is primarily concerned with the role of public attitudes in political theory, rather than with this question about the place of more basic facts about human nature. However, it is worth noting that we might plausibly resist even this claim that characteristic human dispositions and motivations (in contrast to contingent public attitudes) shape our fundamental ideals. Notably, David Estlund has argued that ‘it is never a feature’s status as characteristic of humans by nature that constrains the concept of justice, since a judgement is also required in every case about whether the feature’s moral value or significance suits it to

³⁷ David M. Estlund, ‘Utopophobia: Concession and Aspiration in Democratic Theory’, in his *Democratic Authority: A Philosophical Framework* (Princeton, NJ: Princeton University Press, 2009), pp. 258-75; Mason, ‘Just Constraints’; Christian Barry and Pablo Gilabert, ‘Does global egalitarianism provide an impractical and unattractive ideal of justice?’, *International Affairs*, 84 (2008), pp. 1025-39, at p. 1030.

³⁸ Miller, ‘Political Philosophy for Earthlings’.

have this kind of weight.³⁹ In other words, we always need to carry out an independent moral evaluation of our typical motivations and dispositions in order to judge whether and how they shape the demands of justice. On this account, what draws us to agent centred prerogatives is not the fact that partiality is *characteristically human*, but rather that it is *desirable* that people have some room to pursue particular projects and to form special relationships.⁴⁰ The force of Estlund's position is revealed when we turn to less appealing aspects of human nature. Suppose, he asks, that a certain degree of cruelty is shown to be an inevitable part of human nature. Does this imply that an element of cruelty becomes part of the demands of justice? Estlund is surely right that 'Vicious, or complacent, or selfish concerns are not somehow morally sanitized if they should happen to be characteristic of humans.'⁴¹

3.1. Is feasibility conditional on effort?

I have suggested that judgements about feasibility should not be allowed to shape the specification of fundamental political ideals. Nevertheless, the feasibility argument potentially identifies an important role for public attitudes in political theory. In particular, it was noted that popular beliefs, both about what is desirable and about what is feasible, may feed into assessments of the accessibility and stability of the implementation of normative ideals. The next section will interrogate the empirical basis of this argument. However, first I want briefly to address a conceptual move that would rule out a significant role for public attitudes in judgements of feasibility. Specifically, Brennan and Southwood suggest that we should make assessments of feasibility conditional on effort: X is feasible if we have a reasonable probability

³⁹ David Estlund, 'Human Nature and the Limits (If Any) of Political Philosophy', *Philosophy and Public Affairs*, 39 (2011), pp. 207-37, at p. 228.

⁴⁰ In this sense, the path to agent centred prerogatives is a moral rather than an empirical one. However, the facts might play a crucial role, in the sense that it is observing patterns of partiality that draws our attention to their importance and desirability. For a related distinction between 'epistemic and logical grounding', see Robert Jubb, 'Logical and Epistemic Foundationalism About Grounding: The Triviality of Facts and Principles', *Res Publica*, 15 (2009), pp. 337-53.

⁴¹ Estlund, 'Human Nature', p. 235. Note that Estlund argues that his position does not involve a denial of 'ought implies can', since 'can' does not imply 'can will'. In other words, he claims that we can do what we cannot bring ourselves to do.

of achieving X *if we try*.⁴² The motivation for this conditional analysis of the concept of feasibility is to avoid deeming infeasible outcomes that we could easily achieve, if only we were to try:

‘Suppose that one is so lazy that one is highly unlikely to go to one’s daughter’s hockey game on Saturday morning. It’s not that there is anything preventing one from doing so. Nor would it be especially difficult or costly. It’s just that one is so lazy that one will almost certainly stay in bed and read the paper instead. It would be a mistake, we take it, to claim that one’s going to watch one’s daughter’s hockey game is “infeasible”. It’s perfectly feasible. It’s just that the chances are that it won’t happen. Feasibility isn’t the same as sufficient probability.’⁴³

What is the value of understanding feasibility in this way? The question here is not so much what feasibility *really* means, but rather how useful alternative conceptualizations prove for addressing the questions that concern us. Brennan and Southwood’s interpretation is persuasive at the individual level; it does indeed seem odd to claim that it is infeasible for me to attend a sports game when the only barrier to my doing so is my own laziness. However, the difficulty with the conditional analysis of feasibility arises when we turn to the collective political level, because it seems to exclude much of what political theorists are interested in when they ask whether their normative ideals are politically achievable. Crucially, this analysis would rule out, as feasibility considerations, facts about public attitudes that lead people not to strive for (or to try to sustain) particular outcomes – either because they believe those ends are not sufficiently desirable or are not achievable. For example, when assessing the feasibility of cosmopolitanism we would not factor in popular beliefs that we have stronger duties to our fellow citizens, insofar as this belief implies unwillingness to seek significant redistribution across borders. Brennan and Southwood’s account might not rule out public opinion entirely, if some facts about public attitudes impinge not on whether we *try* to achieve certain ends, but

⁴² Geoffrey Brennan and Nicholas Southwood, ‘Feasibility in Action and Attitude’, in T. Rønnow-Rasmussen, B. Petersson, J. Josefsson and D. Egonsson, eds., *Hommage à Wlodek: Philosophical Papers Dedicated to Wlodek Rabinowicz*. (2007)

Available at: <http://www.fil.lu.se/hommageawlodek/site/papper/Brennan&Southwood.pdf>.

⁴³ Ibid, p. 9.

on whether we succeed if we try. Perhaps some beliefs sabotage our ability to achieve certain ends, in spite of our own best efforts? But when political theorists appeal to public opinion as a feasibility consideration, they are typically thinking about public attitudes as something that leads citizens not to seek (or to resist others' attempts to realize) particular normative ideals. In order to capture these concerns, we should reject the conditional analysis and interpret feasibility in such a way that public attitudes are, at least in principle, relevant to feasibility assessments.

4. Public opinion and political feasibility: empirical considerations

The feasibility argument starts from the assumption that public opinion is a key determinant of what happens, and what is reasonably likely to happen, politically. Given this assumption, making normative theory more sensitive to public attitudes represents a means of giving due consideration to feasibility constraints. For example, if the public tend to favour conditionality in welfare policies,⁴⁴ we should recognize that universal basic income, whatever its appeal as an ideal, is not politically feasible – at least in the short-run. However, the literature on feasibility in political theory has tended to ignore the complex empirical questions raised by such arguments: questions concerning the extent to which, ways in which, and conditions under which, public opinion shapes political outcomes. Given the variety of mechanisms through which public attitudes are expressed, there is a wide range of potentially relevant fields of research for the political theorist to consider, including studies of the motivations and impact of social movements and research exploring how elite actors gauge and respond to public opinion.⁴⁵ We should also consider the potential impact of public opinion *research*. In other words, the influence of public attitudes depends not just on what people think, but on

⁴⁴ For some evidence on this question, see Wim Van Oorschot, 'Who should get what, and why? On deservingness criteria and the conditionality of solidarity among the public', *Policy & Politics*, 38 (2000), pp. 33-48.

⁴⁵ See Susan Herbst, *Reading Public Opinion: How Political Actors View the Democratic Process* (Chicago: University of Chicago Press, 1998)

how what they think is studied and how these data are disseminated and viewed, in particular by powerful political actors.⁴⁶ Public opinion might matter if elite political actors think that it matters, even if they are wrong about how the public will react or what they will tolerate.

A full exploration of the relevant empirical literature is beyond the scope of this chapter. But even a brief look at the evidence in just one field highlights some important messages for the political theorist who is interested in public opinion for feasibility reasons. Some of the classic findings of opinion research, concerning the limits of citizens' political knowledge and the instability and superficiality of public opinion on many policy issues, suggest a challenge to the empirical basis of the feasibility argument. If citizens know little about politics and policy and can be led to express conflicting views by seemingly insignificant features of context and framing, how can public attitudes be an important constraint on political action? In the context of representative democracies, the political significance of public opinion rests in large part on the responsiveness of elected representatives to public attitudes. But if it is unclear what the public think, or if they simply lack any meaningful attitudes, this mechanism is undermined; 'without public responsiveness to policy, there is little basis for policy responsiveness to public opinion.'⁴⁷ Against this, there is a growing body of research that uses quantitative methods to gauge the impact of mass attitudes on various measures of elite political action and policy outputs. Drawing mainly on US data, researchers have demonstrated that public opinion *does* have significant political effects. For example, in a recent review of empirical evidence, Shapiro concludes that there is 'a substantial connection, overall, between public opinion and policymaking in the United States.'⁴⁸

⁴⁶ For reservations about the impact of survey research on elite political action, see Robert Y. Shapiro, 'Public Opinion and American Democracy', *Public Opinion Quarterly*, 75 (2011), pp. 982-1017. Shapiro emphasizes the variety of sources of information about public opinion available to political elites, as well as mistrust and limited understanding of polling.

⁴⁷ Stuart N. Soroka and Christopher Wleizen, *Degrees of Democracy: Politics, Public Opinion and Policy* (Cambridge: Cambridge University Press, 2010), p. 41.

⁴⁸ Shapiro, 'Public Opinion and American Democracy', p. 982.

This evidence challenges the sceptical dismissal of mass opinion as too fragile or ill-informed to be politically significant. However, beyond the broad consensus that public attitudes are not wholly irrelevant or ineffectual, there are several remaining areas of uncertainty and disagreement. For example, has selection bias led to the systematic overestimation of the political impact of popular attitudes?⁴⁹ How is the political impact of public opinion mediated by institutional context?⁵⁰ Are there significant differences between socioeconomic groups in terms of the extent to which their attitudes influence policy?⁵¹ Is the impact of mass opinion in fact declining, with intensifying partisan conflict and polling being used to manipulate, rather than respond to, public attitudes?⁵² There is growing evidence that the policy impact of mass opinion is likely to be contingent in a number of important ways. For example, studies have consistently found that the effect of public opinion is greater for more salient issues, with foreign policy, in particular, often appearing relatively immune from public influence. However, further research is needed to identify general patterns within this variability, which would allow us to predict the strength of impact of popular attitudes in particular cases. Even studies reporting a significant relationship between public policy and popular attitudes towards salient issues find that in a substantial minority of cases policy moves against majority opinion: 'With opinion-policy congruence at the 60-percent level or better, cases of noncongruence still abound, so that while responsiveness is the modal effect, the occurrence of non-responsiveness is far from trivial.'⁵³

⁴⁹ See Paul Burstein, 'Why Estimates of the Impact of Public Opinion on Public Policy are Too High: Empirical and Theoretical Implications', *Social Forces*, 84 (2006), pp. 2273-89.

⁵⁰ See Stuart N. Soroka and Christopher Wleizen, 'Political Institutions and the Opinion-Policy Link', *West European Politics*, 35 (2012), pp. 1407-32.

⁵¹ See Stuart N. Soroka and Christopher Wleizen, 'Inequality in Policy Responsiveness?', in Peter K. Enns and Christopher Wleizen, eds., *Who Gets Represented?* (New York: Russell Sage Foundation, 2011), pp. 285-310.

⁵² Lawrence R. Jacobs and Robert Y. Shapiro, *Politicians Don't Pander: Political Manipulation and the Loss of Democratic Responsiveness* (Chicago: University of Chicago Press, 2000)

⁵³ Shapiro, 'Public Opinion and American Democracy', p. 1000.

Thus whilst the overall direction of recent quantitative findings is broadly supportive of the feasibility argument for engaging with public attitudes – in the sense that most researchers have concluded that public policy is responsive to mass attitudes – closer examination reveals a great deal of complexity and uncertainty. Some researchers have even expressed remaining doubts about the direction of causality within the data, with Shapiro conceding that ‘a fully and indisputably causal effect of public opinion is still subject to debate.’⁵⁴ With ongoing disputes amongst political scientists about the quality and interpretation of the data, it is hard for theorists to take an informed position. It is also very difficult to map the available evidence onto the kinds of questions that concern political theorists. Given the limitations of the data, the most significant recent studies have been restricted to testing the impact of public opinion on ‘amounts’ of policy: if the public want ‘more’ health policy, does this result in ‘more’ health policy being realized?⁵⁵ For example, Brooks and Manza used overall government spending on nine types of benefits and services as the dependent variable in their study of the relationship between public opinion and the persistence of welfare state policies.⁵⁶ The difficulty here is two-fold. First, the questions that interest political theorists are typically much more fine-grained than the variables employed in these empirical studies. Political theorists are not simply concerned about how much is spent, but with how it is spent and on whom – and indeed about issues that are not primarily to do with spending at all. On the other hand, normative political theories are often more sweeping, in the sense that they cut across policy domains that are treated as discrete for the purposes of investigating the political impact of public opinion.

⁵⁴ Ibid, p. 999.

⁵⁵ Soroka and Wleizen, ‘Political Institutions’, p. 1049.

⁵⁶ Clem Brooks and Jeff Manza, *Why Welfare States Persist: Public Opinion and the Future of Social Provision* (Chicago: University of Chicago Press, 2007). Dependent variables in other studies include indicators of legislative activity and presidential policy statements. For example, Miller and Stokes’ seminal study investigated the relationship between constituency opinion and roll call voting in Congress – see Warren E. Miller and Donald Stokes, ‘Constituency Influence in Congress’, *American Political Science Review*, 57 (1963), pp. 45–56. These measures are even more difficult to relate to the questions that concern political theorists.

The picture is complicated further by the phenomenon, noted in chapter 3, of disjunctions between the general normative principles that people avow and the policy positions they adopt. In a strict sense, we should not talk about feasibility in relation to normative ideals or principles: this is shorthand for the feasibility, or otherwise, of more concrete schemes for the implementation of an ideal. But we cannot straightforwardly infer public opinion on policy questions from evidence about popular ideals. This is well illustrated by US public attitudes towards the Bush tax cuts of 2001 and 2003. Bartels reports that three quarters of Americans at this time felt that economic inequality was growing, with most of these adding that this was a bad thing. At first glance, we might think that these beliefs would represent a barrier to tax cuts favouring the very richest. However, in actual fact the Bush tax measures attracted majority support among the public – and they attracted majority support even among those recognizing *and* regretting the growth in inequality.⁵⁷ The more general lesson here is that *even if* public opinion is causally highly significant, we cannot straightforwardly rule out particular policies as infeasible on the basis of contrary public opinion *at the level of ideals*. Thus political theorists have to do a lot of hard work in relating their ideals to more specific policy positions before they can even sensibly start the task of trying to gauge what is feasible in light of public opinion. In other words, we must *already* have gone a long way in making political theory more realistic, in the sense of generating more concrete proposals, before we can begin to address the feasibility agenda.

Political theorists sometimes write as if the political world is populated by adherents of various ethical world views. Of course citizens do disagree about moral and political values, and especially about how those values should be weighed in political decision-making. However, simply imagining lines of theoretical contestation to be replicated among the wider population

⁵⁷ Larry M. Bartels, 'Homer gets a tax cut: Inequality and Public Policy in the American Mind', *Perspectives on Politics*, 3 (2005), pp. 15-31.

gives a misleading picture of public opinion and the ways in which it can inform political theory:

‘When it comes to morality, including political morality, citizens reasonably disagree not only about whether certain laws or policies are just, but also about the truth conditions of claims about justice. *Some, for instance, believe that just policies are those which maximize overall utility within the constraints of fundamental rights; others that they are those which maximize average utility; others still think that laws are just in virtue of their conformity with Kant’s Categorical Imperative or Rawls’s principles of justice; some religious citizens hold that justice requires laws and policies to reflect our status as God’s creatures.*’⁵⁸

This is perhaps just an unfortunate way of writing; if they were to reflect for a moment, surely no political theorist really thinks that everyday political thought is consistently structured by Rawlsian, Kantian and various forms of utilitarian theory. However, it is important to expose and to challenge this picture, because it can operate implicitly to shape how we think about the relationship between political theory and public opinion. From a feasibility perspective, with this picture in the background it is tempting to think that the task is first to compare the content of a political theory with the content of public attitudes and, secondly, to draw conclusions about what is politically feasible based on the degree of congruence. I have suggested that such an approach will sometimes lead us to give ground to public attitudes at the wrong level. A broader problem with this approach is that it focuses our attention exclusively on *what* people think, when there are limits to what examining the substantive content of popular attitudes can tell us about what people will endorse or accept. In other words, what makes a principle or proposal feasible, given public attitudes, is not simply – perhaps even primarily – a function of the relationship between the substantive content of the proposal and of public attitudes. In addition, the empirical literature highlights the crucial role of framing and perceptions of the proposal’s proponents.⁵⁹ This suggests that there will often

⁵⁸ Laura Valentini, ‘Justice, Disagreement and Democracy’, *British Journal of Political Science*, 43 (2013), pp. 179-99, at p. 190.

⁵⁹ On framing (or ‘metaphors’), see George Lakoff, *The Political Mind: Why You Can’t Understand 21st-Century American Politics with an 18th-Century Brain* (New York: Viking, 2008). On source effects, see

be no *general* answer to the question: How feasible is the implementation of ideal X in light of evidence about public attitudes? The feasibility of an ideal will typically depend on how X is framed and by whom.

A related complication concerns the fact that public opinion is not fixed, but rather subject to change. Earlier in this chapter I noted that recent discussions of feasibility have highlighted the notion of dynamic duties: obligations concerned with ‘expanding our feasible sets of political action.’⁶⁰ Jenson draws a related contrast between first and second order abilities: we have a first order ability to do A when we can do A; we have a second order ability to do A if we can do A only if we first perform some action B. Jenson’s suggestion is that recognizing second order abilities enables us to avoid an overly pessimistic approach to questions of feasibility, in which we dismiss a proposal as infeasible simply because it is only attainable given some intermediate steps.⁶¹ The notions of dynamic duties and second order abilities highlight that we should not be quick to give ground to constraints, such as public attitudes, that may themselves be open to change. Thus rather than simply working out what is feasible taking public attitudes as given, perhaps political theorists might seek to influence popular beliefs and thereby make previously inaccessible ideals accessible?

Much recent work in political psychology points to a fairly pessimistic assessment of the likely persuasive force of political theory. Authors such as Lakoff and Westen have emphasized the limited political power of rational argument against framing and emotional appeals.⁶² Again, however, there are significant gaps in empirical understanding and the feasibility argument implicates political theorists in further complex and unsettled debates. Specifically, once we

James H. Kuklinski and Norman L. Hurley, ‘On Hearing and Interpreting Political Messages: A Cautionary Tale of Citizen Cue-Taking’, *The Journal of Politics*, 56 (1994), pp. 729-51.

⁶⁰ Gilabert, ‘Debate: Feasibility and Socialism’, p. 61.

⁶¹ Jenson, ‘The Limits of Practical Possibility’, pp. 178-81. Jenson also notes that we can go wrong in the other direction, by mistakenly treating proposals that require intermediate steps as directly accessible.

⁶² Lakoff, *The Political Mind*; Drew Westen, *The political brain: the role of emotion in deciding the fate of the nation* (New York: PublicAffairs, 2007)

recognize the dynamic character of public opinion, the feasibility argument points to two key questions: First, how changeable is public opinion? Secondly, to what extent are public attitudes subject to influence by normative arguments of the kind typically offered by political theory? One emerging message from the empirical literature concerns *who* is likely to be most amenable to persuasion. There is growing evidence that people with moderate political awareness and information are most likely to change their views – they are more likely than those with low awareness to receive persuasive messages and less likely than the highly aware to have the resources to resist them.⁶³ For example, Koch describes how the structure of attitudes towards healthcare provision among the moderately politically aware most closely reflected the shifting patterns of elite messages during the Clinton administration.⁶⁴ It has proved more difficult empirically to study ‘message effects’; to identify the general properties, if any, of persuasive political arguments. For example, one widely cited study set out to test whether simple or complex arguments are more convincing – an issue that is potentially highly relevant to political theorists, who typically deal in the latter. However, no consistent overall pattern was found, with more complex arguments having a greater impact in the area of free trade, and simple arguments proving more effective in the domain of healthcare.⁶⁵

A thorough review of recent research into political persuasion is beyond the scope of this chapter. The purpose of this brief discussion is simply to reinforce the wider message that the empirical connections between public opinion and political feasibility are complex and there are significant limitations to the available data. Public opinion is politically efficacious, but it is very difficult, in most cases, to determine to what extent, and in what forms, prevailing attitudes determine the parameters of political possibility. Given these uncertainties, the

⁶³ James N. Druckman and Arthur Lupia, ‘Preference Formation’, *Annual Review of Political Science*, 31 (2000), pp. 1-24, at p. 15.

⁶⁴ Jeffrey W. Koch, ‘Political Rhetoric and Political Persuasion: The Changing Structure of Citizens’ Preferences on Health Insurance During Policy Debate’, *The Public Opinion Quarterly*, 62 (1998), pp. 209-29.

⁶⁵ Michael D. Cobb and James H. Kuklinski, ‘Changing Minds: Political Arguments and Political Persuasion’, *American Journal of Political Science*, 41 (1997), pp. 88-121.

burden of proof rests with those who would reject a proposal as infeasible on the basis of contrary public attitudes: to bring forth robust evidence, at an appropriate level, that takes account of issues of framing and credibility and acknowledges the dynamic character of public opinion.

5. Is feasibility feasible?

Recent discussions of feasibility in political theory have left the discipline with a series of 'promisory notes'⁶⁶ outlining a range of challenging tasks: including making trade-offs between proposals with varying degrees of feasibility and desirability and judging how alternative 'waystations'⁶⁷ increase or decrease the prospects for making further progress towards an ideal. Thus articulation of the concept of feasibility has outstripped attempts to make good on the research agendas it generates. Given the empirical complexities involved, the prospects for political theorists to make progress with these questions are limited. In other words, the recent literature on feasibility in political theory introduces its own forms of infeasibility. Specifically, it makes unrealistic demands of the social scientific evidence and perhaps also of the capacity of political theorists to make informed judgements about areas of ongoing empirical controversy.

The epistemic barriers to forming robust feasibility judgements are reflected in the speculative tone of many discussions in this area. For example, considering market socialism as a potential transition towards a fuller realization of socialist ideals, Gilabert notes first that: '*perhaps* those living in a market socialist society will cherish the greater equality and community they have achieved (when comparing their society to the previous, capitalist one), and they may want to experiment with further reforms leading to even more egalitarian and community minded forms of social life. If this were so, then there would be even more reason to aim at market

⁶⁶ Annette Baier, *Postures of the Mind: Essays on Mind and Morals* (Minneapolis: University of Minnesota Press, 1985), p. 212.

⁶⁷ Wright, 'Guidelines for envisioning real utopias', p. 38.

socialism now rather than at deeper reforms.’ On the other hand, he concedes, ‘*it might be the case* that market socialism’s acceptance of certain inegalitarian and instrumental attitudes and institutions sets off a degree of social inertia that in fact undermines more radical transformations. So *someone might say* that instead of incremental changes going, say, from welfare state capitalism to market socialism to full socialism, we should seek paths leading to full socialism that pass through less desirable stages.’⁶⁸ Both of these suggestions about the dynamics of socialism are plausible, but Gilabert does not tell us how we might begin the task of adjudicating between them. Cohen has suggested that we do not know at this time whether or not socialism is feasible.⁶⁹ This agnostic position, I suggest, applies not just to socialism, but to the feasibility of most normative ideals. Indeed Gilabert himself notes ‘the presence of extreme uncertainty about possible political futures’⁷⁰ and he concedes that this uncertainty counts against strategies that would impose short-term moral costs in order to set us on a path towards a more promising future. But this deep uncertainty also threatens our more general capacity to make reliable judgements of feasibility and thereby weighs against a concessionary approach towards real world political constraints, including public attitudes.

Having emphasized the difficulty of making robust feasibility judgements, I now want to introduce a more optimistic note into the discussion. Specifically, we can learn from some studies that have succeeded in moving beyond a purely speculative approach to feasibility questions, particularly within the field of basic income studies. It is commonly objected that unconditional basic income (UBI) is infeasible, because it would create disincentives to work, thereby drastically reducing labour supply and the tax base from which the UBI is supposed to be paid. Proponents of basic income policies have contested this behavioural prediction, yet much of the discussion – as with the wider literature on feasibility in political theory – has

⁶⁸ Gilabert, ‘Debate: Feasibility and Socialism’, p. 62.

⁶⁹ Cohen, *Why Not Socialism?*

⁷⁰ Gilabert, ‘Debate: Feasibility and Socialism’, p. 63.

remained at a theoretical level. However, recent research suggests some promising empirical strategies for moving the debate forward. In particular, one study shows how evidence about the behaviour of lottery winners can be used to draw conclusions about the feasibility of UBI. Marx and Peeters identify the Belgian ‘Win for Life’ game, in which winners are awarded a tax free monthly income for life, as a natural experiment that allows at least some tentative lessons to be drawn about the likely impact of UBI on labour market choices. A small group of winners responded to a postal questionnaire, asking about their current labour market status, their position at the time of the win and the reasons for any change. The researchers conclude that their findings about the behaviour of lottery winners ‘point to no extreme consequences of introducing a BI, with very few changes with regard to quitting work, diminishing working times or becoming self-employed.’⁷¹

Marx and Peeters rightly urge caution in drawing conclusions about the likely effects of UBI from the results of this small-scale pilot study. For example, the results may be shaped by specific features of the Belgian labour market, such as the relatively high minimum wage, which makes the cross-national implications uncertain. Nevertheless, this evidence does speak to the important question of whether introducing UBI would lead to a large-scale short-term disruption of labour supply, which has been central to debates about the feasibility of unconditional income policies. Further, the researchers identify some promising future research strategies, for example employing cross-national data and using various kinds of lotteries to study how the frequency of payment of UBI affects labour supply.⁷²

⁷¹ Axel Marx and Hans Peeters, ‘An unconditional basic income and labor supply: Results from a pilot study of lottery winners’, *The Journal of Socio-Economics*, 37 (2008), pp. 1636-59, at p. 1648.

⁷² Ibid, p. 1650. Marx and Peeters also note four alternative research strategies, each with its own strengths and limitations: use official statistics to analyze the effect of increases in income on labour supply; conduct surveys asking people how they would behave under a UBI; look at existing policies that most closely resemble UBI – in particular the Alaskan Permanent Fund Dividend; conduct laboratory experiments.

The wider message I think we should draw from this work is that the prospects for making progress with issues of feasibility are better where debates are centred on specific behavioural predictions: claims about how people will respond to particular changes in social or political conditions, rather than more general assertions about the kinds of values or policies people will support or tolerate. A second lesson from this study is that we should settle for a less ambitious approach to feasibility questions: rather than making global judgements about the feasibility of implementing a particular normative ideal, we may at best be able to identify particular respects in which an ideal is feasible or infeasible.⁷³ Finally, this example supports Wright's suggestion that we are likely to make more progress with questions of viability than achievability. I noted that public attitudes are, in principle, relevant to both components of feasibility. But most discussions focus our attention on the issue of achievability - they tend to suggest that the primary problem is whether particular ideals can command enough public support (or attract little enough opposition) for us to make progress towards them. The discussion in this chapter supports Wright's claim that this problem is just too hard: 'there are simply too many contingencies for us to assign meaningful probabilities to the achievability of a given viable alternative very far into the future.'⁷⁴ Focussing instead on specific behavioural assumptions directs our attention towards the issue of the stability of particular schemes for the realization of our ideals, rather than the prospects of getting there from where we are now.

6. Is realism about feasibility?

The latter part of this chapter has focussed on the notion of feasibility, since this is a particularly well-developed area of recent realist debate that also seems to have quite direct implications for the role of public attitudes. However, I want briefly to step back from this

⁷³ For example, the other major feasibility objection to UBI concerns the disincentive effects of the higher tax rates needed to fund the UBI. A separate body of empirical evidence is needed to test this contention.

⁷⁴ Wright, 'Guidelines for envisioning real utopias', p. 31.

discussion and reflect a bit further on the implications of framing the demand for greater realism in terms of the concept of feasibility. What does the notion of feasibility highlight about the relationship between political theory and politics and what does it omit? As discussed earlier, feasibility directs our attention towards the probability of our political ideals being realized in practice; it suggests that the key realist task is to develop less demanding principles that have some realistic chance of coming about given the facts on the ground. This initially seems like a reasonable concern, although one that I have emphasized should not intrude into normative theory at the deepest level. However, on further reflection, feasibility is, in itself, perhaps a rather odd thing to care about. We do not criticize political theorists for defending principles that do not *actually* end up being realized, so why care about whether our ideals are at all likely to come about? Those who advocate closer attention to questions of feasibility do so because, more broadly, they are troubled about how political theory relates, or fails to relate, to real politics. Thus the emphasis on feasibility seems to be driven by an assumption that highly improbable ideals are politically irrelevant; that we need more feasible theories in order to engage with real politics in a meaningful way. Here I will challenge this assumption, by briefly highlighting three alternative ways of thinking about the demand for greater relevance in political theory.

First, the aspiration for political relevance raises prior questions about the framing of problems in political theory. The challenge here is not so much that political theory asks too much in the real world (as the feasibility critique suggests), but rather that the way in which political theorists frame their questions means that they are sometimes unable to get a grip on, or speak to, real world problems at all. There are two dimensions to this problem. First, there is the issue of vagueness or indeterminacy about what it would even mean to implement an ideal. Earlier I suggested that in order to judge how feasible an ideal is, in light of popular attitudes, a theory must *already* be realistic in this sense of generating a clear policy

recommendation. A second problem concerns the misdescription of real world problems. If we are working at a relatively concrete level, we need to ensure that we have a proper appreciation of the details of the phenomena we are theorizing about.⁷⁵ Thus a theory will be realistic in important senses if it clearly responds to some real world political issue and generates a recommendation about what ought to be done, even if it is highly infeasible.

Secondly, the question of the feasibility of the implementation of a normative ideal is distinct from the question of whether it is feasible that the espousal of an ideal has a political impact.⁷⁶ If it is the latter concern about actual impact beyond the academic sphere that is driving the detachment critic, then this is not guaranteed by feasible ideals, nor is it ruled out by highly infeasible visions. For example, Miller's suggestion that distant ideals can have a demotivating effect on citizens suggests an actual – if unintended – real world effect of infeasible ideals.⁷⁷ More positively, infeasible ideals might have an impact if they are taken up and espoused by real world political movements: 'Such defences [of utopias] are practically very important, whether or not the ideals are infeasible. *For a theory that supports certain social arrangements may direct citizens' individual action even if the arrangements as such are impossible to carry out or maintain.* Perhaps it is not exaggeration to say that it is impossible to carry out the social ideals supported, for example, by some animal liberation movements, many secessionist movements and certain environmental movements. But it would certainly be wrong to say that these ideals have no practical relevance.'⁷⁸ On the other hand, simply generating a

⁷⁵ On the problem of the misdescription of real world political phenomena in political theory, see Adrian Favell, 'Applied Political Philosophy at the Rubicon: Will Kymlicka's *Multicultural Citizenship*', *Ethical Theory and Moral Practice*, 1 (1998), pp. 255-78.

⁷⁶ This relates to Brennan and Hamlin's notion of 'theory infeasibility': 'a clear policy recommendation might still be theory infeasible in our terms if that recommendation did not engage appropriately with the operation of the political system, *so that the fact of the normative endorsement itself did no real work (and could do no real work) in bringing about the recommended policy.*' Geoffrey Brennan and Alan Hamlin, 'Positive Constraints on Normative Political Theory', Manchester Centre for Political Theory Working Paper Series, 2007, p. 22. Available at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.119.9717&rep=rep1&type=pdf>

⁷⁷ Miller, 'A Tale of Two Cities'.

⁷⁸ Räikkä, 'The Feasibility Condition', p. 40. Emphasis added.

feasible proposal does not guarantee that we have any actual impact on the course of real politics. Thus if realism involves real world impact, it is both less and more demanding than the feasibility requirement. It is less demanding in the sense that it might sometimes be met by highly aspirational visions that are unlikely to be realized. It is more demanding because it requires political theorists not merely to take account of what is likely to happen politically, but also to consider the conditions under which espousing particular ideals is likely to have a political impact. An account of how ideas from academia exert influence over real politics is missing from recent discussions of feasibility, perhaps because these two issues – the feasibility of a normative theory being implemented and the feasibility of advocating a normative position having a political impact – are blurred.

Thus political relevance can be understood in terms of the generation of concrete recommendations for properly described real world political problems and in terms of causal impact, both of which are distinct from the feasibility condition. Thirdly, however, I think that there is a looser sense in which political theory is genuinely politically engaged if the questions it addresses are recognizable, in everyday terms, as political. Consider, for example, Cohen's *Why Not Socialism?* Cohen's theory is both highly ambitious, in terms of the economic, social and political transformations it calls for, and indeterminate, since he does not commit to a particular institutional scheme for the realization of the values of socialist equality and community. Moreover, it is not clear to what extent this work has had an impact beyond the discipline. Yet Cohen's defence of socialism still seems to me to be deeply *political*, in the way that some highly technical, abstract debates about, for example, the nature of rights or the concept of responsibility are not.

This section has suggested that the concern for feasibility should not be seen as an end in itself, but rather as one reflection of a search for politically more meaningful modes of theorizing. This implies that we should not be too quick to dismiss infeasible theories as

unrealistic. Indeed, I have suggested that if feasibility was *all* that was lacking, political theory would already be realistic in some important senses.

7. Conclusion

It is often noted that the demand for greater realism in political theory encompasses a variety of critiques, with diverse motivations and targets. This chapter has sought to move beyond this observation by urging that we recognize two central realist themes: the objection that political theory is too detached from real politics and the charge that political theory displaces politics. Both detachment and displacement realists call for a reshaping of the relationship between political theory and real politics, but they do so on quite different grounds and with contrasting implications for the practice of political theory. Attempts to develop the capacity of political theory to guide or inform real world political decision-making appear, from the displacement perspective, to reinforce the discipline's anti-political or anti-democratic tendencies. Moreover, some forms of the displacement critique rest on a denial of the detachment worry that political theory is politically irrelevant. By marking the distinction between its detachment and displacement forms, we avoid 'realism' coming to stand for an incoherent combination of concerns about the relationship between political theory and real politics.

These two critiques in turn suggest different ways in which evidence about public opinion can contribute to the realization of more realistic forms of political theory. The latter part of the chapter focussed on the suggestion that a closer engagement with public opinion is a means of rendering political theory more sensitive to feasibility considerations. This looks like a straightforward argument: political theorists should be concerned not only with specifying ideals, but with developing proposals with some realistic prospect of being realised; the views and beliefs of the public shape what is politically achievable in democratic systems; therefore, political theorists should take public opinion seriously as a key mediator of political feasibility. This chapter endorsed the broad contours of this argument: public opinion is, from both a

theoretical and empirical perspective, central to questions of political feasibility. At the same time, I have highlighted the barriers to actually fulfilling the research agendas suggested in the recent literature on feasibility. We do not have sufficient empirical evidence, in most cases, to judge when we should give ground to public views, when outcomes that run contrary to public attitudes are politically feasible, and when public opinion itself can be moved in a more favourable direction. The chapter ended on an optimistic note, suggesting that even if the demand for feasibility is very difficult to fulfil, there are alternative modes of theorizing that are, in important senses, politically relevant and meaningful.

Part II Political Theory, Public Opinion and Democratic

Legitimacy

Introduction to Part II

How should political theorists go about their work if they are democrats? Given their democratic commitments, should they develop theories that are sensitive to the views and concerns of their fellow citizens at large? Is there a compromise to be struck within political theory, between truth-seeking and democratic responsiveness? If so, what form should this take? Part II explores these questions about the relationship between political theory, public opinion and democratic legitimacy. In particular, I consider in greater depth one of six arguments for engaging with public opinion identified in *Disadvantage*: the claim that political theorists should incorporate evidence about public opinion in order to enhance the democratic legitimacy of their normative principles. If political theorists care about democracy, this argument suggests, they should seek to develop theories that reflect the views of their fellow citizens. In order to do this, the argument continues, they must modify their accounts in light of empirical evidence about what people think. Throughout part II, I refer to this view as the ‘democratic restraint’ model of the relationship between political theory and public opinion. This picture seems plausible. After all, if we are democrats shouldn’t we seek to democratize our political theories by making them responsive to public views? This approach also appears to provide a rejoinder to the displacement realist charge that there is something arrogant and anti-democratic about the practice of normative political theory.¹

Despite its initial appeal, I reject the democratic restraint model, arguing that it generates a problematic picture of the role of political theory in a democracy. Whilst apparently responsive to the displacement worry about the anti-democratic character of political theory, this

¹ See chapter 4 for discussion of the distinction between detachment and displacement forms of realism.

approach renders political theory vulnerable to the otherwise misplaced charge that it aspires to pre-empt politics. I develop this critique by considering the conception of democratic legitimacy implicit in the democratic restraint model. Drawing on the work of David Estlund, I suggest that democratic legitimacy involves *honouring the decisions of the people*, rather than merely *tracking their preferences*.² The reliance of the democratic restraint model on the latter, preference-tracking, view helps to make sense of its vulnerability to the pre-emption charge: it shows why political theory, drawing on evidence about public opinion, cannot do the work on behalf of democratic politics that the democratic restraint model implies. Ultimately, these chapters press the paradoxical conclusion that when, out of a concern for democratic legitimacy, political theorists temper their ideas in deference to public opinion, they render political theory less rather than more democratic in character. I argue instead that a closer engagement with evidence about public opinion can support political theory in performing a ‘democratic underlabourer’³ role. On the underlabourer model, the aim is to facilitate a more meaningful role for political theory in democratic debate; incorporating opinion data cannot enhance the democratic legitimacy of normative principles themselves.

This account has wider implications for the question of whether, as practitioners have often claimed, opinion research can enhance democracy. I show that my critique of the democratic restraint model does not necessarily undermine the democratic aspirations of opinion researchers. However, there are a number of conditions that opinion research must fulfil if it is potentially to contribute to a vision of democracy on which political decision-making honours the decisions of the people, rather than merely tracks their preferences.

² David M. Estlund, *Democratic Authority: A Philosophical Framework* (Princeton, NJ: Princeton University Press, 2009), pp. 76-78.

³ I take this term from Adam Swift and Stuart White, ‘Political theory, social science, and real politics’ in David Leopold and Marc Stears, eds., *Political Theory: Methods and Approaches* (Oxford: Oxford University Press, 2008), pp. 49-69, at p. 54.

Chapter 5 Against Democratic Restraint

1. Introduction

Chapter 5 explores how political theorists have employed evidence about public opinion with the aim of democratizing political theory. I identify a model of the relationship between political theory and public opinion that I term ‘democratic restraint’: an approach on which the theorist moderates her normative principles in response to evidence about public opinion, in order to enhance the legitimacy of her account. This way of thinking about the role of public opinion renders political theory vulnerable to an otherwise misconceived version of the displacement realist critique: the charge that political theorists aspire to pre-empt democratic politics.

1.1. Chapter outline

The chapter proceeds in four main parts. Section 2 clarifies the focus of the argument. I also make some preliminary remarks about the concept of democratic legitimacy. The following section discusses three works that connect the role of public opinion in political theory to the value of democratic legitimacy: Wolff and de-Shalit’s study of disadvantage; Klosko’s attempt to give a stronger empirical grounding to Rawls’ political liberalism; and Bertram’s argument that the value of ‘democratic community’ places limits on the complexity of political theory.¹ Section 4 criticizes the ‘democratic restraint’ account of the role of public opinion that is common to these otherwise diverse projects. Finally, section 5 contrasts the democratic restraint model with a more appealing ‘democratic underlabourer’ view.

¹ Jonathan Wolff and Avner de-Shalit, *Disadvantage* (Oxford: Oxford University Press, 2007); George Klosko, *Democratic Procedures and Liberal Consensus* (Oxford: Oxford University Press, 2000); Christopher Bertram, ‘Political Justification, Theoretical Complexity and Democratic Community’, *Ethics*, 107 (1997), pp. 563-583.

2. 'What the people think', public opinion research and the role of the political theorist

Adam Swift has argued that 'what the people think (and what they can reasonably be expected to come to think) on distributive matters can be an important factor for the political theorist to take into account for reasons of legitimacy.'² In this section, I clarify the sense in which I am concerned to interrogate and, in one form, to resist this claim. In order to understand the nature of my argument, it is important to draw three sets of distinctions:

1. The contribution of public opinion to a theory of legitimacy

versus

2. The role of public opinion in working out what is democratically legitimate for us here and now

and

3. Whether public opinion research can enhance the legitimacy of democratic decision-making

versus

4. Whether incorporating evidence about public opinion is a means for political theorists to enhance the legitimacy of their normative theories

and, finally

5. Public opinion construed loosely as the basis of everything that citizens say and do in democratic politics

² Adam Swift, 'Public Opinion and Political Philosophy: The Relation between Social-Scientific and Philosophical Analyses of Distributive Justice', *Ethical Theory and Moral Practice*, 2 (1999), pp. 337-63, at p. 338.

versus

6. Data from empirical studies of public attitudes

Chapter 5 is concerned with the second, fourth and sixth issues. In relation to the first distinction, it is important to see that the call to integrate political theory more closely with public opinion on grounds of democratic legitimacy must rest on an account of the nature of that value. Part of my complaint against the theorists discussed in this chapter is that they fail adequately to deal with this prior theoretical question. However, the democratic restraint model, as I understand it, does not involve the further claim that evidence about public opinion has a role to play in determining our *theory of democratic legitimacy*. Rather, it says (on the basis of a prior theory of legitimacy) that public opinion research plays an important role in determining *what is democratically legitimate for us here and now* (and that part of the job of political theorists can, or should, be to engage with evidence about public opinion in order to render their theories more legitimate).

There is a growing body of empirical literature exploring ‘process preferences’ or public views about the nature of decision-making procedures.³ In the political domain, this research has begun to investigate attitudes towards levels of direct popular involvement in political decision-making and various aspects of perceived procedural fairness. Broadly, the evidence suggests that views about *how* political decisions are made impact on political attitudes, including trust in political institutions, approval of government and the acceptance of political decisions. For example, a review of psychological research concluded that the influence exerted by authorities and institutions derives at least in part from judgements about how authority is exercised, ‘judgments not based upon the favourability or even the fairness of the

³ See, for example, John R. Hibbing and Elizabeth Theiss-Morse, ‘Process Preferences and American Politics: What the People Want Government to Be’, *American Political Science Review*, 95 (2001), pp. 145-53.

decisions the authorities make, but upon beliefs about what are fair or ethical procedures for exercising authority.’⁴

If, as this recent research suggests, people care about the procedures by which political decisions are made, and not only about how closely outcomes match their preferences, this implies that people do have beliefs at the level of a theory of legitimacy (if not a fully developed theory). However, from the perspective of political theory, there is still a further critical question to be asked about these process preferences: are the procedural features to which people accord importance defensible from the perspective of a normative theory of legitimacy? On this view, ‘people’s beliefs about legitimacy – or about what makes a procedure just – can themselves be mistaken. If we have reasons to regard citizens’ mistakes in decisions about distributive justice as legitimate, this is because of a correct analysis of what makes a decision legitimate and not because of what they think makes a decision legitimate.’⁵ In other words, and in contrast with most empirical research, I treat legitimacy as a normative ideal, rather than a purely descriptive concept.

Secondly, this chapter focuses on whether greater sensitivity to public opinion on the part of political theorists can enhance the legitimacy of their normative theories. However, my critique of the democratic restraint model does not centre on concerns about the expertise or experience of political theorists in the field of opinion research. Rather, it is based on a deeper worry about the conception of democratic legitimacy on which this approach is based. Hence my argument immediately raises broader questions about the role of opinion research within a democracy, which are picked up in chapter 6.

⁴ Tom R. Tyler, ‘Psychological Perspectives on Legitimacy and Legitimation’, *Annual Review of Psychology*, 57 (2006), pp. 375-400, at p. 394. Tyler notes that these findings counter earlier research, which tended to assume that political attitudes are driven entirely by satisfaction with substantive political outcomes, or by broader processes of political socialization.

⁵ Swift, ‘Public Opinion and Political Philosophy’, footnote to p. 353.

Thirdly, there is a very broad sense in which I take it that caring about democratic legitimacy must involve caring about what people think: where this is understood to encompass everything that people say and do in political life. This chapter has a narrower focus: I am interested in the role that public opinion research, in the form of surveys or more in-depth qualitative studies, can play in enhancing the democratic character of political theory.

To summarize, there are a number of different ways of interpreting the claim that the value of democratic legitimacy gives us reason to care about what the people think. This chapter focuses on the question of whether political theorists should modify their theories in response to evidence about public opinion, in order to enhance the legitimacy of their normative principles. In urging that we reject this approach, my concern is thus to resist the move from the very general claim that ‘what the people think’ matters to democratic legitimacy, to the view that political theorists should, on democratic grounds, restrain their normative principles in light of popular views.

2.1. The concept of democratic legitimacy

I have emphasized that any account that suggests that opinion research can further democratic legitimacy must rest on a prior theory of democratic legitimacy. But what would such a theory look like? What is the nature of the concept of legitimacy, and of democratic legitimacy in particular? An investigation of the foundations of democracy is beyond the scope of this thesis. Thus, for the purposes of the current discussion, I set aside anti-democratic accounts of political legitimacy and start from the assumption that the legitimacy of decision-making is in some way bound up with its democratic character.⁶ In the broadest sense,

⁶ As discussed in the introduction to part II, I will draw on ideas from David Estlund’s *Democratic Authority*. Estlund is concerned with a central debate about the justification of democracy: Does the legitimacy of democracy rest solely on the intrinsic value of democratic procedures, for example that democratic decision-making expresses equal respect for persons? Or does it instead derive from the tendency of democratic processes to produce good outcomes? However, the use I make of Estlund’s work does not require me to take a position in this debate about procedural versus instrumental justifications of democratic legitimacy.

democratic legitimacy concerns the moral authority of a democratic body to issue commands, and perhaps to coercively enforce those commands. It refers to 'some benchmark of acceptability or justification of political power or authority and – possibly – obligation ... legitimacy both explains why the use of political power by a particular body ... is permissible and why there is a *pro tanto* moral duty to obey its commands.'⁷

As this attempt to offer even the broadest definition suggests, legitimacy is one of the most uncertain and contested concepts in political theory. Two key areas of disagreement already emerge in Peter's account. First, is legitimacy sufficient to generate political obligation, or are the questions of legitimacy and obligation distinct? Secondly, is legitimacy concerned with the justification of moral authority, or specifically with coercive power? A third key question concerns the relationship between the concepts of justice and legitimacy. How distinct are these ideals? Can legitimate decisions be unjust? Can just decisions be illegitimate? Thus the purpose of theories of legitimacy and the relationship between the concept of legitimacy and related ideas of authority, coercion and justice are all areas of uncertainty and disagreement. My core argument does not necessitate taking a stand on most of these contested issues around the conceptualization of democratic legitimacy and its relationship to adjacent concepts such as authority. An exception is the question of the relationship between principles of justice and legitimacy, which will surface at various points in part II. Most importantly, I will suggest that the democratic restraint model becomes vulnerable to the pre-emption charge in part because it fails to distinguish these ideals. Thus rather than a conceptual matter that can be addressed in advance of the main discussion, the question of the relationship between justice and legitimacy is bound up with the central argument of this chapter.⁸

⁷ Fabienne Peter, 'Political Legitimacy', *The Stanford Encyclopedia of Philosophy* (Summer 2010 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/sum2010/entries/legitimacy/>>.

⁸ In section 4.1, I state the issue more broadly (borrowing Waldron's language) as a distinction between the question of what we ought to do and the question of what we ought to do when we disagree about what we ought to do. This more general way of stating the problem brackets any controversy about the

3. The democratic restraint model

There are two crucial steps in the democratic restraint model of the relationship between political theory and public opinion. First the theorist compares the content of her theory to evidence about what people think: do the people agree or disagree with the theorist's views? If she finds areas of disagreement, the theorist modifies her account in the direction of public attitudes. Secondly, she claims that this modified opinion-sensitive theory has a more democratic character or a greater claim to legitimacy than the theory that reflects only her own ideas. For example, I noted earlier in the thesis that support for deserved inequalities is an important feature of public views about fairness. On this model, then, we would say that a theory of justice that provides space for claims of desert has a greater claim to democratic legitimacy than one that ignores public views and excludes the idea of desert. I call this model democratic restraint, because it involves the theorist partially modifying or restraining the content of her normative theory in response to evidence about the content of public opinion – and exercising this restraint in the name of democracy.

3.1. Capability lists: philosophy, democracy and public opinion

The first place in which we can see this model reflected is Wolff and de-Shalit's *Disadvantage*. As discussed in chapter 2, there is some ambiguity about the precise role of public opinion in their account. However, one important strand in Wolff and de-Shalit's defence of their method is the claim that integrating evidence from their interviews enhances the democratic character or the legitimacy of their conclusions. For example, in a passage cited in chapter 2, they suggest that engaging in opinion research 'will allow us to achieve what we referred to in the Introduction as 'dynamic public reflective equilibrium', *using both philosophical theory and*

nature of the value of justice – in particular whether justice is regarded as the 'first virtue of social institutions', or rather as one among many values involved in the determination of all things considered judgements about what we ought to do. See, respectively, John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 1999) and G.A. Cohen, *Rescuing Justice & Equality* (Cambridge, MA: Harvard University Press, 2008), chapter 7.

*public consultation to arrive at more democratically supported, and therefore, in some sense, legitimate, view.*⁹ They also argue that ‘people’s intuitions, claims, and theories should be a fundamental point for a *political philosophy of democracy* which seeks policy change.’¹⁰ This language of democracy and legitimacy resurfaces at various points in the book. For example, the methodology is described as a ‘democratic procedure’,¹¹ and the views uncovered through the interviews are characterized as ‘democratic knowledge’, rather than merely ‘subjective knowledge.’¹² Wolff and de-Shalit are clear that there must be a role for philosophy as well as public opinion in this democratic project: ‘the philosopher cannot merely abdicate responsibility to democratic politics’¹³ and they are not simply ‘handing the authority to the people who then tell philosophers what their theories should reflect.’¹⁴ Instead, the picture they convey is one in which public opinion is filtered through a theoretical framework, as a result of which some theoretical commitments are revised or new ideas introduced. Crucially, the results of this procedure are regarded as more legitimate than principles developed by a political theorist who works in isolation, or who responds only to the views of academic colleagues.

This approach speaks to an established debate within the capability literature about the appropriate method for developing a list of key capabilities. Specifically, capability theorists have grappled with the question of where theory should end and politics should start. Can a list of key capabilities be developed through philosophical reflection, or is this a matter that can be addressed only through democratic politics? Martha Nussbaum has developed a list of

⁹ Wolff and de-Shalit, *Disadvantage*, p. 41. Emphasis added. We might object that a theory itself cannot be legitimate or illegitimate; rather legitimacy is a property of political systems or decisions. However, I take this to be shorthand for the claim that were the theory to be acted on politically, the resulting policies would be (more) legitimate, because of their being informed by popular views. This is the view I will criticize.

¹⁰ *Ibid*, p.43.

¹¹ *Ibid*, p. 99.

¹² *Ibid*, p. 12.

¹³ *Ibid*, p. 99.

¹⁴ *Ibid*, p. 12.

ten key capabilities in her philosophical work.¹⁵ In contrast, Amartya Sen argues that theory should leave open-ended an account of the basic capabilities, to be filled in by the democratic process. For Sen, 'pure theory cannot "freeze" a list of capabilities for all societies for all time to come, irrespective of what the citizens come to understand and value. That would be not only *a denial of the reach of democracy*, but also a misunderstanding of what pure theory can do, completely divorced from the particular social reality that any particular society faces.'¹⁶ As this passage illustrates, there is more than one concern motivating Sen's 'democratic' stance. First, he argues that we cannot develop a single list of capabilities that is adequate for all contexts. If we regard the key capabilities as sensitive to specificities of time, place and purpose there is more reason to doubt that philosophers alone will come up with an adequate list: we are likely to do better if we draw on the perspectives of individuals with direct experience of the relevant conditions. However, this is to construe the philosophy versus democracy debate in epistemic terms: whether philosophers or a broader public are better positioned, epistemically speaking, to develop an account of the key capabilities. Sen seems to be concerned with this epistemic dimension when he suggests that 'public discussion and reasoning can lead to a *better understanding* of the role, reach, and the significance of particular capabilities.'¹⁷ However, this chapter is specifically concerned with the issue of democratic legitimacy. Is it simply that a wider conversation is likely to produce better answers? Or is there something objectionably *undemocratic* about political theorists assuming the task of developing a list of key capabilities?

¹⁵ See Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000). As discussed in chapter 2, this list provides the starting point for the interviews conducted by Wolff and de-Shalit.

¹⁶ Amartya Sen, 'Capabilities, Lists, and Public Reason: Continuing the Conversation', *Feminist Economics*, 10 (2004), pp. 77-80, at p. 78. Emphasis added. Note that Sen himself has sometimes offered lists for particular purposes. As long as they are treated as revisable and context and purpose specific, he suggests that such list-making can be legitimate.

¹⁷ *Ibid*, p. 80.

Claassen rightly notes that the ‘democratic’ approach adopted by Sen is not as anti-philosophical as it may first appear.¹⁸ First, Sen admits, at least tacitly, that the selection of a capability framework *is* a legitimate subject for political theory: it is only the filling out of this framework in terms of specific capabilities that must be left to democratic politics. Thus the question is not one of wholly substituting democracy for philosophy. Rather it is a matter of *which issues* can be addressed through theoretical argument and which are a legitimate matter only for democratic politics. If we want to advocate a capability framework within political theory, whilst arguing on democratic grounds that the task of specifying a list of key capabilities must be left to democratic politics, we need to justify this particular division of labour. We need to explain why it is undemocratic for a theorist to advocate a particular capability list, but not undemocratic for her to insist on a capability framework rather than, for example, a resource or welfare metric. Secondly, the democratic position needs a theory of democracy to give meaning to the claim that the selection of a list of capabilities should be left to democratic politics. We need a philosophical account of what this democratic politics should look like: ‘If the democratic position holds that only a democratic process can deliver the requisite legitimacy, then it needs to answer the question whether any democratic process will do; or, to put it differently, what it means for a process to be (sufficiently) democratic ... This means that the philosophical modesty at one point (in the theory of justice) requires philosophical outspokenness at another point (in democratic theory).’¹⁹ Defending the democratic approach becomes more complex once we recognize that it too retains a role for theory in these two senses.

The picture is further complicated when we bring in Wolff and de-Shalit’s model. In defending an approach in which political theorists engage with popular views, they open up a third

¹⁸ For the distinction between epistemic and democratic lines of dispute see Rutger Claassen, ‘Making Capability Lists: Philosophy versus Democracy’, *Political Studies*, 59 (2011), pp. 491-508.

¹⁹ *Ibid*, p. 498. This echoes a point made in section 2: that any case for a closer engagement between political theory and public opinion on the grounds of democratic legitimacy must rest on a prior theory of legitimacy.

position within this established debate. Rather than considering whether ‘legitimate list making belongs to the democratic public [or] to the philosopher’,²⁰ Wolff and de-Shalit offer a model on which it belongs to both.²¹ Does this intermediate approach represent a way of combining the appeal of the philosophical and the democratic positions? A fuller critical discussion of this model of the role of public opinion will be offered after I have considered the different ways in which it is developed by Klosko and Bertram. However, I want here to note one central implication of Wolff and de-Shalit’s account. On their approach, the political theorist becomes a mediator of public opinion, who offers ‘a general theoretical perspective, informed by public views, which can provide guidance when special interests collide.’²² Recall here the distinction drawn in the previous section between a theory of legitimacy and an answer, in light of this theory, to the question of what, substantively, is legitimate for us here and now. Wolff and de-Shalit do not just offer the former: an account that tells us what weight to give to the views and decisions of the people, under what conditions. Rather, they actually engage in a process in which public views are expressed and given weight, in order to go some way towards answering the second question.²³

Claassen also acknowledges the possibility of an intermediate ‘philosopher-investigator’²⁴ approach. Importantly though, he carves out this role only with respect to the epistemic line of dispute between the philosophy and democracy positions: ‘The philosopher-investigator’s strategy, when seriously conducted, provides an answer to the epistemological objection. *He remains a philosopher-citizen in that his goal is to provide his theories as a recommendation to*

²⁰ Ibid, p. 494.

²¹ Chapter 3 argued that Wolff and de-Shalit generally take a top-down approach to their research, which is at odds with some of their theoretical claims. This suggests that their methodology, in practice, leaves them closer to the ‘philosophy’ than the ‘democracy’ position. However, my focus here is the theoretical space that Wolff and de-Shalit open up, rather than issues of implementation or methodology.

²² Wolff and de-Shalit, *Disadvantage*, p. 97.

²³ Only some way, because their claim is that the integration of public opinion makes the theory *more* legitimate – so more needs to be said about what would make it fully legitimate. See section 5 for further discussion.

²⁴ Claassen, ‘Making Capability Lists’, p. 504.

the polis (the philosopher-investigator role is a subspecies of the philosopher-citizen) ... Thus, he or she engages in public reasoning qua philosophical reasoning (*but not qua democratic decision-making*).²⁵ On Wolff and de-Shalit's democratic interpretation of the philosopher-investigator role, however, theory becomes *something more* than a recommendation, voiced by the theorist as an individual citizen. Rather, having already taken account of the views of at least some of the public, the theorist claims also to speak on their behalf.

3.2. Liberal consensus

George Klosko has also argued, on democratic grounds, for a closer integration of political theory with evidence about public opinion. Klosko's fundamental commitments are those of Rawlsian political liberalism. However, Klosko suggests that the principle he shares with Rawls, 'that political principles should be able to be justified to each citizen at the bar of his or her own reason',²⁶ implies an empirical project that Rawls himself failed to pursue. In particular, from the commitment to justification to democratic citizens, Klosko derives the 'distinctive method employed in this study ... construction of principles with careful attention to the actual beliefs of liberal citizens.'²⁷ Klosko reviews a wide range of secondary data, from quantitative surveys to smaller scale qualitative studies, to piece together an account of US public views about the distribution of economic resources, rights and civil liberties. He acknowledges significant limitations to the existing data: the result will be, at best, a rough and imprecise account of the principles on which public opinion converges. However, he claims that the available empirical evidence points to the following shared beliefs:

- a. Support for democracy as a central political value
- b. The need to support democratic political procedures
- c. A range of rights for all citizens, which must be generally respected

²⁵ Ibid, p. 505. Emphasis added.

²⁶ Klosko, *Democratic Procedures and Liberal Consensus*, p. 19.

²⁷ Ibid, p. 19.

- d. Respect for those rights necessary for the proper functioning of democratic processes
- e. Distribution according to merit, supported by real equality of opportunity, in the economic sphere²⁸

Klosko argues that the pattern of opinion he uncovers represents a 'liberal consensus' to which normative theory must be responsive. This is the case even though the content of the consensus, which on closer examination is revealed to be sometimes illiberal and inegalitarian, will disappoint many liberal theorists. Klosko's interest in public opinion is partly pragmatic in character: he suggests that some degree of normative consensus is required for a stable society. This is described as the 'sociological' argument for engaging with evidence about public opinion. However, Klosko's core argument is that we have moral reason, beyond the concern with stability, to pay closer attention to evidence about public opinion. More specifically, a legitimate political order is one that can be justified to its citizens, and in order to work out what can be justified we need to investigate people's current beliefs. On the basis of this argument, Klosko devotes a significant proportion of his book to a detailed exploration of empirical data. However, closer examination is required to determine precisely what work this evidence is performing in Klosko's account. In particular, what is the respective status of three crucial components in his approach: public opinion data, philosophical argument and the outputs of actual democratic processes?

Public opinion versus real democratic politics

As discussed above, Klosko draws together evidence from a range of sources in order to build a picture of public attitudes. He then seeks to identify a set of normative principles that can be justified to citizens in light of their existing beliefs. However, Klosko also suggests that the interrogation of public opinion data only takes us part way towards the goal of identifying a legitimate political order: 'these principles [identified in public opinion data] constitute an

²⁸ Ibid, p. 230. I am concerned here with Klosko's account of the status of evidence about public opinion, rather than with the accuracy of these empirical claims.

outline that must be filled in. In regard to all five principles ... details must be provided by democratic procedures. In this sense, democratic procedures are 'reflexive'; they must be invoked in order to flesh out their own nature.'²⁹ Thus Klosko's theory is procedural in *two* senses. First, the consensus he finds within public opinion is primarily procedural in character: the main area of agreement concerns democratic procedures as a way of making political decisions. Secondly, both this consensus on procedures and the more minimal substantive agreement he identifies around principles of merit and equality of opportunity should be further developed through democratic procedures. This raises an important question about the relative status of the outputs of his investigation of public opinion and the outcomes of real world democratic procedures. Are the general principles he identifies as forming a broad area of agreement within public opinion legitimate in as far as they go? Or is their legitimacy entirely contingent on their being both endorsed and rendered more concrete through democratic procedures? In the latter case, is his engagement with public opinion doing any real work?

Given Klosko's emphasis on actual democratic procedures, there is a threat of his empirical evidence about public opinion dropping out. This is evident when Klosko remarks that 'to a large extent, what we mean by procedural liberalism is that such lines must be drawn democratically ... The fact that a portion of the populace heavily favours moralistic restrictions does not mean that they will necessarily pass. Controversial issues must be debated and voted upon, and strong liberal views may prevail.'³⁰ Klosko seems to suggest here that the 'liberal consensus' identified within public opinion does not, in itself, carry any weight with respect to what is politically legitimate: it may differ from, and is superseded by, the outcomes of real democratic politics. On the other hand, Klosko elsewhere argues that '*support for equality of opportunity creates a general requirement to equalize resources throughout society* – though

²⁹ Ibid, p. 230.

³⁰ Ibid, p. 233.

this must be balanced against principles of distribution based on merit. People should support policies required by equal opportunity to some extent and insist that their political leaders implement them.’³¹ Here he suggests that the liberal consensus within public opinion *does* have democratic weight. The fact that people value equality of opportunity, as revealed by the investigation of evidence about public opinion, is seen to generate an imperative to pursue that goal politically. Thus there is an instability in Klosko’s position. His general approach and some of his specific comments suggest that the consensus he identifies within public opinion carries, in itself, some democratic weight. However, elsewhere he suggests that what is legitimate is ultimately to be determined by democratic political action, which may produce results at odds with the pattern of opinion data.

Public opinion versus respect for persons

The role of public opinion in Klosko’s account comes under pressure from a second direction. Klosko argues that the demand for justification, and related attention to public opinion, follow from the ideal of respect. However, this more basic commitment also opens up a gap between justification and actual acceptance: we should not construe the idea of justification in such a way that views that violate the fundamental ideal of respect have veto power.³² The commitment to justification does not therefore require that principles are actually acceptable to citizens in light of their existing beliefs: ‘Liberal citizens cannot make patently unreasonable demands; they should be willing to co-operate on reasonable terms with others, which implies willingness to accept principles that satisfy reasonable conditions.’³³ In introducing a condition of reasonableness, Klosko is here seeking to tread the difficult path between over-inclusive and under-inclusive views of justification.³⁴ If only true objections are deemed sufficient to

³¹ Ibid, p. 234. Emphasis added.

³² Ibid, p. 9.

³³ Ibid, p. 19.

³⁴ For this distinction, see Estlund, *Democratic Authority*, pp. 44-52. Klosko expresses this problem in terms of the need to seek a balance between two ways in which a theory can be liberal: in its content

override justification, then we collapse the distinction between correctness and legitimacy. On the other hand, it is a radically sceptical position to hold that all actual objections, however repugnant or outlandish, can defeat justification. In other words, justification is not simply a matter of the truth of political principles, wholly independent of citizens' actual reactions to them, but nor is justification reducible to *justification to* actual citizens.³⁵

Given the restriction that only *reasonable* views count from the point of view of justification, the definition of reasonableness becomes central to Klosko's account. The more we include in the notion of reasonableness, the fewer actual citizens will meet this standard. Klosko argues that we should be concerned only with justification to citizens who demonstrate both attitudinal and cognitive reasonableness. The former concerns whether people are 'willing to live and let live and do not attempt to force their beliefs or practices on other members of society',³⁶ and their beliefs do not 'entail harming others.'³⁷ Klosko suggests that this requirement should be understood in behavioural terms and ought not to include the stronger requirement that people are *motivated by* a desire to justify their conduct to others and to live on terms that all can reasonably accept.³⁸ Cognitive reasonableness concerns whether people have adequate grounding for their views and whether there are sound inferences from their main principles to more specific beliefs.³⁹ Here Klosko maintains that inferential errors are not, in themselves, sufficient grounds to set aside people's actual beliefs. These errors must be

and in its form. Klosko claims that Rawls seeks to evade this trade-off – by ignoring empirical evidence and simply assuming that citizens hold more liberal values than they really do.

³⁵ See Todd Hedrick, *Rawls and Habermas: reason, pluralism and the claims of political philosophy* (Stanford: Stanford University Press, 2010), p.10.

³⁶ Klosko, *Democratic Procedures and Liberal Consensus*, p. 20.

³⁷ Ibid, p. 23.

³⁸ We might, for example, practise religious tolerance because we think that only religious beliefs that are sincerely held are of value and that sincere belief cannot be cultivated by force. This is distinct from the case in which our tolerance is motivated by the view that it would be unreasonable to seek to impose a particular set of religious practices on those who hold alternative views. Ibid, p. 22.

³⁹ See part III for discussion of recent empirical research that challenges this picture of the structure of people's moral and political beliefs.

clearly implicated in an individual's favouring their current views over the proposal that is seeking justification.

How close then does Klosko's understanding of the reasonableness condition keep us to the public opinion data on which he claims to place so much weight? On the one hand, Klosko suggests that the ideal of respect involves accepting a strong burden of proof when claiming that what can be justified goes beyond the views that people actually endorse. He suggests an iterative process, in which 'Though in some form constraints [on the kinds of beliefs that count from the point of view of justification] must be posited at the outset, their final form cannot be given until we explored the evidence concerning people's beliefs – though even then it is important not to develop the constraints in great detail.'⁴⁰ However, at other times, Klosko suggests that only substantially liberal views will pass the reasonableness test and are therefore relevant to the demand for justification: 'principles developed for a liberal society must be consistent with liberal theory's commitments ... Principles must guarantee appropriate levels of rights, including rights to democratic government, and not support justified inequalities, or treating people without due respect. Beliefs inconsistent with – or that imply principles inconsistent with – these requirements can be set aside.'⁴¹ The question then arises why we cannot move directly from the commitment to respect for persons to this interpretation in terms of certain equalities and democratic rights. What role, if any, does public opinion play? It seems that we do not need to study empirical data in order to understand what can be justified to reasonable people: that is given directly by prior liberal commitments. If the idea of reasonableness is merely shorthand for principles whose status is wholly independent of popular attitudes, there is again a threat of public opinion dropping out.

⁴⁰ Klosko, *Democratic Procedures and Liberal Consensus*, p. 10.

⁴¹ *Ibid*, p. 24.

Is 'liberal consensus' Rawlsian?

What does this discussion imply for Klosko's claim to be taking up an empirical project demanded by, but missing from, Rawls' own political liberalism? A full exploration of the relationship between Klosko's approach and Rawls' own commitments would take us to the heart of a persistent controversy about the proper interpretation of the liberal principle of legitimacy: Rawls' claim that 'our exercise of political power is proper and justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in light of principles and ideals acceptable to them as reasonable and rational.'⁴² In order to understand which principles and ideals are acceptable to citizens as reasonable and rational, do we, in Rawls' view, need to undertake an empirical investigation of citizens' current beliefs? I cannot engage in depth here with the interpretative issues raised by this question. However, it is important to note that many commentators suggest that we can address the question of liberal legitimacy without recourse to empirical data. Larmore, for example, emphasizes that Rawls' entire approach in *Political Liberalism* rests on a commitment to an ideal of respect. Thus: 'The basic sense in which principles of justice ought to be the object of consensus is that each person should have both sound and identical reasons to embrace them, for only then does their publicity give expression to mutual respect. Consensus so understood is therefore hardly identical to the extent of agreement about justice that actually obtains in a society.'⁴³ From this perspective, Klosko's stated method is based on a flawed understanding of Rawls' political liberalism. On the other hand, I have questioned how much weight Klosko himself ultimately places on the empirical data he discusses. Thus perhaps his approach *is* Rawlsian: not because he pursues an empirical project

⁴² John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 217. As this passage suggests, the interpretive task is further complicated by Rawls' suggestion that this principle applies only at the level of 'constitutional essentials.'

⁴³ Charles Larmore, 'Public Reason', in Samuel Freeman, ed., *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003), pp. 368-393, at p. 377.

that Rawls neglected, but because ultimately neither theorist places much weight on empirical evidence about public opinion in the determination of what is democratically legitimate.

Whilst evidence about what people think appears to be at the centre of Klosko's approach, the role of public opinion is in fact squeezed from two directions. First, at times it appears that what is legitimate is a matter of what emerges from real democratic politics; this cannot be determined in advance by theoretical reflection, even if informed by public opinion. Secondly, Klosko sometimes suggests that core liberal values of autonomy and respect go a long way to determining legitimate political outcomes, independently of what people think. Thus I have argued that Klosko is inconsistent in his commitment to his apparently empirical methodology. I will go on, in section 4, to suggest that these tensions in Klosko's account are indicative of a more general problem with the 'democratic restraint' way of thinking about the relationship between theory, public opinion and democratic legitimacy.

3.3. Democratic legitimacy and theoretical complexity

Klosko argues that 'people should be governed on the basis of principles they are able to understand and accept',⁴⁴ but he focuses primarily on the acceptance condition. Bertram, on the other hand, emphasizes that the requirement that principles be *understood* restricts the terms in which debates are properly conducted within political theory. Thus like Klosko and Wolff and de-Shalit, Bertram advocates a kind of theoretical restraint in the name of democratic legitimacy. However, Bertram focuses on the limits that a concern for democratic legitimacy places on the *complexity* of theoretical argument, rather than the *substantive positions* we advance. His argument implies that political theorists should pay closer attention to *how* people think and, in particular, to the kinds of principles and arguments they are capable of understanding.

⁴⁴ Klosko, *Democratic Procedures and Liberal Consensus*, p. 2.

Unlike Klosko and Wolff and De-Shalit, Bertram does not actually employ empirical evidence in his paper. But he makes a theoretical case for doing so on the grounds of the value of 'democratic community'. The ideal of democratic community implies that a legitimate social order is transparent or 'capable of explaining itself at the tribunal of each person's understanding'.⁴⁵ This then sets constraints on the complexity of the political principles we propose (and the arguments we give to support them):

'When we insist on the accessibility of principles and their rationales, we take seriously the idea of treating each member of society as an end in themselves, as governed or potentially governed, by their own reason ... If on the other hand, I say, "Here are my principles, and, trust me, if you were fully rational and placed in an appropriate choice-situation, then you would accept them," then for all my rhetoric about equality and autonomy, I treat her as less than equal or autonomous.'⁴⁶

Bertram argues here that the accessibility condition on legitimate political argument follows from a commitment to ideals of equality, autonomy and respect for rational agency. We do not, he claims, treat our fellow citizens as equals and as rational autonomous agents if we propose principles to govern our common political life in terms that they are unable to understand. This in turn implies that political theorists should modify their arguments in light of evidence about the kinds of principles and claims that are accessible to the wider public. However, like Klosko's account, this argument is subject to some important ambiguities and tensions.

People as they might be

First, like Klosko, who distinguishes between justification to reasonable citizens and actual acceptance, Bertram contrasts his demand for transparency with the requirement that principles be comprehensible to actual citizens. To demand that arguments and principles be accessible to citizens here and now would, he claims, be to concede too much to the effects of

⁴⁵ Jeremy Waldron, 'Theoretical Foundations of Liberalism', in his *Liberal Rights* (Cambridge: Cambridge University Press, 1993), p. 61. Cited in Bertram, 'Political Justification', p. 565.

⁴⁶ Bertram, 'Political Justification', p. 573.

prevailing ideologies and unjust background institutions. Thus we should be concerned with what can be understood by ‘people as they might be, given realistic levels of education, attention, and debate for a modern population.’⁴⁷ However, Bertram fails to address the difficulty that this idealizing condition creates from within the terms of his own argument. In the passage cited above, he argues that we treat others as less than equal when we say to them “‘Here are my principles, and, trust me, if you were fully rational and placed in an appropriate choice-situation, then you would accept them’”. However, given that Bertram is concerned with the comprehension of people as they might be, he will still need to say to *actual* citizens: trust me, if society was a bit more just, or you were a bit more educated, you would understand. Bertram asks ‘why not just defer to the experts, such as political philosophers, in determining the terms of association for a just society?’⁴⁸ His answer is that such deference violates the ideals of respect, equality and autonomy. However, given his reliance on an idealizing condition, Bertram’s approach still seems to demand the kind of deference that troubles him: when people do not actually understand the theorist’s arguments, they must accept assurances that they *would* understand under more ideal conditions.

Multiple audiences for political theory

What does Bertram’s claim – that the value of democratic community imposes a non-complexity condition on political argument – imply for the everyday practice of political theory: for how political theorists write and speak to each other? Bertram offers the following test for non-complex argument: ‘that it should be reasonable for a speaker to believe that *were she to address an assembly of her fellow citizens*, picked at random, possessed of the sincere intention to understand, then the vast majority would come to understand (if not at

⁴⁷ Ibid, p. 574.

⁴⁸ Ibid, p. 578. In section 4, I criticize the assumption that political theorists are asking for deference. Thus I will suggest that Bertram’s account is partly driven by a mistaken picture of the claims that political theorists are making over the democratic process.

that every moment, at least after due reflection).'⁴⁹ The hypothetical nature of this standard implies that political theorists are always bound by a uniform non-complexity requirement, regardless of who they are *actually* talking to. The problem with this position is that it denies that the relevance or meaning of respect for democratic community varies according to context and it fails to leave space for academic debate in which political theorists do not have regard for the understanding of their fellow citizens more generally.⁵⁰

In his analysis of the idea of justification, Bertram rightly suggests that a charge of insincerity can be raised against someone who 'utters a true account of the phenomenon without the intention of enlightening her epistemically unprepared listeners.'⁵¹ However, to understand the implications of this claim we need a more careful analysis of the different kinds of listeners to political theory, and the various arenas in which theorists might operate. Indeed Bertram claims that 'democratic community requires of citizens that they exchange *in the public arena* only reasons that they can reasonably expect their fellow citizens to comprehend.'⁵² However, he does not further analyze the idea of a 'public arena' and its application to political theory. It might be insincere, even disrespectful, to enter a wider forum and to reiterate one's theoretical arguments in terms identical to those employed in academic papers, without regard for the needs of the audience. However, this does not support an across-the-board restriction on the complexity of political theorizing. In order to exhibit a proper respect for democratic community (and ultimately, according to Bertram's argument, a proper respect for persons), political theorists need not always limit themselves to 'the kind of argument which

⁴⁹ Ibid, p. 575.

⁵⁰ Although note that Bertram suggests that the accessibility requirement applies only to 'basic constitutional principles' and not to all areas of public policy. Thus if theorists are addressing issues that fall outside of this sphere, they are free to theorize without regard to the complexity of their arguments. More needs to be said to explain why it is not similarly disrespectful to violate the accessibility requirement outside of the domain of basic constitutional principles.

⁵¹ Ibid, p. 570.

⁵² Ibid, p. 581.

ordinary citizens could advance to one another',⁵³ since what is accessible is relative to the audience in question.

Bertram's failure to recognize the audience-relative nature of accessibility perhaps stems from his understanding of the relationship between the ideals of accessibility and justice. Specifically, Bertram claims that a theoretical principle is defective *as a principle of justice* if it compromises democratic community. Thus we should not, he emphasizes, interpret him as calling for a trade-off between true principles of justice and democratic community; rather transparency or accessibility is *part of the demands of true justice*.⁵⁴ This suggests the following diagnosis of Bertram's position: he is drawn to an implausibly fixed conception of accessibility because he ties together the values of justice and legitimacy, and he does not want to make the demands of justice turn on contingent facts about the kinds of arguments that are accessible to different people.⁵⁵

How significant is complexity?

Finally, it is not clear that limiting 'theoretical *complexity*' will adequately deal with the core issues of accessibility and transparency that concern Bertram. With sufficient time, perhaps many people could come to grasp complex arguments in political theory. But it seems likely that they would still struggle, as political theorists often do, to relate these principles to the real political choices confronting them. The issues that attract fierce debate within political theory, for example between rival currencies of justice or between interest-based and will-

⁵³ Ibid, p. 576.

⁵⁴ Bertram's perspective is similar to theorists such as Anthony Laden and Rainer Forst, who argue that justice is a matter of citizens standing in relations to justification to one another. See, for example, Anthony S. Laden, 'Taking the Distinction between Persons Seriously', *Journal of Moral Philosophy*, 1 (2004), pp. 277-92.

⁵⁵ Thus, by blurring the lines between democratic legitimacy and justice we risk distorting at least one of these values, or being pulled at once in two conflicting directions. Bertram himself inadvertently illustrates the risks of linking justice and legitimacy too closely together. As discussed above, he argues that the accessibility requirement should not be understood in terms of what people actually understand, because this would contaminate the theory with the effects of *unjust* background conditions. There is a threat of circularity here: accessibility is defined with reference to the idea of justice, but justice is understood partly in terms of accessibility.

based theories of rights, are typically not the choices that face us in real politics. That is not to deny that political theory can speak to some important political debates. However, the dividing lines in political theory do not map neatly onto the dividing lines in real politics and many theoretical battles lack clear political payoffs. Hence we should not overstate the role of *complexity* in creating barriers to wider public comprehension of, or engagement with, the arguments of political theory. The gap between political theory and people's lived experiences of politics is much broader, thus restraining the complexity of arguments in political theory will not necessarily render their meaning and purpose transparent to citizens at large.

I have briefly highlighted three complicating features of Bertram's account: the reliance on an idealizing condition; the neglected question of the audiences for political theory; and the issue of the relative significance of complexity as a barrier to understanding. I have thereby suggested that the implications of Bertram's commitment to accessibility are at once more and less restrictive than he implies: potentially more stringent because he does not adequately justify the focus on 'people as they might be' (as opposed to people as they are) and because complexity is not the only significant barrier to accessibility; less restrictive because what is accessible is relative to audience in a way that Bertram fails to recognize. I now want to suggest that this instability in Bertram's account, like the ambiguities in Klosko's work, has wider significance: it is reflective of a deeper problem with the model of the relationship between political theory, public opinion and democratic legitimacy that is shared by all three works considered in this chapter.

4. Does political theory pre-empt politics?

The theorists discussed in this chapter maintain that the value of democratic legitimacy requires us to pay closer attention to empirical evidence about public opinion. More specifically, they all suggest that democratic legitimacy lies in part in *restraining* normative principles, in either content or form, in order to bring them more closely into line with public

opinion. On this account, the role of the political theorist is not simply to explain and defend her own views. Rather, as a democrat, she should partially modify her ideas, to reflect how or what her fellow citizens think about politics. I now want to consider how this approach relates to a strand of realist thought identified in chapter 4: the displacement charge that political theory exhibits an anti-democratic attitude. I first explore a bit further what is at stake in the displacement critique, before considering how it speaks more specifically to the democratic restraint model.

Michael Walzer has posed the following problem about the relationship between philosophy and democratic politics: 'Philosophers claim a certain sort of authority for their conclusions; the people claim a different sort of authority for their decisions. What is the relation between the two?'⁵⁶ The displacement critique, I have suggested, is centred on the idea that there is a tension between these two claims: that the activity of normative political theory threatens, or in some way fails appropriately to respect, real politics. What, more precisely, does this alleged tension consist in? And does the kind of project discussed above, in which the theorist gives weight to popular views, offer a rejoinder to this critique?

On the most literal interpretation of the displacement critique, political theorists are charged with seeking to circumvent the democratic process: with aspiring illegitimately to impose their favoured normative positions politically. Newey, for example, evokes this idea when he calls for political theorists to curtail their 'legislative ambitions.'⁵⁷ Similarly, Wolff and de-Shalit suggest that: 'The philosopher's claim to authority to settle such disputes [when citizens disagree] may seem deeply suspect.'⁵⁸ In order to evaluate this charge, we need to clarify the sense in which theorists aspire to 'legislate' or to 'settle disputes'. Political theorists seek to adjudicate between competing theoretical positions: to evaluate the merits of alternative

⁵⁶ Michael Walzer, 'Philosophy and Democracy', *Political Theory*, 9 (1981), pp. 379-99, at p. 379.

⁵⁷ Glen Newey, *After Politics: The Rejection of Politics in Contemporary Liberal Philosophy* (Basingstoke: Palgrave, 2001)

⁵⁸ Wolff and de-Shalit, *Disadvantage*, p. 43.

normative principles. However, the circumvention charge rests on the very different claim that political theorists would (if they could) like to *impose* their own normative visions on their fellow citizens. As a number of theorists have emphasized, this mischaracterizes how they think about the status of their ideals in relation to democratic politics. Rawls, for example, emphasizes that political theorists do not claim any special right to be heard in the democratic process, still less to circumvent that process entirely. Rather, ‘students of philosophy take part ... as citizens among others.’⁵⁹ More generally, if their normative ideals fail to find support among the democratic public, political theorists do not wish that their vision would be imposed regardless; at most they claim that their fellow citizens have good reason to change their minds.⁶⁰

Thus the pre-emption charge fails to find a target, because political theorists do not aspire to be philosopher-kings. However, my response to this objection requires some clarification, which opens the way for a deeper version of displacement critique. Why, although they regard their ideals of justice, rights or freedom as, in some sense, true or correct, do political theorists not aspire to impose themselves politically? They do not do so because ‘*their own theorizing* – not now about what decisions should be made, but about how they should be made – tells them that there is a crucial distinction between correctness and legitimacy.’⁶¹ Thus the political modesty I have emphasized within political theory seems to rest on a deeper immodesty: behind the political theorist’s attitude of restraint is an account of the conditions of legitimate democratic politics whose status is not contingent on its being endorsed or

⁵⁹ John Rawls, *Political Liberalism*, p. 427. Cited in Anthony Simon Laden, ‘The House that Jack Built: Thirty Years of Reading Rawls’, *Ethics*, 113 (2003), pp. 367-90, at p. 385. For a similar response to the circumvention charge see Claassen, ‘Making Capability Lists’, pp. 500-1 and Adam Swift, ‘The Value of Philosophy in Nonideal Circumstances’, *Social Theory and Practice*, 34 (2008), pp. 363–87, at pp. 382-3.

⁶⁰ Juha Räikkä, ‘The Feasibility Condition in Political Theory’, *Journal of Political Philosophy*, 6 (1998), pp. 27-40 at p. 30. The view that this latter claim – that their fellow citizens have good reason to change their minds – is anti-political or anti-democratic I find difficult to understand. It seems to rest on the idea that, from the point of view of politics, the very ideas of truth and correctness are despotic – see Estlund, *Democratic Authority*, p. 21.

⁶¹ Swift and White, ‘Political Theory, Social Science and Real Politics’, p. 55. Emphasis added.

realized politically. Hence we should consider the possibility that the displacement critique reaches down to this deeper level. In other words, is it anti-political or anti-democratic to suggest that real politics must respect independent moral limits in order to be deemed legitimate?⁶²

In its strongest forms, displacement realism does sometimes suggest that we must eschew moral principles of legitimacy altogether, in order to demonstrate a properly political or democratic attitude. Mouffe, for example, argues that 'Democracy requires ... that the constructed nature of social relations finds its complement in the purely pragmatic ground of the claim to legitimate power.'⁶³ However, in practice displacement realists are not willing to accept the costs of this radical stance. Hence Mouffe goes on to emphasize that, although the basis of legitimate power is purely pragmatic, this is not in 'the absurd sense that all power is automatically legitimate'⁶⁴ and she deploys a normative theory of legitimacy to defend an 'agonistic' rather than an 'antagonistic' vision of democracy.⁶⁵

Similarly, Williams' critique of 'political moralism' does not ultimately represent a rejection of the view that politics, in order to be deemed legitimate, must respect some moral limits. Williams is famously critical of the idea that the moral is prior to the political: either in the sense that politics is seen as an instrument for achieving moral ideals, or morality is seen as

⁶² Of course, there are still strong reasons why we should normally seek to further these conditions for legitimate democratic politics from within the terms of actually existing (somewhat) democratic politics – even though the status of the conditions is not contingent on their being accepted or endorsed politically. One of these reasons is the importance of having an appropriately fallibilistic attitude towards our normative commitments. Another is the importance of stability and an appreciation of the fragility of our political achievements, as theorists of the liberalism of fear have emphasized – see Judith Shklar, 'The Liberalism of Fear', in Nancy L. Rosenblum, ed., *Liberalism and the Moral Life* (Cambridge, Mass: Harvard University Press, 1989), pp. 21-38. I am interested here in whether there is a viable version of the displacement critique that speaks to the project of theorizing moral limits to legitimate politics, whilst not resting on these two distinct ideas.

⁶³ Chantal Mouffe, 'For an agonistic model of democracy', in Noel O'Sullivan, ed., *Political Theory in Transition* (London: Routledge, 2000), pp. 113-30, at p. 125. See also her *On the Political* (Abingdon: Routledge, 2005)

⁶⁴ Mouffe, 'For an agonistic model', p. 125.

⁶⁵ For a related discussion of the normative content of Mouffe's theory of democracy see Andrew Knops, 'Debate: Agonism as Deliberation – On Mouffe's Theory of Democracy', *Journal of Political Philosophy*, 15 (2007), pp. 115-26.

placing constraints on rightful political action.⁶⁶ At the same time, however, he recognizes that we cannot do without an account of conditions of legitimate political power. He argues that a legitimate state is one that can answer the Basic Legitimation Demand (BLD): that is it secures 'order, protection, safety, trust, and the conditions of cooperation' and is able to 'offer a justification of its power to each subject.'⁶⁷ Of course, Williams recognizes that there is an immediate question about the nature of the BLD, in light of his rejection of moralism:

'It may be asked whether the BLD is itself a moral principle. If it is, it does not represent a morality which is prior to politics. It is a claim that is inherent in there being such a thing as politics: in particular, because it is inherent in there being a first political question. The situation of one lot of people terrorizing another lot of people is not per se a political situation: it is, rather, the situation which the existence of the political is in the first place supposed to alleviate (replace).'⁶⁸

Thus in order to sustain his distinction between realism and moralism, Williams emphasizes that the BLD is not an external moral standard to be applied to politics; rather it is a position concerning the essential character of politics itself. In other words, the BLD, for Williams, is constitutive of the very idea of politics.

There are questions to be asked about the usefulness of Williams' narrowing of the idea of politics, particularly from the realist perspective. His account implies that oppression and violence are not recognizable as *political* acts. Indeed, it looks like politics, for us, means liberal politics, given Williams' suggestion that only liberal answers to the BLD are likely to be successful here and now. This way of conceptualizing politics is at odds with the realist complaint that liberal political theorists have an overly narrow and sanitized view of politics. Most important for present purposes, however, is whether Williams' account of the status of the BLD supports the claim that he is engaged in a fundamentally different kind of project to the liberal theorist who subjects politics to prior moral limits. The difficulty is that it is clear

⁶⁶ Bernard Williams, 'Realism and Moralism in Political Theory', in Geoffrey Hawthorn, ed., *In the Beginning was the Deed* (Princeton, NJ: Princeton University Press, 2005), pp. 1-17, at p. 2.

⁶⁷ Ibid, p. 4.

⁶⁸ Ibid, p. 5.

that Williams thinks that the political is to be preferred to the non-political situation: it is a good thing if the state justifies its power to each subject. Furthermore, although Williams emphasizes that what constitutes a good answer to the BLD is historically contingent, not every actual agreement counts – specifically acceptance of a justification should not be the result of the coercive power supposedly being justified.⁶⁹ What else, except some deeper moral commitment, underpins the demand that power be justified to each citizen and the claim that some actual agreements do not count? As Sleat suggests, ‘It is hard to know how we can answer why we should be concerned about the oppressive and tyrannical use of state power over particular individuals without falling back, as liberals do, upon some foundational moral premise that all persons matter.’⁷⁰

Thus Williams’ critique of ‘moralism’ and Mouffe’s claim that the grounds of legitimate power are ‘purely pragmatic’ should not be allowed to disguise the fact that they too employ moral principles to distinguish between legitimate and illegitimate forms of politics. The costs of the radical rejection of all moral limits on legitimate politics are too high and displacement critics cannot press this objection without undermining their own normative projects.⁷¹ Therefore, we can resist any attempt to push the pre-emption critique to a deeper level, on which the very task of identifying moral principles of legitimacy is seen as somehow anti-political.

⁶⁹ Ibid, p. 6.

⁷⁰ Matt Sleat, ‘Bernard Williams and the possibility of a realist political theory’, *European Journal of Political Theory*, 9 (2010), pp. 485-503, at p. 495.

⁷¹ Rather than suggesting that we must not place any prior moral limits on legitimate politics, a more plausible form of the displacement critique centres on the nature of the conditions of political legitimacy. In particular, it is alleged that liberal theorists have an overly restrictive vision of democratic politics: they place unjustified limitations on the mode, content, or range of legitimate democratic action. However, in pressing this objection, realists no longer appear as radical external critics of the entire enterprise of normative political theory. Rather, they become parties to a set of long-standing normative debates involving issues over which liberal theorists themselves sharply disagree. For further discussion see Alice Baderin, ‘Two Forms of Realism in Political Theory’, *European Journal of Political Theory* (2013), doi: 10.1177/1474885113483284

4.1. How the pre-emption charge finds a new target

Section 4 began by emphasizing that insofar as political theorists generate prescriptions for political practice, they are offered as ideas to be debated and contested through the democratic process, not conclusions that seek to undercut that process. Thus the pre-emption charge rests on a false picture of the status that political theorists seek for their claims in relation to democratic politics. However, this response to the pre-emption critique is no longer available under the democratic restraint model. This approach suggests that the outputs of political theory *do* have some special right to be heard: political theorists are not merely offering up another voice or resource to the democratic process, because they have *already taken account of what the democratic public think*. Jeremy Waldron has suggested⁷² that we can think of normative political theory broadly as composed of two parts: first, questions about what should be done and, secondly, questions about what should be done when we disagree about what should be done. The charge that political theory seeks to pre-empt politics typically involves mischaracterizing arguments of the first kind as claims of the second form. However, the democratic restraint model, at least implicitly, moves political theory into the second space. In co-opting public opinion into the process of normative theorizing, it thereby increases the demands of political theory to be heard in the democratic arena.

There is a sense, running through the realist literature, that there is something objectionably arrogant about political theory. As Kelly notes, ‘political theory is accused [by realists] not merely of philosophical deficiencies in its conceptual armoury; more importantly, it is accused of hubris.’⁷³ The democratic restraint model might initially seem to provide a response to this charge of arrogance; this model can look like, and has been presented as, a more modest vision of political theory. Rather than seeking the truth about complex normative issues,

⁷² At the Nuffield Political Theory Workshop, June 2011

⁷³ Paul Kelly, ‘Political theory in retreat? Contemporary political theory and the historical order’, in Noel O’Sullivan, ed., *Political Theory in Transition* (London: Routledge, 2000), pp. 225-41 at p. 225.

political theorists, on this approach, merely strive for principles with some degree of legitimacy. As Wolff and de-Shalit suggest, we can limit our task for looking for ideas that form the basis for agreement among democratic citizens: 'it may be that there is something to be gained by comparing ... [people's views] for it may turn out that there is some sort of broad consensus. Whether or not this consensus implies anything about the ultimate truth of that answer, it could help to initiate and legitimize policies.'⁷⁴ In fact, though, I have suggested that there is an important sense in which the democratic restraint model is a more ambitious way of doing political theory. Specifically, it is politically more ambitious, because it amplifies the discipline's claims over democratic politics.

It is helpful to relate this argument to Claassen's conclusion about the philosophy versus democracy debate within capability theory. Claassen argues that the claim that list-making in capability theory should be left to democratic politics actually does a disservice to democracy: 'The philosophical position offers the democratic process something to digest ... The debate in academia between several principles of justice, like other academic debates in other disciplines, may trickle down to public debate, helping citizens to make up their minds. And the fiercer and more explicit are the ways in which these philosophical theories fight each other, the more there is to be eventually taken up in the public arena.'⁷⁵ Claassen here suggests that tempering theory in deference to public opinion will deprive theoretical debate of the vibrancy and fierce contestation that is likely to increase its value to democratic politics. However, establishing this claim would involve addressing some difficult empirical questions, about the forms in which and conditions under which theory is most likely to impact on real world political debate. My claim is rather that the democratic restraint model undermines its own democratic purposes, by blurring the two spaces of political theory outlined by Jeremy Waldron. This also provides a more general diagnosis of the specific tensions identified in

⁷⁴ Wolff and de-Shalit, *Disadvantage*, p. 98.

⁷⁵ Claassen, 'Making Capability Lists', p. 13.

Klosko and Bertram's accounts. They are pulled in two directions because they run together two questions that should be kept distinct.

It is important to clarify what it is about the democratic restraint model that makes it vulnerable to the pre-emption charge, by recalling a distinction drawn in section 2 of this chapter. Political theory often does, and should, move into the second space identified by Waldron by offering a *theory of legitimacy*; by identifying the kind of political process that would meet the standards of democratic legitimacy. I have rejected a version of the displacement critique that sees *that* task as anti-political or anti-democratic. However, the democratic restraint model does something more than this. It does not merely offer a theoretical framework for thinking about the problem of what ought to be done when we disagree; rather it seeks to mediate that disagreement and thereby positions itself as having some authority to tell us *what is actually legitimate for us here and now*. It suggests that the work of determining what is politically legitimate can be done partly in advance of real democratic politics, through a combination of theoretical reflection and empirical investigation of public views. Motivated by the desire to put political theory on a more democratic footing, the democratic restraint model in fact damages the discipline's democratic credentials.

4.2. A note on the scope of the argument

I have considered three studies that advocate a closer engagement between political theory and public opinion research on democratic grounds. I argued that all involve a problematic account of the role of public opinion in political theory, which in turn generates an unattractive picture of the status of political theory in relation to democratic politics. I now want briefly to clarify the scope and strength of this critique and thereby respond to some potential objections. First, my claim is not that the considered position of these theorists is that the principles they identify ought to have special weight in the democratic process. However, this is an implicit implication of the model of engagement between political theory and public

opinion that they develop; and this implication is significant, since it seriously undermines the appeal of their account of the role of public opinion in political theory.

Secondly, none of the theorists I have considered claims that drawing on evidence about public opinion allows us fully to determine what is legitimate. Rather public opinion is seen to add somewhat to the legitimacy of their theory; it renders it *more* legitimate. Thus the democratic restraint model does not imply that we can circumvent the democratic process completely. Rather, it suggests that what is legitimate is to be determined through some combination of public opinion, theoretically mediated and interpreted, plus the operation of actual democratic procedures. Thus, having incorporated evidence about public opinion, political theory has an expanded, although somewhat uncertain, status in relation to democratic politics.

Thirdly, it might be objected that my critique involves an overly strong interpretation of the democratic restraint model. Perhaps the aim is merely to use evidence about public opinion to identify what *might be* or *could be* democratically legitimate, where this must ultimately be determined through democratic procedures? As discussed in section 3, Klosko is inconsistent in how he characterizes the status of public opinion within his account, and we can plausibly interpret some of his claims along these lines. In this form, the democratic restraint model would avoid the charge of 'pre-empting politics': it would not involve political theorists seeking to answer questions that should be left to democratic politics. However, all of the theorists discussed in this chapter, at least at times, claim something stronger: they suggest that incorporating evidence about public opinion *actually adds* to the legitimacy of their theories. Moreover, the weaker interpretation of the democratic restraint model would evade the pre-emption charge at the cost of introducing an unattractive picture of what political theory can accomplish. We would thereby reduce the role of political theory to second-guessing the

potential outcomes of democratic politics; a role in which political theory is unlikely to perform very well.

Finally, it is helpful to clarify the way in which my critique is intended to speak to Bertram's version of the democratic restraint model. In contrast to Wolff and de-Shalit and Klosko, Bertram's argument is negative in form: he suggests that political theorists should *rule out* some principles and arguments as democratically illegitimate, on the grounds they are not accessible to the wider public. His account is, in this way, less ambitious about what political theory, informed by public opinion, can accomplish for democracy. However, his approach shares the same problematic structure as Klosko and Wolff and de-Shalit's accounts: it too calls, on grounds of democratic legitimacy, for political theorists to restrain their arguments in response to public opinion and thereby amplifies the political status of political theory. Indeed, at times Bertram's argument seems to be motivated by an exaggerated view of the democratic aspirations of political theorists, of the kind that underpins the pre-emption charge. For example, he claims that: 'A society framed by the principles that would be enacted by ideal agents may be visible, or appear to be visible, to the theoretician. But it would detract from democratic community among existing citizens *to bring it into being*.'⁷⁶ Recall, however, that there is an easy response to this argument: theorists are not so quick to move from the 'visibility', or even truth, of their principles to the claim that they ought to be enacted. Perversely, it is the kind of approach advocated by Bertram, along with Klosko and Wolff and de-Shalit, which renders political theory newly vulnerable to this kind of concern.

⁷⁶ Bertram, 'Political Justification', p. 583. So rather than 'democratic' responsiveness to public attitudes generating a problematic picture of the role of political theory in a democracy, perhaps the argument runs the other way round: Bertram is motivated to turn to public opinion because he is already committed to a mistaken view of the democratic aspirations of political theory.

5. Democratic restraint versus democratic underlabouring

If the democratic restraint model is flawed, as I have argued, how then should we think about the role of political theory in a democracy? A better view put forward, for example, by Stuart White and Adam Swift, is that the theorist's role is that of a 'democratic underlabourer'. On this alternative account, the political theorist tries to serve the democratic process in one of two ways: either she defends ideals or proposals that she herself believes to be correct, or she seeks to clarify the terms of everyday political debate. Crucially, however, the underlabourer model limits the role of the political theorist to speaking *to* and *with* her fellow citizens; she does not seek also to speak on their behalf:

‘she can offer arguments and justifications of her own, seeking to persuade her readers about which values (or more likely, which conceptions of those values, or which balance between competing values) are the right ones for them to be pursuing in their policy choices. This last role remains underlabouring, despite being substantially normative precisely because the arguments she makes are, indeed, offered. It is for her fellow citizens to decide whether they want to accept them.’⁷⁷

The democratic underlabourer and democratic restraint models involve different pictures of the senses in which democratic legitimacy is a political versus a theoretical achievement. As discussed previously, the democratic restraint model suggests that by integrating evidence about public opinion, political theorists can speak *for* the democratic public and thereby go some way to determining legitimate political outcomes. In contrast, the underlabourer model suggests that, although political theorists might make a useful contribution to democratic politics, legitimate decisions must ultimately be produced by the operation of actual democratic processes. Of course this does not imply that politics here and now actually is conducted in a legitimate fashion. However, to the extent that current politics falls short of legitimacy, the answer has to be to work out how and why and to seek to redress these

⁷⁷ Swift and White, 'Political theory, social science, and real politics', p. 54.

failings. It is not to try to secure democratic legitimacy through a theoretical exercise informed by public opinion, in the way suggested by the democratic restraint model.

If we think about the democratic contribution of political theory according to this more modest underlabourer account, do political theorists have any reason to pay attention to evidence about public opinion? After all, on this account, the theorist's job is defend her own views, rather than to seek to reflect the beliefs of her fellow citizens. Swift and White emphasize that political theorists should not sacrifice the discipline's critical edge by compromising their principles in the face of contrary public opinion: 'To act properly as a democratic underlabourer, the political theorist must work out her ideas independently, following her reasoning where it leads, and not simply mirror back to society what most people already think.'⁷⁸ However, if we keep this warning in mind, evidence about public opinion can nevertheless play some role in helping to realize the promise of the underlabourer model. If political theorists are serious about performing an underlabouring role, they need to be genuine participants in public debate. This, in turn, means that they must offer arguments that people can understand and engage with. Thus the democratic underlabourer model directs our attention towards evidence about the forms in which and conditions under which the arguments of political theory are publicly accessible.⁷⁹

The democratic underlabourer model can be thought about in both negative and positive terms. Negatively, it says that the outputs of political theory do not have special weight in the democratic process. Positively, it says that political theorists have something useful to offer the democratic process. Political theorists might choose not to take on this second project, and they should not be criticized for that. The claim is rather that if we *do* want to pursue the underlabourer model in a positive way, we must offer ideas and arguments that are

⁷⁸ Ibid, p. 63.

⁷⁹ Although note that the main way in which political theorists speak to a wider public is likely to be indirectly, through intermediaries such as think tanks and media. As I emphasized in my discussion of Bertram, what is accessible or makes sense should be considered in relation to the particular audience.

meaningful to a wider public. We do not need to succeed in actually persuading people, but we do need to make sense to them. In other words, it is problematic if we are met with incomprehension, but not with disagreement. Making political theory make sense to audiences outside of the discipline is likely to be largely a process of trial and error. However, one general requirement will be for political theorists to do more of the hard work of relating their abstract ideals to more concrete policy choices.

There are two important differences between the democratic restraint and democratic underlabourer models that should be emphasized. First, on the democratic underlabourer account, we are going to be interested in a different *kind* of evidence about public opinion: less about *what* people think and more about *how* they think and specifically the kinds of arguments that are accessible or make sense to them. Secondly, and most importantly, evidence about public opinion has a different kind of status or purpose on these two accounts. On the democratic underlabourer model, the aim of understanding public opinion is to help political theory to play a more meaningful role in democratic debate. The underlabourer account does not claim that incorporating opinion data can enhance the democratic character of the normative principles themselves. Thus the responsiveness to public opinion that the underlabourer model demands is strategic, not in itself democratic; it is democratic only in the sense that it helps political theory to make a more meaningful contribution to real politics. Thus although I have suggested that making good on the underlabourer role involves a condition similar to Bertram's accessibility principle, the theoretical significance of this requirement is very different on the underlabourer account. The democratic restraint model draws public opinion into political theory; it suggests that by taking account of public opinion, political theory can do work on behalf of democratic politics. In contrast, the democratic underlabourer view asks political theorists to turn outwards, towards real politics, and to find effective means through which political theory can speak to public political debate.

6. Conclusion

‘Authorization is the work of citizens governing themselves among themselves. Validation is the work of the philosopher reasoning alone in a world he inhabits alone or fills with the products of his own speculations. Democracy has no claims in the philosophical realm, and philosophers have no special rights in the political community. In the world of opinion, truth is indeed another opinion, and the philosopher is only another opinion-maker.’⁸⁰

Walzer here sketches a vision of two sharply divided worlds, of philosophy and democracy. Contrary to this picture, the democratic restraint model suggests that the philosopher need not inhabit her world alone; instead she can fill it with the ideas of her fellow citizens. This approach may thus appear to represent an appealing way of bridging the gap between the domains of philosophy and democracy described by Walzer. I have argued, however, that on closer examination the democratic restraint model loses its appeal, since it undermines rather than enhances the democratic credentials of political theory. Specifically, this chapter has made three main arguments:

- o There is a model of the relationship between political theory, public opinion and democratic legitimacy on which the political theorist adapts her theory in response to evidence about public opinion and thereby claims enhanced legitimacy for her normative principles. This approach is exemplified in the work of Klosko. It is also employed by Wolff and de-Shalit and suggests a third position in an ongoing debate among capability theorists: about the respective roles of philosophical reflection and democratic politics in determining a list of key capabilities. It is evident, in somewhat different form, in Bertram’s argument that the value of democratic community places a non-complexity requirement on normative principles and the terms in which they are justified.

⁸⁰ Walzer, ‘Philosophy and Democracy’, p. 397.

- o The otherwise misplaced objection that political theory seeks to pre-empt or to circumvent democratic politics gains force in relation to the democratic restraint model. Whilst presenting itself as a more modest vision of political theory, this model in fact amplifies the discipline's claims over the democratic process in an unappealing way. In pulling back from the fullest development of their theories and principles out of a concern for democratic legitimacy, political theorists render the discipline less, rather than more, democratic in character.
- o The democratic underlabourer model provides an alternative and more attractive vision of the contribution of political theory to democratic politics. This model directs our attention towards a different kind of evidence about popular attitudes: evidence about the kinds of arguments that are publicly accessible, rather than the substantive content of popular attitudes. Instead of drawing on evidence about public opinion in order try to determine what is legitimate, political theorists who want to democratize their practice should focus on finding channels and means through which to engage with public debate.

Chapter 6 Can Opinion Research Enhance Democracy?

1. Introduction

Chapter 6 seeks to give a deeper theoretical grounding to my critique of the democratic restraint model. Specifically, it suggests that the problem with this model stems from its underlying conception of democratic legitimacy. Drawing on the work of David Estlund, I argue that democratic legitimacy involves honouring the decisions of the people, rather than merely tracking their preferences. Implicit in the democratic restraint model, however, is a preference-tracking view. This reinforces the charge that the democratic restraint model pre-empts politics: if ‘rule by the people is something different from rule in accordance with the people’s views’¹, then political theory, on this approach, seeks to address questions that must lie beyond its remit.

The second aim of chapter 6 is to show what this argument implies for the wider question of the role of opinion research in a democracy. The democratic purpose of opinion research is thought about, most naturally, as a way of ensuring that political decisions more closely track the preferences of the people. If democratic legitimacy is instead a matter of honouring citizens’ decisions, can opinion research still fulfil a democratic role? I show that the view of democratic legitimacy defended here need not rule this out. Specifically, chapter 6 outlines three conditions under which opinion research can potentially serve a democratic purpose. Thus the aim is to establish a negative conclusion: that the view of democratic legitimacy defended here is not incompatible with the claim that opinion research can fulfil a democratic role. I do not seek to make a positive case for the democratic contribution of public opinion

¹ David M. Estlund, *Democratic Authority: A Philosophical Framework* (Princeton, NJ: Princeton University Press, 2009), p. 76. Note that I am not claiming that honouring people’s decisions is a sufficient condition for democratic legitimacy. Rather, the suggestion is that a full theory of legitimacy should be built around this idea. For example, it is compatible with the view defended here that justice sets some limits on the kinds of political decisions that can be deemed legitimate. For this view see John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 428.

research, which would require a much fuller theory of democracy and consideration of further questions about the nature of public opinion.

2. Democratic legitimacy: honouring decisions versus tracking preferences

Estlund asks us to consider the following puzzle: ‘whether there would be anything wrong (or, alternatively, anything undemocratic) about using electrodes or some less invasive technology to ascertain individual attitudes without their voting, and then proceeding the way democracy typically handles real votes. If a majority prefer Jones, then Jones wins, and so on.’² He claims that there would indeed be something undemocratic about this way of proceeding. My suggestion is that Estlund’s argument to this effect can, in turn, help us to make further sense of what is wrong with the democratic restraint model of the relationship between political theory and public opinion.

Imagine, Estlund asks us, that you invite me to dinner because you know I would like you to ask me. However, I have explicitly asked you not to invite me out for that reason, although I secretly do want you to (even if that is your only reason). In this case, ‘you have done what I want, because I want it. Still you have not done as I asked, and this seems potentially morally important.’³ There seems to be something troubling about the way I have treated you in this case and this suggests that we sometimes treat people inappropriately if we disregard *their decisions*, even if our actions track *what they want*. For a political example with a parallel structure, consider the 1999 Australian referendum on whether to become a republic. The republican proposal failed in the referendum, despite receiving strong support in a deliberative research exercise. Let us assume, quite plausibly, that the research provided a more accurate reflection of the preferences of Australian citizens on the republican question – perhaps because it captured a more representative segment of the population or because it offered an

² Estlund, *Democratic Authority*, p. 76.

³ Ibid, p. 76.

opportunity for people to listen to a range of arguments and to reflect more deeply on the issues at stake. Similarly, research into attitudes towards gun control has produced results at odds with referendum outcomes in some US states. Again there is good reason to think that the poll results represent a more accurate picture of citizens' preferences as a whole. However, there is something troubling about the idea that political decision-making in these cases might follow the research findings rather than the referenda results. I think this should strike us as an undemocratic move, *even if* we accept that the research better reflects what the people want. The principle that legitimate political decision-making is a matter of honouring what people decide, rather than merely tracking their preferences, provides a way of making sense of these cases in which there is a conflict between votes and research findings.

Estlund's argument is embedded within the wider agenda of *Democratic Authority*: to show that the legitimacy of democratic decision-making rests on its epistemic value and that we can introduce a concern for the quality of outcomes whilst resisting elitist objections to democracy. I employ Estlund's distinction between honouring decisions and tracking preferences without taking a stand on this broader project. However, it helpful to take a brief detour here into his overall theory of epistemic proceduralism in order to clarify the distinction between these two views of democratic legitimacy. Procedural fairness alone is not, Estlund suggests, enough to explain the moral importance of democracy. If all we care about is fairness, he asks, why not make political decisions by flipping a coin? Our defence of democracy, he suggests, must therefore rest on its tendency to produce good outcomes, in the same way that the moral force of jury trial rests on its epistemic value. However, if what we care about is good outcomes, why be democrats at all? Why not have rule by the wisest or best informed? We should not, Estlund contends, seek to respond to the elitist challenge by denying, implausibly, that some would be better than others at making political decisions.

Rather, we can resist 'epistocracy' because claims about the expert status of particular individuals are controversial; specifically such claims are subject to disagreement among qualified points of view, in a way that makes them inadmissible in political justification:

'Even if we grant that there are better and worse political decisions ... and that some people know better what should be done than others (we all think some are much worse than others), it simply does not follow from their expertise that they have authority over us, or that they ought to. This expert/boss fallacy is tempting, but someone's knowledge about what should be done leaves completely open what should be done about who is to rule. You might be correct, but what makes you boss?'⁴

The crucial elements of Estlund's theory, in terms of my critique of the democratic restraint model, are the qualified acceptability requirement on political justification and the related identification of an expert/boss fallacy. The qualified acceptability requirement is a condition of political legitimacy, similar to Rawls' liberal principle of legitimacy. Like Rawls, Estlund maintains that there are some arguments and claims that, although possibly true, are rendered inadmissible in political justification because they are subject to a special kind of disagreement. Estlund characterizes the qualified acceptability requirement in deliberately broad terms: 'Justified in terms acceptable to all qualified points of view (where qualified will be filled in 'reasonable' or some such thing)'.⁵ Rather than justifying a particular conception of qualified acceptability, his aim is to defend a family of such principles. This chapter remains similarly open about the meaning of qualified or reasonable disagreement. Of course much more needs to be said to explain and to justify this principle. However, rather than directly arguing for this view of political legitimacy, my intention is to offer something in the way of an indirect defence: by showing that it helps to make sense of the argument of the previous chapter, as well as the cases, discussed above, in which there is a conflict between votes and research findings. Conversely, we might think that these cases have some intuitive force and therefore endorse the distinction between honouring decisions and tracking preferences, even

⁴ Ibid, p. 3.

⁵ Ibid, p. 41.

if we reject Estlund's way of making sense of this distinction in terms of a qualified acceptability requirement on political justification.

The principle of qualified acceptability is used to construct an argument parallel to one presented above, but now at the level of public opinion. Some people are better at making political decisions than others, but they should not thereby get to rule, because their expert status is subject to qualified disagreement. Similarly, we can recognize that some people have greater expertise about public opinion than others, without admitting that they get to say what the people think for the purposes of political decision-making:

‘the requirement that justifications be acceptable to all qualified points of views rules out claims about who knows better than whom what is just, and, for the same reasons, about who knows better than whom what the people's views are ... [D]oing what the people say to do is the best generally acceptable epistemic route to doing what they really think should be done. There might be epistemically better routes, such as some special ability certain people have to know such things, but they (I claim) are controversial among qualified points of views.’⁶

Note that the source of this expertise about public opinion need not be as mysterious as Estlund suggests here. For example, psychological research suggests that individuals do not always have reliable access to their own underlying values – perhaps in the area of race in particular. Studies have found that experiments measuring underlying brain activity can better predict how white respondents interact with a black researcher than questions about racial attitudes.⁷ The idea that we might make political decisions based on these underlying values, which are not consciously accessible to us, is likely to strike us as troubling. Estlund's argument provides one way of making sense of what would be wrong (and specifically undemocratic) with such an approach – crucially he shows why such an approach is undemocratic *even if* such experiments sometimes better reflect what people think than their own political choices.

⁶ Ibid, p. 77.

⁷ See Drew Westen, *The political brain: the role of emotion in deciding the fate of the nation* (New York: PublicAffairs, 2007), Chapter 10. Note that I will later argue that Estlund's objection applies not only to any attempt to use neuroscientific research for democratic purposes, but also to many conventional studies of public opinion.

How does this account support the argument of the previous chapter? Recall that on the democratic restraint model, political theorists modify their principles in light of evidence about public opinion and thereby claim enhanced legitimacy for their theory and some authority to speak on behalf of the people. In Estlund's terms, the difficulty with this approach is that it involves political theorists positioning themselves as experts *and therefore bosses* with respect to the content of public opinion: it involves political theorists making a claim to expertise that is unjustifiable in political terms. It is important to see that the objection here is not political theorists are not typically well-qualified to undertake robust studies of public opinion or to interpret secondary data about popular attitudes – although, of course, we might also have worries of that form. Rather, the point is that their expertise is not acceptable to all qualified points of view. Thus *even if* they are experts, they do not get to be bosses.

The qualified acceptability requirement on political justification implies that legitimacy is a matter of honouring people's decisions, rather than merely tracking their views. This in turn implies that legitimacy must be won through real democratic politics: this work cannot be done by political theory, even theory that is carefully informed by public opinion.⁸ In this way, Estlund's argument reinforces the major conclusion of the previous chapter: that the democratic restraint model amplifies the democratic claims of political theory in an unappealing way and renders the discipline newly vulnerable to the charge that it seeks to pre-empt politics.

3. The democratic contribution of opinion research

From the earliest days of opinion research, many practitioners have framed their work in democratic terms. For example, in 1936, Crossley claimed that polls are 'the long-sought key to

⁸ For a related argument, about the importance of actual rather than hypothetical acceptance, see James Bohman and Henry S. Richardson, 'Liberalism, Deliberative Democracy, and "Reasons that all can accept"', *Journal of Political Philosophy*, 17 (2009), pp. 253-274, at p. 262.

government by the people.’⁹ These aspirations have been subject to an equally long-standing set of challenges. Many have questioned whether providing short responses to closed ended questions constitutes meaningful democratic participation. As discussed in chapter 1, objections have also been raised to the notion of public opinion as the aggregation of privately expressed individual opinions. However, the growth of more complex forms of opinion research since the early 1990s has seen renewed interest in the democratic potential of a range of methods, such as citizen juries, consensus conferences and deliberative polls.¹⁰ Perhaps the best known and politically most influential among these ‘democratic innovations’¹¹ is the participatory budgeting process that has been employed to set priorities for municipal spending in the Brazilian city of Porto Alegre since 1989.¹² Another notable example is the British Columbia Citizens’ Assembly, established to deliberate about alternative electoral systems, with the commitment that the Assembly’s recommendation would be put to a popular referendum.¹³ It is commonly suggested that these more sophisticated forms of research, which present citizens with new information, allow them to interrogate experts and to exchange ideas, offer new democratic potential. For example, Fishkin claims that the results of deliberative polls do not simply describe popular views; they also have a ‘recommending

⁹ Archibald Crossley, ‘Straw Polls in 1936’, *Public Opinion Quarterly*, 1 (1937), pp. 24-35, at p. 35. Cited in Michael A. Genovese and Matthew J. Streb (eds) *Polls and Politics: The Dilemmas of Democracy* (Albany, NY: State University of New York Press, 2004), p. 4. See also George Gallup and Saul Rae, *The Pulse of Democracy: The Public Opinion Poll and How it Works* (New York: Greenwood Press, 1940).

¹⁰ For a helpful overview of these different, but related, approaches see Graham Smith, *Beyond the Ballot: 57 Democratic Innovations from around the World* (London: POWER Inquiry, 2005). The idea of deliberative polling is Fishkin’s. The first deliberative poll, on the subject of crime, took place in Manchester in 1994. Similar exercises have subsequently been carried out in the UK, US and a number of other countries. Fishkin has written extensively describing and justifying this approach. For a recent account see his *When the People Speak: Deliberative Democracy & Public Consultation* (Oxford: Oxford University Press, 2009).

¹¹ This term is taken from Smith, *Beyond the Ballot*.

¹² See Boaventura de Sousa Santos, ‘Participatory Budgeting in Porto Alegre: Towards a Redistributive Democracy’, *Politics and Society*, 26 (1998), pp. 461-510.

¹³ The Assembly’s recommendation was rejected in the referendum. See Amy Lang, ‘But Is It for Real? The British Columbia Citizens’ Assembly as a Model of State-Sponsored Citizen Empowerment’, *Politics & Society*, 35 (2007), pp. 35-70.

force' for democratic citizens.¹⁴ It has also been suggested that such exercises can play a key role in reinvigorating democracy in a context of growing alienation from traditional representative institutions.¹⁵

What does the argument of this chapter imply for these long-held hopes that opinion research, at least in certain forms, can play a key role in enhancing or even reinvigorating democracy? In order to answer this question, it is important first to address an ambiguity in how Estlund frames his argument. At times, Estlund characterizes his distinction between two conceptions of democratic legitimacy as a contrast between doing what people 'say' and what they 'want', rather than between honouring decisions and tracking preferences. This 'saying' versus 'wanting' way of framing the distinction is misleading, because appears only to rule out as illegitimate the determination of political decisions according to research that involves the observation of behaviour or measurement of brain activity: i.e. research that does not involve people 'saying' anything. Elsewhere, however, Estlund also associates traditional polling with the problematic preference-tracking view. For example, he concludes that 'If the attraction of democracy is simply its ability to force policy to track people's attitudes, then highly accurate polls might be as good as votes.'¹⁶ Estlund is correct when he suggests that his argument threatens not only any attempt to put observational or neuroscientific research to democratic use, but also the more commonplace view that opinion surveys can serve a democratic purpose. Although opinion research typically involves people *saying* something, for example in response to questions posed by an interviewer, people can participate in research by *saying* things without *deciding* anything, or intending to influence political decisions. Participants often lack a clear idea of the way in which research will be used: of the nature of the decisions

¹⁴ James Fishkin, *The Voice of the People: Public Opinion and Democracy* (New Haven: Yale University Press, 1995), p. 162.

¹⁵ For example, in the wake of the phone-hacking scandal in 2011, the pressure group Compass called for a 'Public Jury', of 1,000 randomly selected citizens to develop proposals to reform banking, the media, politics and the police. See <http://www.guardian.co.uk/politics/2011/jul/31/public-jury-feral-elite-letter>

¹⁶ Estlund, *Democratic Authority*, p. 76.

and further processes, if any, into which their responses will be fed. In these circumstances, it seems implausible to suggest that research is a means of honouring the *decisions* of the people, despite the fact that it involves participants 'saying' what they think.

However, I now want to suggest that there is a way of thinking about and approaching opinion research such that it does not merely represent a way of uncovering people's preferences. Under the following conditions, opinion research also potentially enhances the capacity of the political system to honour citizens' decisions:¹⁷

- o Research outputs are integrated into wider political decision-making processes
- o These connections are established in advance and are transparent to participants, who intend their inputs to influence political decisions
- o The terms in which the issues are presented to research participants closely reflect the framing of actual decisions

In order for opinion research to fulfil a democratic purpose, given the view that democratic legitimacy is a matter of honouring the decisions of the people, the contributions of participants must represent realistic intentions to influence political decisions. This involves, first, some actual connection between research outputs and wider political decision-making processes. In other words, the research cannot be designed simply to uncover people's opinions; it must also feed these views into further political processes. The suggestion here is not that research findings must have sovereign or binding status in order to fulfil a democratic purpose. It is simply that a total disconnect between research and actual decision-making is not compatible with the view that such research serves a democratic purpose. It is also

¹⁷ In Estlund's account, the distinction between honouring decisions and tracking preferences seems to be binary. However, in relation to the status of opinion research, it can more helpfully be treated as scalar. Thus my claim is that the more fully the following conditions are met, the closer opinion research moves towards the honouring decisions end of the spectrum.

important to note that the impact of research need not relate to immediate policy outcomes. Rather, we should think about political decision-making as a process, with the possibility that research outputs are integrated at different stages.¹⁸ For example, a participatory exercise was conducted following 9/11, to explore different possibilities for rebuilding Lower Manhattan. The event was established with clear links to decision-makers, thus meeting the condition set out above. But the impact was to shape the agenda for further decision-making, and specifically to take some possible options off the table in the face of strong opposition, rather than to determine the development plans.¹⁹

The requirement that research be integrated into wider political processes relates to an ongoing debate within the literature on deliberative democracy, about the status of deliberative exercises or ‘mini-publics’ within the wider system of representative democracy. This debate has both an empirical and a normative dimension: Have such exercises in fact had any meaningful political impact? What kind of status or influence ought they to have from the perspective of a normative theory of democracy? For example, Graham Smith offers a six part typology of ‘democratic innovations’ according to their political impact. Specifically, he asks: ‘To what extent do citizens influence the final decision on the policy or issue considered within the innovation – do they have a final say on a decision, provide a recommendation or generate preferences?’²⁰ In Smith’s terms, the broad space I have staked out lies between consultations, which simply ‘aim to inform decision-makers of citizens’ views’ and direct democracy innovations, which ‘aim to give citizens final decision-making power on key issues.’ A more precise account of the weight that should be given to research outputs would require a much fuller exploration of the nature and value of democracy. In particular, it implicates us in long-

¹⁸ For discussion of the various ways in which small-scale deliberative exercises can be integrated into, or impact on, wider politics, see Robert E. Goodin and John S. Dryzek, ‘Deliberative Impacts: The Macro-Political Uptake of Mini-Publics’, *Politics & Society*, 34 (2006), pp. 219-44.

¹⁹ *Ibid*, pp. 229-30.

²⁰ Smith, *Beyond the Ballot*, p. 7.

standing debates about the merits of direct versus representative democracy. Earlier I discussed the examples of gun control in the US and the republican question in Australia, where research findings have been at odds with referenda outcomes. However, these cases of conflict between the preferences that people reveal through opinion research and what they decide through direct modes of political participation are atypical. More typically studies of public opinion are carried out in contexts where decision-making is taking place through representative bodies. Here the picture is more complicated, because it raises the issue of the place of direct elements within a broadly representative system. There is also a question about whether we can regard bodies such as citizen panels not simply as exemplars of direct democracy but as *themselves* having some representative status. Members of these research exercises are not voted for and thus are not formally authorized to represent others' views and interests. But perhaps they have some claim to representation, if we take a more expansive view of that contested concept?²¹

Such questions lie beyond the scope of this thesis. Thus the first condition is deliberately general: in order for research to serve a democratic purpose, its outputs must have some wider political influence. However, this condition also applies on the preference-tracking view of legitimacy: if research is to represent a way of forcing political decision-making to track citizens' preferences, it similarly cannot stand in isolation from wider decision-making processes. Thus the distinctive demand of the decision-honouring conception of democratic legitimacy lies in the second condition: that respondents understand the nature of the connections between their participation and wider decision-making processes and, in light of this awareness, intend to influence decision-making. In other words, it is not sufficient that the research turns out to have a political impact; the connections to wider decision-making processes must be established in advance and be transparent to participants. In this regard, it

²¹ See Mark Brown, 'Survey Article: Citizen Panels and the Concept of Representation', *Journal of Political Philosophy*, 14 (2006), pp. 203-25.

is helpful to consider how Estlund characterizes voting within the context of his defence of the decision-honouring conception of legitimacy. When an individual votes, Estlund suggests, she '*intends* to effect the execution or the election in the event that circumstances unfold so as to make things hang on her own action. Heeding votes is different, then, from tracking the voters' views or preferences.'²² My second condition captures this intentional element, which opinion research must share with voting if it is to fulfil its democratic promise. Only if participants intend to influence decision-making can opinion research be seen as a tool that enhances the capacity of citizens to *decide* what gets done.

This second condition clearly rules out any democratic claim for a project such as Klosko's, which involves the aggregation of results from diverse studies, carried out for a variety of purposes. Any attempt to shape decision-making according to the results of such a meta-analysis involves using research outputs in ways that were not transparent to participants and thus cannot be viewed as a means of honouring their *decisions*. More generally, the second condition is not met in the large number of studies in which participants have little information about why their views are being sought, and how the information gathered will be employed. However, the demand that participants are given a realistic picture of the likely nature and extent of their influence supports established good practice in participatory research and resonates with frequently expressed concerns about the risks of tokenistic participation. Participants in exercises such as deliberative polls are often sceptical about the motivation for seeking their involvement and the possibility of their having any real impact on decision-making. Moreover, empirical evidence suggests that introducing new opportunities for participation without adequate evidence of influence may carry greater risks than benefits.²³ Thus the claim that democratic legitimacy involves honouring the decisions of the people

²² Estlund, *Democratic Authority*, p. 78.

²³ See Marcia Grimes, 'Organizing consent: The role of procedural fairness in political trust and compliance', *European Journal of Political Research*, 45 (2006), pp. 285-315, at p. 307.

provides a theoretical rationale for the widely accepted principle that researchers should make the intended uses and purposes of research transparent to participants and set realistic expectations about impact.

The third condition requires that the terms in which political issues are framed for research purposes closely reflect the form in which decisions will actually be made. If research is to contribute to the capacity of the political system to honour the decisions of the people, participants must be aware of the nature of the decisions to which they are supposedly contributing. One crucial element of this condition is the provision of information about the likely wider costs of particular options. If this information is not introduced into the research exercise, a gap is created between the choices presented to participants and the terms in which decisions will ultimately be made. In some cases, this risks creating a distorted picture of public attitudes. For example, research consistently finds significant levels of opposition to inheritance tax, even among those who are unlikely to be subject to such taxation.²⁴ However, studies also suggest that citizens tend to respond differently, and more favourably, when the question of inheritance tax is placed in the context of wider taxation and spending decisions. There would clearly be something problematic then about using opposition to inheritance tax as a 'democratic' basis to justify wider tax and spending decisions, *with which citizens have not been presented*. However, on the view of democratic legitimacy defended here, a disjunction between the framing of research questions and political decision-making is problematic *even if* it does not lead to a mistaken view about the content of public preferences. On the preference-tracking account of legitimacy, there is no democratic objection if we can successfully infer participants' attitudes towards a particular issue from their answers to questions about another matter. However, if legitimacy is instead a matter of honouring

²⁴ See the conclusion to this thesis for further discussion of attitudes towards inheritance tax.

citizens' decisions, it is essential that participants have actually engaged with the issues in the form in which they will be decided.

The third condition for democratic research – the need for congruence between the framing of research questions and political decisions – also implies limits on abstraction in studies of public opinion. Research into relatively abstract or theoretical questions *may* be justified in democratic terms, if these issues themselves have a place in political decision-making. However, political decisions are typically made in more concrete terms and thus participants' views should be sought at a similar level. For example, NICE established a Citizens' Council to input wider public attitudes into their decision-making. However, Smith notes that the questions they have presented to the Council are rather different from the terms in which NICE ultimately makes its decisions. In particular, the discussions of the Council are structured to abstract from any issues regarded as 'technical' in nature: 'questions to the Council have been rather general – the first was 'What should NICE take into account when making decisions about clinical need?' There are two comments to make about these sorts of questions. First, their generality makes it very difficult to respond to. Second, NICE may be drawing a false distinction between 'technical' and 'value-based' input. In other words, the best use of the Council may actually be in setting it more specific and controversial questions.'²⁵ The argument presented here supports Smith's concern about the very general terms in which the Citizens' Council is asked to deliberate. If organizations such as NICE are to justify consultative exercises in democratic terms, they must close the gap between the terms of debate set for these bodies and the form in which decisions are actually made. More generally, we need to tie research to the kinds of choices that present themselves in real politics, in order for the contributions of participants to represent intentions to influence political decisions.

²⁵ Smith, *Beyond the Ballot*, p. 44.

The third condition also undermines the democratic aspirations of Wolff and de-Shalit's project. Despite their claim to eschew the excessive abstraction of recent theorizing about justice, much of their discussion of capabilities is conducted at a similarly abstract level. Thus there is still a significant amount of work to be done to see what many of their ideas imply in practice. For example, what is required for people to be 'able to participate effectively in political choices that govern [their] lives' or to 'live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction'?²⁶ Wolff and de-Shalit recognize this remaining gap between theory and practice. However, they do not consider the implication of the fact that they engage people's views mainly at the level of theory for the 'democratic' justification of their approach. It seems likely that respondents will reject the practical implications of at least some aspects of the theory which has purportedly gained legitimacy by being congruent with their views.²⁷ Moreover, I have suggested that even if we can correctly infer people's more specific attitudes from their responses to some more general issue, this does not represent a democratic way of proceeding – given that democracy is about honouring people's decisions and not merely tracking their preferences.

3.1. Clarificatory remarks

I have argued that opinion research, under a restricted set of conditions, can plausibly be seen not simply as a means of tracking people's preferences, but rather as a way of honouring their decisions. This section has sought to rescue a potential democratic role for opinion research, without effectively collapsing the distinction between participating in research and voting. On the view of democratic legitimacy defended here, the threat to the democratic aspirations of opinion research arises because such research has an ineliminable interpretive element.

²⁶ Wolff and de-Shalit, *Disadvantage*, p. 191.

²⁷ We cannot simply *assume* that when people endorse a theoretical principle, this is stronger or more fundamental than their commitment to conflicting specific judgements. This claim is developed further in part III, where it plays an important role in my argument.

Studies of public opinion essentially and inevitably involve a person or team gathering evidence about public attitudes and offering, on that basis, an interpretation of what the people think. In this way, research always involves an individual or group claiming expertise about what the people more widely think. The suggestion is not that any form of research can, or should, seek to eliminate this claim to expertise entirely – as in voting, in which the interpretation is effectively performed through an aggregation rule, rather than by researchers analysing and giving meaning to data. However, research can take on some of the crucial democratic characteristics of voting, without reducing research to voting. Specifically, I have argued that research should be integrated into, and reflect the form of, wider political decision-making, and these connections should be made clear to participants. This account is intended to leave open the possibility that both qualitative and quantitative studies of public opinion can serve as a means of honouring the decisions of the people. However, there will be distinctive challenges in ensuring that different research methodologies meet the conditions set out here. Qualitative research is typically more vulnerable to the expert/boss fallacy, because the analysis process is often less transparent and less replicable. Within the constraints of quantitative research it is likely to be more difficult to ensure that participants are aware of the broader implications of possible decisions and of the status of the research outputs in relation to wider decision-making processes.

The conditions outlined above support some established ideas about good practice in opinion research. However, they also rule out the justification of many studies of popular attitudes in democratic terms, including those of Wolff and de-Shalit and Klosko. It is interesting to note that at one point Wolff and de-Shalit suggest an interpretation of their project that is more amenable to the view of democratic legitimacy defended in this chapter. Specifically, they argue that: ‘Part of [the role of political theorists] is *to devise ways in which the broader public too should have a fair chance to influence the decision-making process*, given that relatively

few people have access to decision makers.’²⁸ The suggestion here is that by engaging with public opinion, political theorists provide a channel through which people can seek to influence political decision-making. However, I have argued that Wolff and de-Shalit’s research fails to meet the conditions necessary to realize this vision; their project is not designed in such a way that participants’ contributions can plausibly be seen as intentions to influence political decisions. This leaves open the possibility that political theorists might contribute to research that is structured according to the conditions outlined in this chapter. For example, provided that they are able to present their arguments at an appropriately concrete level, political theorists might provide testimony in support of particular political positions within a deliberative research exercise. However, we should think about this kind of contribution from the perspective of the democratic underlabourer model outlined in the previous chapter: the political theorist is addressing the public, rather than employing public opinion in an attempt to democratize their own theory.

4. Conclusion

Estlund’s argument that democratic legitimacy involves honouring citizens’ decisions, rather than merely tracking their preferences, provides a compelling way of making sense of the difficulty with the democratic restraint model. Implicit in this model is a preference-tracking conception of legitimacy, according to which political theorists have authority to interpret evidence about public opinion in order to determine what is (to some extent) legitimate. In moderating their principles in response to evidence about public opinion and thereby claiming enhanced legitimacy for their account, political theorists make a politically controversial claim to expertise: a claim that is subject to disagreement among qualified points of view.

Public opinion researchers have often understood their vocation as fulfilling a democratic purpose. The perspective on democratic legitimacy outlined here does not necessarily

²⁸ Wolff and de-Shalit, *Disadvantage*, p. 97.

undermine these aspirations. However, it suggests a restricted set of conditions under which studies of public opinion can potentially play a democratic role: when research is integrated into wider political decision-making processes and these connections are transparent to participants, and when there is a close fit between the framing of research questions and the terms in which political decisions are made.

Part III Justice, Public Opinion and Response-Dependence

Introduction to Part III

I argued in chapter 3 that evidence about popular attitudes, in at least two forms, is a valuable epistemic resource for political theory. Part III considers the possibility that the status of public opinion within political theory is, in fact, more fundamental than this account of its epistemic role acknowledges: that rather than being a tool that helps us more closely to track the opinion-independent moral facts, public attitudes instead partly constitute those facts. The central question addressed in part III is whether and how such an account of the status of public opinion can be reconciled with the critical role of normative political theory. In particular, through an exploration of the work of David Miller and Michael Walzer, I ask whether this account is consistent with the idea that a theory of justice should provide a critical lens on our prevailing attitudes and practices. I concentrate in these chapters on the question of justice, since this is the subject of Miller and Walzer's work and the focus of the established debate in political theory.

Public opinion plays a complex role in the work of both theorists and some of their claims are most plausibly interpreted in terms of arguments already considered in this thesis, about democratic legitimacy and political feasibility. However, at times both theorists endorse a stronger view of the status of public opinion in theorizing about social justice; a view I suggest is best understood as a form of 'idealizing response-dependent' theory of moral value. Such accounts seek to avoid the epistemic and metaphysical difficulties facing robust realism, by holding that moral values are constituted or brought into being by human attitudes or responses. At the same time, however, they eschew a crude or simple form of subjectivism, because they maintain that only *some* attitudes and responses count: those that are formed under specific conditions, or are free from certain biases or empirical errors.

The central challenge for such theories is to find a plausible way of motivating such an idealizing condition, without implicitly undermining the response-dependent character of the account.¹ On the one hand, any account that treats justice as constituted by *actual* opinion will be extensionally inadequate: it leaves us unable to condemn clearly oppressive practices as unjust in contexts in which they are widely endorsed. On the other hand, we need a convincing response to the question ‘why idealize?’ that does not illicitly appeal to the ability of the theory to track opinion-independent facts about justice. I trace the ways in which Walzer falls prey to the second horn of this dilemma: by incorporating a ‘thin’ universal morality into his theory of justice and by moralizing his central concept of social meaning. More promising is Miller’s account of the ways in which political theory can correct or refine public opinion, whilst remaining within the parameters set by its most fundamental underlying commitments. Central to Miller’s approach is a distinction between people’s judgements about particular cases and their more general principles, or ‘basic beliefs’. If we look beyond specific attitudes to the *underlying principles* that structure public opinion about social justice, he suggests, we find both a great deal of agreement and the critical resources with which to reject exclusionary views. This appeal to underlying principles looks plausible: if we are committed to working up public opinion, surely what should count are people’s deepest commitments rather than their more superficial opinions? I emphasize, however, that this move implicates us in complex empirical issues about the nature and structure of moral and political judgement. Empirical evidence undermines any general assumption that ‘true’ public opinion is located in supposedly fundamental underlying principles, rather than more concrete judgements. In particular, recent work in moral psychology shows that reasoning from more general principles sometimes functions only as a post hoc rationalization of particular judgements to which we

¹ David Enoch, ‘Why Idealize?’, *Ethics*, 115 (2005), pp. 759-87. See chapter 8 for further discussion of Enoch’s argument.

are already committed.² Thus Miller's initially more appealing approach ultimately confronts the same problem as Walzer: how to motivate the claim that we should prioritize among, or idealize away from, actual public opinion, without implicitly appealing to opinion-independent convictions about the demands of justice. In other words, if the appeal to underlying principles is not empirically sustainable as an account of what people *really* think, how can it be justified except as an account of what they *ought* to think?

The wider message of these chapters concerns the need to situate the debate about the status of public opinion within political theory more firmly in the context of the wider meta-ethical literature. However, I also seek to make a modest contribution to the meta-ethical debate, by bringing the evidence from moral psychology to bear on a recent exchange between Enoch and Sobel. Specifically, I suggest that Sobel's defence of idealization is correct to the extent that there are, in principle, justifications for departing from actual responses that are consistent with the underlying response-dependent character of the account. However, a more empirically informed picture of the shape of public attitudes suggests that an (in principle acceptable) idealizing process will not deliver what the response-dependent account needs. Thus the argument of part III resonates with a wider claim advanced in the introduction to this thesis: that in order to address the question of the role of public opinion in political theory we must look beyond disciplinary boundaries in two directions – towards both empirical social science and meta-ethics.

² The classic paper is Jonathan Haidt, 'The emotional dog and its rational tail: a social intuitionist approach to moral judgment', *Psychological Review*, 108 (2001), pp. 814-34.

Chapter 7 Social Meanings and Popular Attitudes: A Response-Dependent Interpretation

1. Introduction

How deeply should political theorists commit to taking account of popular views? Chapter 7 begins to address this question through an exploration of the work of David Miller and Michael Walzer. As in Wolff and de-Shalit's account, I suggest that Miller and Walzer offer more than one justification for engaging with public opinion. Amidst this complexity, however, there is a strand within both of their works that can helpfully be understood in terms of the idea of response-dependence: the view that human judgements or responses, under specific conditions, determine the moral facts, and not vice versa.

Thus the first aim of the chapter is interpretive: to clarify the status of public opinion in Miller and Walzer's thinking about justice, by relating their accounts to the meta-ethical literature. Secondly, chapter 7 begins to explore the difficulties facing a theory of social justice that accords popular opinion this kind of status. How can public opinion determine the demands of justice when popular attitudes towards justice are diverse and conflicting? If there is a complex set of competing ideas about what is just, rather than a singular public opinion, how are we to identify the attitudes that purportedly constitute the correct normative account? In the face of such disagreement, are we forced to concede that justice is merely subjective; a matter of each individual's opinion? Moreover, history confronts us with cases of widespread public support for abhorrent practices; practices that any plausible normative theory must condemn as unjust. What can the theorist of response-dependence say to these cases in which public opinion coalesces around repugnant views? Is slavery to be deemed just in a society in which slave holding is widely endorsed? These two objections ultimately converge on the same fundamental challenge: how, consistently with a response-dependent account, to justify a

process of selecting among, or correcting, public attitudes in order to generate a plausible theory of justice.

Chapter 7 identifies three kinds of response to this central challenge within Walzer and Miller's work: First, Walzer's claim that the varied social meanings that constitute justice coexist with a universal 'thin' morality; secondly, the way in which Walzer incorporates some moral content into the idea of social meaning itself; thirdly, Miller's account of the ways in which we must refine popular attitudes, in particular by looking for the more fundamental principles that underlie and structure public views. I reject the first two responses, as involving a betrayal of the claim that justice is response-dependent. The third strategy will be explored in greater depth in chapter 8.

1.1. Chapter outline

Section 2 begins by clarifying the account of the status of public opinion that is the focus of part III. Specifically, I suggest that the view that public opinion constitutes or determines the demands of justice is best understood in terms of the idea of response-dependence. I then argue that this view should be distinguished from two alternative senses in which we might think that the practice of political theory is wholly internal to public opinion.

With this account in mind, section 3 considers whether either of the theorists most closely associated with the idea that public opinion plays a deep role in political theory in fact endorses a response-dependent view. First, I discuss the kind of commitment to public opinion implied by Walzer's method of social criticism. Section 3 then explores the status of public opinion in Miller's account of social justice, by problematizing the relationship between three central commitments in his work: fidelity to public opinion, contextual pluralism and political feasibility. Section 4 explores how Miller and Walzer reconcile a response-dependent account of the status of public opinion with the critical purpose of a theory of justice. Most promising, I suggest, is Miller's argument that political theory should select among the diverse

commitments inherent in public opinion by seeking out its most fundamental underlying principles.

1.2. Note on terminology and scope of the argument

A few clarificatory remarks are needed concerning the scope of the argument and the interpretation of key terms in part III. First, there is a variety of ways of referring to what I call a ‘response-dependent’ account of the nature of moral values, for example dispositionalism or ‘intersubjective subjectivism.’¹ These terms are employed interchangeably by some philosophers, but are used by others to mark out more specific categories of theories: for example to distinguish more subjective from objective accounts, or accounts that prioritize affective responses from those that emphasize cognitive judgements. For the sake of clarity, the term response-dependence is used throughout these chapters. Section 2 explains more fully what I mean by that term.

Secondly, this chapter (and part III as a whole) brackets the extensive controversy about the characteristics required for a meta-ethical theory to qualify as ‘realist’. For example, on Sayre-McCord’s well-known account, a meta-ethical view is realist if it holds that moral claims are both truth apt and sometimes true.² Other theorists maintain that the realist label is best reserved for theories that additionally conceive of moral facts as mind-independent. For example, Holland notes that ‘If properly classified as a realist position then [response-dependence] is a qualified realism, in the sense that the concept of value is not independent of a subject’s responses to value under suitable conditions.’³ I will refer to a view that endorses all three claims as ‘robust realism’, thus reserving judgement on whether idealizing response-dependent accounts should also be seen as realist in some broader sense.

¹ Ronald Dworkin, ‘Objectivity and Truth: You’d Better Believe It’, *Philosophy and Public Affairs*, 25 (1996), pp. 87-139, at footnote 8 to p. 102.

² Geoffrey Sayre-McCord, ‘The many moral realisms’, *The Southern Journal of Philosophy*, 24 (1986), pp. 1-22.

³ Sean Holland, ‘Dispositional Theories of Value Meet Moral Twin Earth’, *American Philosophical Quarterly*, 38 (2001), pp. 177-95, at p. 183.

Thirdly, the term ‘public opinion’ is used broadly throughout this chapter, to encompass both what Miller refers to as ‘popular attitudes’ and the ‘social meanings’ that provide the focus for Walzer’s account. It is important therefore to acknowledge that Miller and Walzer seem to have quite different kinds of evidence in mind. In particular, Miller devotes significant attention to experimental and survey data, whereas Walzer focuses on the commitments implicit in our common social and political practices. This raises a number of important questions: about how broadly we should understand the concept of public opinion, and about the role within political theory for evidence about expressed attitudes versus patterns of actual behaviour.⁴ However, these issues can legitimately be set aside for the purposes of part III, since the argument presented here is quite general; it turns neither on the precise meaning we give to the concept of public opinion, nor on the particular measures or indicators we prioritize.

2. Clarifying the response-dependent account

Many philosophers agree that some properties, such as colour, taste and smell, are constituted by their tendency to provoke certain responses in human agents under particular conditions. Thus a distinction is commonly drawn between primary qualities, ‘which things have in themselves’, and secondary qualities, which are tied to the capacity to produce particular reactions or feelings in sentient beings.⁵ More precisely, in McDowell’s terms, a secondary quality is ‘a property the ascription of which to an object is not adequately understood except as true, if it is true, in virtue of the object’s disposition to present a certain sort of perceptual appearance: specifically, an appearance characterisable by using a word for

⁴ For doubt about whether Walzer is concerned with anything we should regard as public opinion, see Adam Swift, ‘Public Opinion and Political Philosophy: The Relation between Social-Scientific and Philosophical Analyses of Distributive Justice’, *Ethical Theory and Moral Practice*, 2 (1999), pp. 337-63, at p. 355. For the argument that political theorists should be more concerned with behaviour than opinion, see Jonathan Floyd, ‘From historical contextualism, to mentalism, to behaviouralism’, in Jonathan Floyd and Marc Stears, eds., *Political Philosophy versus History? Contextualism and Real Politics in Contemporary Political Thought* (Cambridge: Cambridge University Press, 2011), pp. 38-64.

⁵ Dworkin, ‘Objectivity and Truth’, p. 101.

the property itself to say how the object perceptually appears.’⁶ A paradigmatic example of a secondary quality is the property of being nauseating: X is nauseating in virtue of X being disposed to give rise to sensations of nausea in human agents under appropriate conditions.

A smaller, but significant, group of philosophers has argued that this account of secondary quality should be extended to a wider range of properties, including moral ideals.⁷ This family of views has been termed ‘response-dependence’. In broad terms, ‘A response-dependent account of a given attribute ... identifies the attribute with the disposition to produce specified sorts of response in specified sorts of being under specified conditions.’⁸ Why might we want to apply this type of account to moral qualities? The appeal of these accounts lies in their promising to steer a course between simple subjectivism, non-cognitivism or moral scepticism, and a more robust and controversial realism that posits the existence of mind-independent moral facts. Crucially, theorists of response-dependence do not identify moral values with whatever beliefs or commitments we empirically happen to have. Rather, they hold that only the dispositions of certain kinds of agents under particular kinds of conditions count. Thus response-dependence, it is claimed, can allow us to hold onto truth and objectivity in the moral arena and the possibility that we might, individually or collectively, be mistaken in our moral judgements. Relatedly, this kind of account maintains the possibility of real moral progress, since ‘it is possible to come to discern more exactly our actual dispositions to response, or to find ourselves in more ideal conditions under which to judge.’⁹

A response-dependent account seeks to secure this level of objectivity in the moral domain without positing either ‘queer’ mind-independent moral facts or mysterious epistemic faculties that enable us to make contact with these facts. Thus it claims an advantage over robust moral

⁶ John McDowell, ‘Values and Secondary Qualities’, in Geoffrey Sayre-McCord, ed., *Essays on Moral Realism* (Ithaca: Cornell University Press, 1988), pp. 166-80, at p. 168.

⁷ Ibid. See also Mark Johnson, ‘Dispositional Theories of Value’, *Proceedings of the Aristotelian Society*, Supplementary Volume 63 (1989), pp. 139-74.

⁸ Peter Vallentyne, ‘Response-dependence, Rigidification and Objectivity’, *Erkenntnis*, 44 (1996), pp. 101-12, at p. 101.

⁹ Holland, ‘Dispositional Theories of Value’, p.183.

realism, or the theory that ‘moral judgements enjoy a special sort of objectivity: such judgements, when true, are so independently of what any human being, anywhere, in any circumstance whatever, thinks of them.’¹⁰ A response-dependent view also avoids the objection, commonly levelled at robust realism, that it severs the link between moral judgments and human motivations and commitments. By tying moral properties to our beliefs or dispositions, we should be better able to account for the view that there is a special relationship between moral judgement and motivation.¹¹

In this way, response dependent accounts seek to occupy a middle ground in meta-ethical debate and thereby ‘to capture what is most appealing about both realist and nonrealist views.’¹² Beyond this common project, there are significant differences among the various versions of response-dependence, in terms of how they specify the relevant agents, conditions and responses.¹³ Since the critique advanced in part III is quite general I do not engage with these distinctions within the response-dependent camp. However, it is helpful briefly to note two important areas of debate in order to situate my discussion. First, response-dependent theories differ as to whether they emphasize judgements or affective responses. The concept of public *opinion* perhaps suggests a cognitive focus. However, neither Miller nor Walzer explicitly engage with this question and their central ideas of popular attitudes and social meaning might also encompass, to some degree, affective responses.¹⁴ Secondly, and perhaps most importantly, a distinction can be drawn between subjective and objective versions of response-dependence. The focus here is theories that take *actual* public views as their starting point; accounts on which ‘moral judgements are sometimes true, but their truth is

¹⁰ Russ Shafer-Landau, *Moral Realism: A Defence* (Oxford: Clarendon Press, 2003), p. 2

¹¹ See Terence Cuneo, ‘Are Moral Qualities Response-dependent?’, *Noûs*, 35 (2001), pp. 569-91, at pp. 572-3.

¹² Holland, ‘Dispositional Theories of Value’, p. 183.

¹³ Cf. Holland’s claim that ‘Dispositional theories of value come in many flavours.’ Ibid, footnote 3 to p, 191.

¹⁴ For a defence of an affective version of response-dependence, see Kevin Mulligan, ‘From Appropriate Emotions to Values’, *The Monist*, 81 (1998), pp. 161-88.

constitutively tied to facts about human opinion.¹⁵ Thus this chapter does not speak to fully objective theories, such as Scanlon's view that justice is constituted by what cannot be reasonably rejected; where what is reasonably rejectable is identified wholly independently from what people here and now believe.¹⁶

2.1. Political theorists are embedded in particular social contexts

With this brief sketch of a response-dependent account in mind, it is helpful to distinguish this view from two other senses in which political theory might seem to be partly constituted by popular attitudes. First, political theorists work in particular contexts, including specific climates of opinion. These circumstances will shape, in complex ways, both the kinds of questions that theorists judge to be important and the answers they give. There is a sense, then, in which political theorists are always drawing on public opinion, regardless of whether or not they choose to engage in a systematic way with empirical data on popular attitudes. To claim otherwise seems to be to suggest that theorists can achieve an Archimedean point, wholly outside of their social, political and historical contexts.

The thesis of political theorists' embeddedness in particular climates of opinion is distinct from the response-dependent view that is the focus of part III. Rather than holding that public attitudes (suitably idealized) constitute the demands of justice, it implies that political theorists do not have epistemic access to principles of justice independently of public opinion. Admittedly, if we want to reject a response-dependent account in favour of robust realism, we must also be cautious in the extent to which we embrace this idea that the views of political theorists are conditioned by their social and political environments: although there may *be* opinion-independent normative facts, it looks as if political theorists can never have reliable access to them if they cannot escape from the fog of public opinion. In other words, 'A

¹⁵ Alexander Miller, *An Introduction to Contemporary Metaethics* (Cambridge: Polity, 2003), p. 130.

¹⁶ Thomas Scanlon, *What we owe to each other* (Cambridge, Mass: Belknap Press of Harvard University Press, 1998)

radically inaccessible realm of moral facts is ... a very small comfort for the [robust] realist.'¹⁷ Fortunately, we can resist this sceptical conclusion without insisting on the possibility of radical detachment. Political theorists may not be able to separate themselves all at once from the entirety of their social and political environment. However, surely they can step back in stages, and critically evaluate any given aspect of their context and prevailing practice.

It is also helpful to note that neither Miller nor Walzer advances the view that public opinion is inescapable in this sense, of theorists being trapped within particular climates of opinion. Indeed Walzer clearly accepts the possibility of a detached standpoint, since he sees such detachment as characteristic of a certain kind of philosophical practice.¹⁸ Miller too contrasts his approach with a 'skeptical view [which] holds that beliefs about justice are purely conventional, in the sense that they reflect the customs and practices of a particular society; when social arrangements change, people's beliefs about the justice of those arrangements will alter in tandem.'¹⁹

2.2. Public opinion determines the parameters of the concept of justice

There is a second sense in which we might be tempted by the thought that public opinion is, inescapably, the material with which political theorists work. Specifically, we might think that public opinion determines what it is to offer a theory *of social justice*. We can plausibly interpret some of Miller's claims about the status of public opinion along these lines: that political theory necessarily involves working up public opinion because how ordinary language users employ concepts sets limits on their philosophical use. For example, he argues that 'our aim should be to develop a theory of justice specifically, not a theory of political morality in general, and to succeed in this aim we must make use of the conceptual markers that are

¹⁷ David Enoch, 'How is Moral Disagreement a Problem for Realism?', *The Journal of Ethics*, 13 (2009), pp. 15-50, at p. 22.

¹⁸ Michael Walzer, 'Philosophy and Democracy', *Political Theory*, 9 (1981), pp. 379-99.

¹⁹ David Miller, *Principles of Social Justice* (Cambridge: Harvard University Press, 1999), p. 23.

present in everyday judgement. People think and say that this is a matter of justice but that is not, and unless we pay attention to such distinctions we can have no warrant for saying that what we have produced is indeed a theory of justice.²⁰

Again, however, this view should be seen as distinct from the response-dependent account that is the focus of these chapters. On the argument outlined above, public opinion constitutes the parameters of the concept of justice; the conceptual terrain on which disagreements about justice take place. However, this claim does not, in itself, deliver what Miller and Walzer want, in terms of showing that our theory of justice should be constrained by the *substantive content* of public views about the demands of justice. As Miller himself notes, ‘to assume agreement about the application of the concept is not to assume that people’s concrete judgements about the justice of policies and decisions will necessarily converge’.²¹ Thus we might reject the substantive content of popular views about justice whilst still offering something that is generally recognizable to ordinary language users as a theory of justice. Another way of explicating this difference is in terms of the distinction between concepts and conceptions: *even if* public opinion constitutes the concept of justice, it does not thereby determine the correct conception of justice.²²

Perhaps, however, this response is too quick. In particular, does it assume an implausibly sharp distinction between conceptual questions and questions of normative substance, when in fact these questions are always intertwined? To carve out our conceptual terrain, is, Miller argues, *already* to make a substantive normative or political move:

‘What is the point of having two words to refer to situations that are only trivially different, or in having a term which refers solely to impossible states of affairs ... in political matters it is a subject of controversy what these worthwhile distinctions and

²⁰ David Miller, ‘Two Ways to Think about Justice’, *Philosophy, Politics & Economics*, 1 (2002), pp. 5-28, at p. 6. See also Swift, ‘Public Opinion and Political Philosophy’, pp. 350-51.

²¹ Miller, ‘Two Ways to Think about Justice’, endnote 5, p. 25.

²² For the concept/conception distinction, see John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 1999), p. 5.

connections are. It depends on one's substantive political position, on what one thinks is politically important, and what one thinks is politically possible. So we should expect that the meanings men attach to political terms vary intelligibly and systemically according to the political standpoint of the user.'²³

In other words, disputes about justice, democracy and freedom are *at once* substantive and conceptual. They are not merely disagreements about the meaning of concepts; they are also, simultaneously, substantive disagreements about what constitutes an important distinction, morally or politically, and about what is politically possible. This suggests that if we accept that public opinion is constitutive in the sense of determining the parameters of key concepts, we are *already* accepting at least some of the substantive content of public attitudes.

Of course, some theorists, most prominently Oppenheim and Steiner, see it as part of the role of political theory to resist any such mingling of conceptual and substantive normative claims. We ought, they maintain, to strive for purely descriptive or flat definitions of political terms, in order to begin normative debate with shared meanings. However, we do not need to go this far to resist the move from the claim that popular understandings set the parameters of key concepts in political theory, to the view that public opinion is constitutive in substantive normative terms. Even if conceptual and normative issues are not wholly separable, we might accept popular concepts without ruling out any *important or plausible* normative position. To borrow Ian Carter's terms, concepts derived from public opinion may be 'value-neutral', even if they are not 'value-free'.²⁴ Thus *even if* public understandings determine what it is to be a competent user of the concept of justice, this does not take us very far in determining the content of the demands of justice. In other words, there is room for significant disagreement about the demands of justice before we conclude that disputants are in fact talking past each

²³ David Miller, 'Linguistic Philosophy and Political Theory', in David Miller and Larry Siedentop, eds., *The Nature of Political Theory* (Oxford: Oxford University Press, 1983), pp. 35-51, at p. 49.

²⁴ Ian Carter, 'Value-neutrality and Value-freeness', Paper presented at the Political Thought Conference, St Catherine's College, Oxford, January 2012.

other: that someone is either insincere or making a conceptual error.²⁵ Whether or not there is a plausible sense in which public opinion is constitutive of the concept of justice, this does not resolve the issue at stake in part III.

3. Social justice, shared understandings and popular attitudes

Section 2 sought to clarify what is at stake when we ask whether public opinion is not merely an epistemic resource, but rather partly constitutes or determines the value of justice. First, I positioned this view within the broader family of response-dependent accounts of moral properties. I also distinguished this claim from two alternative senses in which we might think that public opinion constitutes the subject matter of political theory. With this account in mind, section 3 further explores the role of public opinion in the political thought of Michael Walzer and David Miller.

3.1. The social meanings of goods

Walzer has famously argued that justice involves distributing goods according to their particular social meanings:

‘distributive justice must stand in some relation to the goods that are being distributed. And since these goods have no essential nature, this means that it must stand in some relation to the place that these goods hold in the (mental and material) lives of the people among whom they are distributed. Hence my own maxim: distributive justice is relative to social meanings.’²⁶

For example, contained within our shared understandings, Walzer claims, is the principle that healthcare should be distributed according to need, whereas political rights should be distributed on an equal basis. He argues that careful interpretation of the distinctive social

²⁵ For the more general observation of the ‘permissiveness of moral concepts’, see David Merli, ‘Possessing Moral Concepts’, *Philosophia*, 37 (2009), pp. 535-56, at p. 536. Merli emphasizes the extent to which genuine moral disagreement is compatible with diversity in substantive moral views, as well as variation in the conceptual roles accorded to moral concepts (e.g. the relationship between judgements about moral rightness and motivation).

²⁶ Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame, Indiana: University of Notre Dame Press, 1994), p. 26.

meanings of different goods in contemporary liberal societies yields a theory of complex equality: 'a social condition where no group of claimants dominates the different distributive processes. No one good rules over all the others, such that possessing it brings everything else in train.'²⁷ On this view, injustice occurs when distributions that are just in one domain spill over into a neighbouring sphere, which ought to be governed according to its own distinct meaning. It is just, for example, that some enjoy greater rewards than others in the market, but unjust if they use their economic advantage to bribe public officials and thereby to disrupt political equality.

Does Walzer's theory of complex equality based on the social meanings of goods represent a response-dependent account of justice, in the sense discussed above? Consider, for example, the following defence of his method:

'Social meanings are constructed, accepted, and revised for reasons, and we have to engage those reasons. When we engage them from the outside ... we are like missionaries preaching a new way of life to the natives, and *we would do best, morally and politically, to try to work out what they find valuable or satisfying in their old way of life*. More often, and more importantly, criticism of the old ways comes from within, as the result of long processes of social change.'²⁸

There are several ways of interpreting this claim about the moral and political value of starting with popular beliefs and commitments. Perhaps this is the best way to come up with feasible political proposals? Or maybe we should start with popular understandings out of concern for democratic legitimacy?²⁹ Or perhaps this approach is epistemically superior? Is there then any justification for attributing to Walzer the stronger view that when it comes to justice, 'the

²⁷ Ibid, p. 33.

²⁸ Michael Walzer, 'Objectivity and Social Meaning', in his *Thinking Politically: Essays in Political Theory* (New Haven: Yale University Press, 2007), pp. 38-52, at p. 50.

²⁹ For the 'democratic' interpretation of Walzer's approach, see James Dreier, 'Moral Relativism and Moral Nihilism', in David Copp, ed., *The Oxford Handbook of Ethical Theory* (Oxford: Oxford University Press, 2007), endnote 11, p. 263: 'Walzer's book is probably best understood as an argument for valuing political autonomy, and not as resting on any particular conception of the nature of morality.' Note that if we accept my earlier critique of the democratic case for engaging with public opinion, this interpretation does not represent a way of rescuing Walzer.

relevant truth depends on our relevant responses, and not the other way around’?³⁰ Alongside some weaker and some ambiguous claims there are a number of passages in Walzer’s work that do point towards a response-dependent account of the relationship between social meanings and the ideal of justice. Consider, for example, his explanation of the practice of social criticism:

‘Criticism of this sort depends on objective values, where *objectivity is a true report on social meaning. The criticism itself, however, is not objectively true or false*, for it also depends on an interpretation of social meaning, and interpretations are (except at the margins) only more or less persuasive and illuminating.’³¹

The aspiration of political theory, Walzer suggests here, is to true interpretation of social meaning, but not to any level of objectivity independent of social meaning. Thus those who engage in social criticism ‘aim at a rightness that is relative to their critical occasions.’³² For example, Walzer explores the social meanings of healthcare and of religious repentance and salvation in medieval times, contrasting the acceptance of private and unequal provision of healthcare with efforts to ensure universal access to repentance. He reflects that:

‘None of this seems unjust to me – and this is not because I am bound by my “relativist” maxim to defer to the conventions of my age (any age). For if these conventions were imposed by force, the mere ideology of the ruling class, the idea of social meaning might usefully be deployed in criticism of them. But what we have here is a maximalist morality, a thick understanding of life and death, a human culture. To this we ought certainly to defer, for it makes no moral sense to wag our finger at medieval Christians, insisting that they *should have had* our understanding of life and death. But we can criticize the distributions they enforced insofar as we think of these as options for ourselves.’³³

Similarly, Walzer argues that a caste society that is structured in accordance with the shared understandings of its members is just; we cannot condemn the caste system as unjust on the basis that it does not realize a liberal ideal of equality if that ideal is not to be found within the

³⁰ Enoch, ‘Why Idealize?’, p. 782.

³¹ Walzer, ‘Objectivity and Social Meaning’, p. 46.

³² Walzer, *Thick and Thin*, p. 52.

³³ *Ibid.*, p. 30. Original emphasis. The condition that social meanings cannot be imposed by force is discussed further in section 4.

social meanings of that society. It is these claims that lead Dworkin to accuse Walzer of ‘deep relativism about justice.’³⁴ However, as the passage above suggests, Walzer’s is not a simple and uncritical relativism. For example, his approach does not, Walzer maintains, commit us to the possibility that slavery might be just. Rather, he suggests that a slaveholding society is one in which shared social meanings simply do not exist. I return to this argument in section 4, where I consider how Walzer seeks to reconcile his commitment to social meanings with his substantive conclusions about slavery and other difficult cases. However, it is sufficient for now to note that Walzer does, at least at times, seem to endorse a response-dependent account of the relationship between public opinion and the demands of justice.

3.2. Public opinion, contextual pluralism and political feasibility

Like Walzer, Miller defends a pluralist account of justice on the basis of an interpretation of public opinion. A careful exploration of popular attitudes, Miller suggests, reveals that different principles of justice are appropriate to different modes of relationship. Specifically, justice involves distribution according to need in solidaristic communities, desert in instrumental associations and equality in citizenship relations. Also in common with Walzer, however, Miller sometimes characterizes his approach in a way that makes it difficult to determine the precise status of public opinion. For example, he motivates the focus on popular attitudes in *Principles of Social Justice* by suggesting that ‘If we want to describe what social justice means in contemporary political debate, then sooner rather than later we must look at what the people themselves think.’³⁵ This seems right, but a crucial question remains about the status of our interpretive findings: Do they partly constitute the truth about justice? Or are they at most an epistemic resource for getting closer to a truth about justice that is ultimately independent of what people think?

³⁴ Ronald Dworkin, ‘What Justice Isn’t’, in his *A Matter of Principle* (Cambridge, Mass: Harvard University Press, 1986), pp. 214-21, at p. 217.

³⁵ Miller, *Principles of Social Justice*, p. lx.

Three ideas are of central importance to Miller's work and recur throughout his writings on justice and nationality. First, as illustrated above, he emphasizes the need for a theory of social justice to be informed by popular attitudes. Secondly, he argues that justice is plural: 'the principles that tell us what counts as a just distribution of some good are specific to the context in which the distribution is taking place. There is not one master principle (or connected set of principles) that defines justice in all times and all places. Instead, the relevant principle will depend on what is being distributed, by whom, and among whom: especially on the kind of relationship that exists between the people among whom the distribution is occurring.'³⁶ The third important theme concerns the requirement for an adequate theory of justice to offer feasible prescriptions for real world politics – to be more than 'a piece of utopian wishful thinking.'³⁷ Miller does not discuss at length the relationship between these ideas, perhaps because he views them as obviously in harmony or mutually supportive. But in order to understand the status that Miller accords to public opinion, it is important to reflect further on how this relates to his commitments to contextual pluralism and feasibility.³⁸

Public opinion and contextual pluralism

It is no coincidence that both Miller and Walzer combine a commitment to give popular understandings a central place in theorizing about social justice with a plural account of justice (although they differ about whether this pluralism centres on modes of relationship or on

³⁶ David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), p. 14.

³⁷ David Miller, 'A Response', in Daniel A. Bell and Avner de-Shalit, eds., *Forms of Justice: Critical Perspectives on David Miller's Political Philosophy* (Lanham: Rowman & Littlefield Publishers, 2003), pp. 349-72, at p. 356. See also 'A Tale of Two Cities; Or, Political Philosophy as Lamentation', in his *Justice for Earthlings: Essays in Political Philosophy* (Cambridge: Cambridge University Press, forthcoming 2013)

³⁸ The question of the status of public opinion is further complicated by Miller's account of the circumstances of social justice, or the conditions necessary for social justice to be a 'workable ideal'. Officially these are 'a bounded society', an 'identifiable set of institutions' to which the principles apply and 'some agency capable of changing the institutional structure in more or less the way our favoured theory demands.' – see *Principles of Social Justice*, pp. 4-6. These conditions seem in part to reflect Miller's concern with feasibility. However, public opinion also comes in at this level of the circumstances of justice. Miller holds that justice applies beyond formal institutions, so whether we are in the circumstances of justice also depends on what individuals are motivated to do. Moreover, he suggests that there needs to be broad public consensus about the social value of goods for the idea of justice to make any sense.

social goods). There is an important affinity between these two elements of their theories. In justifying the connection he draws between different principles of justice and modes of relationship, Miller appeals to a range of polling data. He also employs experimental evidence of the kind discussed in chapter 3, concerning allocation decisions in small group contexts. In particular, Miller draws on research that manipulates the character of groups in order to assess the impact on participants' distributive decisions. These data, Miller suggests, together provide particularly strong support for the distinction between justice in solidaristic groups (where a principle of need is appropriate) and justice in instrumental groups (governed by desert). In this way, Miller seems to derive his plural account from a deeper commitment to public opinion. However, having emphasized the importance of drawing on public opinion data, Miller goes on to warn us that 'the evidence is not decisive from a normative point of view unless we can say something more about why a certain mode of social relationship makes the corresponding principle of justice the appropriate one to use. "Appropriate" here cannot just mean "the principle people do in fact use in these circumstances". *It must be possible to show that the principle is fitting or relevant in one social context but not in another.* We cannot hope to show that a mode of relationship necessitates the use of a certain principle of justice; but we can and must establish more than a merely empirical connection.'³⁹

Miller highlights, in particular, certain cognitive and imaginative failings, which mean that the principles we actually apply are not always those that are 'relevant' or 'fitting' for the context. Given the patterns of interactions in our daily lives, we tend to be most aware of family and community relationships, then economic and instrumental interactions and finally the more

³⁹ Miller, *Principles of Social Justice*, p. 34. Emphasis added. In talking of alternative principles being 'fitting' in different contexts, Miller's account resonates in an interesting way with what has been termed a 'fitting attitude' account of moral value: theories that hold that what is right, good etc is determined by the fitting response in a particular context. See Daniel Jacobsen, 'Fitting Attitude Theories of Value', *The Stanford Encyclopedia of Philosophy* (Spring 2011 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/spr2011/entries/fitting-attitude-theories/>>. These theories are a version of what Enoch terms an 'intra-normative' idealizing view, because the notion of fittingness is itself normative.

distant citizenship relationship. This asymmetry in our appreciation of different modes of relationship can lead, for example, to a mistaken toleration of nepotistic practices. Given these limitations, 'A theory of justice should provide people with a conception of themselves as citizens as well as family members, economic agents, and so on, *and in this way seek to correct distortions in everyday thinking about fairness*. The aim should be to build up a pluralistic theory of justice with the three criteria I have identified held in consistent balance with one another.'⁴⁰ The crucial question is whether we can see correcting these failings as part of an interpretive project in which public opinion is ultimately sovereign, or whether Miller's more fundamental commitment is to his particular version of contextual pluralism, in which justice is sensitive to distinctive forms of relationship.

In defending his approach against the charge of uncritical conservatism, Miller comes close to suggesting that different principles of justice simply *are* correct for different modes of relationship, regardless of whether or not these principles are recognized in public opinion or embedded in existing practice:

'contextualists ... can avoid the charge that justice in their hands becomes merely a legitimization of established practice. For it may turn out that people in the society that includes context C fail to apply P in that context; they may not only fail to govern those relationships in the way that P demands, they may not even recognize that P is the appropriate principle to apply. In that case, contextualists should have no hesitation in saying they have got it wrong, that the society is to that extent radically unjust. Of course, wholesale misunderstanding of that kind will be unusual.'⁴¹

My intention here is not to challenge Miller's claim that many people think that the demands of justice differ according to context; or, more specifically, that people's views about justice turn on the nature of the relationship at stake. Rather, it is to emphasize that this empirical view leaves open a crucial question about whether it is the commitment to public opinion or to contextual pluralism that is theoretically more fundamental. In *Principles of Social Justice*, the

⁴⁰ Miller, *Principles of Social Justice*, p. 41.

⁴¹ Miller, 'A Response', p. 351.

overall direction of argument seems to run from empirical evidence about public opinion to a pluralist account of the demands of justice. However, in more recent work, Miller appears to place less emphasis on public opinion as the foundation for his pluralist theory. For example, the introduction to *National Responsibility and Global Justice* highlights his contextual approach and the distinctiveness of citizen relations without mentioning popular attitudes.⁴²

Public opinion and political feasibility

Miller's interest in public opinion is intertwined not only with his contextual pluralism, but also with a concern with political feasibility. The following passage from *Principles of Social Justice* illustrates the way in which these two concerns are closely bound up:

‘Besides being more sensitive to popular opinion, [the approach here] also pays closer attention to the social contexts in which principles of justice are applied. This focus gives the theory a less abstract character ... It also, I believe, increases its political relevance. I have felt acutely aware, while writing the book, of the huge gap that exists between the conceptions of social justice defended by political philosophers, particularly those we might describe as egalitarian liberals, and the kind of policy changes it is feasible to propose for the liberal societies of today. Of course social justice has always been, and must always be, a critical idea, one that challenges us to reform our institutions and practices in the name of greater fairness. But it should not be simply utopian ... here I want simply to draw attention to the way in which theorizing about social justice has become detached from questions of political feasibility.’⁴³

Miller moves quickly here from the opinion-sensitive character of his approach to his concern with issues of political feasibility. He does not, however, directly address the question of the relationship between these two commitments. In particular, is the concern with public opinion contingent on a more fundamental concern with political feasibility? Or is the concern with feasibility grounded in a deeper commitment to public opinion?

An argument from feasibility to fidelity to public opinion is suggested at some points in *Principles of Social Justice*. For example, Miller asks: ‘Is it merely an accident that popular views

⁴² Miller, *National Responsibility and Global Justice*, pp. 1-22.

⁴³ Miller, *Principles of Social Justice*, p. x

of social justice have greater political saliency than the theories propounded in the literature of political philosophy?’⁴⁴ Elsewhere, he presents the following defence of the ‘requirement that there should be a reasonably close fit between the theory and our pre-theoretical considered judgements’:

*‘our aim is to develop a theory that has practical force, in the sense that people will be motivated to act on its requirements ... But unless we envisage a Damascene conversion on a mass scale, such a hope is forlorn unless the theory can incorporate in the right kind of way the considered judgements that people already make.’*⁴⁵

These passages suggest that the ultimate goal is a ‘practical’ or ‘politically salient’ theory and that engaging with popular views is a means to achieving this aim. However, as discussed in chapter 4, this kind of argument makes the role of public opinion contingent on two further issues: the theoretical problem of the place of feasibility considerations in normative political theory and the empirical question of the extent to which public opinion determines what is politically feasible. Given the complexity of the feasibility case for engaging with public attitudes, this interpretation would make the role of popular attitudes in political theory more fragile and contingent than many of Miller’s discussions of this issue suggest.

However, Miller also suggests an interesting argument that runs in the other direction: from the imperative that political theory should be faithful to the everyday understanding of social justice to the feasibility constraint. In a recent paper, Miller explores and critiques what he terms the model of ‘political philosophy as lamentation’: namely theories of justice that tell us what we have reason to regret, but are unable to show us how we might move towards a more nearly just society. These accounts, Miller argues, threaten to ‘destroy *the normative force that ideas such as justice usually carry*. As we normally understand these ideas, to characterise a law, or policy, or institution as unjust is to give a strong reason to take steps to change it. The same applies if we say that it is undemocratic or significantly reduces freedom.

⁴⁴ Ibid, p. xi

⁴⁵ Miller, ‘Two Ways to Think about Justice’, p. 7. Emphasis added

This is the role that such ideas play in our political discourse: they are action-guiding words. But as interpreted and used by the neo-Augustinians, this role atrophies: the ideas are drained of their practical force. They become instead contemplative.⁴⁶ Similarly, he objects that ‘the Augustinian understanding of justice fails to capture *the action-guiding quality that the concept has for us.*’⁴⁷ These passages suggest that the commitment to popular understandings is more fundamental than the concern with feasibility: it is because justice, in ordinary usage, is an action-guiding word that a theory of justice must offer us feasible prescriptions for practice. Conversely to the first argument, this makes the status of public opinion fundamental and the commitment to feasibility empirically contingent: in particular the concern with feasibility depends on demonstrating that particular political ideas are predominantly employed in action-guiding ways within popular discourse.

3.3. Conclusion to section 3

I have explored Miller and Walzer’s accounts of the role of public opinion, asking, in particular, whether they understand justice in response-dependent terms. I suggested that Walzer, at least in places, does express a view about the status of public opinion that is captured by the idea of response-dependence. Miller’s account is, if anything, even more complex. Rather than coming to a firm interpretive conclusion, I have highlighted some alternative ways of understanding the relationship between three central commitments in Miller’s approach: public opinion; political feasibility and contextual pluralism. I also suggested that public opinion perhaps receives less emphasis in Miller’s more recent work. However, whether or not Miller’s own position is best understood in response-dependent terms, this possibility is worth exploring further, since he offers an important strategy for defending a response-dependent view of justice that is deserving of closer attention in its own right.

⁴⁶ Miller, ‘A Tale of Two Cities’, p. 10.

⁴⁷ Ibid, p. 12. Note that, in terms of the concept-conception distinction discussed earlier, this argument is presented as a claim about the concept of justice as it functions in ordinary discourse.

4. Two objections to the response-dependent account

I now want to move on from the interpretive issues addressed in section 3, to focus on a critical assessment of the response-dependent account. If, or in those moments when, Walzer and Miller endorse a response-dependent view, are they offering a plausible account of the status of public opinion? In particular, I consider two major objections which, I suggest, ultimately converge on the same fundamental challenge.

4.1. The problem of disagreement

The first major challenge for the response-dependent account is how to deal with the fact that there is no singular ‘public opinion’ about the demands of justice. It is helpful to distinguish two levels at which disagreement arises. First, public opinion research has long demonstrated that individuals sometimes simultaneously endorse opposing commitments and also exhibit significant instability in their attitudes over time. For example, attitudes towards equality and inequality seem to operate somewhat independently and individuals do not tend to bring the potential tensions to conscious attention.⁴⁸ Secondly, there is a problem of interpersonal disagreement: how can we discover justice in popular understandings when the public, like political theorists, disagree about what justice requires?⁴⁹ In the face of multiple conflicting views, how are we to determine which is the relevant response from which justice is constituted?

⁴⁸ See James R. Kluegel and Petr Matějů, ‘Egalitarian vs. Inegalitarian Principles of Justice’, in James R. Kluegel, David S. Mason and Bernd Wegener, eds., *Social Justice and Political Change: Public Opinion in Capitalist and Post-Communist States* (Berlin: De Gruyter, 1995), pp. 209-38. The authors report that egalitarian attitudes are more closely related to social class than inegalitarian beliefs.

⁴⁹ Thus I think that Miller, in the following passage, unhelpfully blurs the question of interpersonal disagreement with the question of the robustness and consistency of individual views about justice: ‘If our disagreements about substantive questions of justice were as radical as the skeptics suggest, therefore, we could not hope to extricate ourselves from the sceptical quagmire by putting forward an account of procedural justice that would command general support ... Fortunately, the evidence does not bear out the skeptics’ claim that ideas of justice are fragmentary and fluctuating ... we do not find the kind of random variation that would make scepticism about justice hard to fend off.’ *Principles of Social Justice*, p. 74. One way of reading Miller’s approach is that he uses the second problem, of intrapersonal variability, to try to solve the first problem, of interpersonal disagreement. See below and chapter 8 for further discussion.

Miller raises the fact of interpersonal disagreement about the social meanings of goods as an objection to Walzer's approach. Walzer, he suggests, 'seems unable to deal with the case where people seriously and authentically disagree about how justice requires a social good to be allocated.'⁵⁰ The ferocity of recent debates about the provision of healthcare in the United States, for example, seems to bear out Miller's claim that the social meanings of some goods are highly contested. Indeed, Walzer himself acknowledges that the fact of disagreement raises a challenge for his theory: 'The fact that there actually are disputes, radically different interpretations of social meaning, fierce intellectual and political battles over this or that social good, has led critics to question the relativity of distributions to meanings. If meanings are disputed and therefore, in the absence of a supreme judge, indeterminate, what is the nature of the relation?'⁵¹

It is helpful to distinguish at least three potential responses to Walzer's question. The first is to accept that justice is subjective: if people genuinely disagree about what is just, then different things simply *are* just for them. Clearly neither Walzer nor Miller endorses this position. Moreover, such a response sacrifices the promise of the response-dependent account, discussed earlier: that it can carve out an intermediate path between non-cognitivism, subjectivism, or moral scepticism on the one hand, and a more robust, but controversial, form of moral realism on the other. For both of these reasons, I set aside the simple subjectivist answer to the problem of disagreement. The second response is that a theory of justice should reflect or respond to the fact of disagreement itself. This is Walzer's strategy when he argues

⁵⁰ Miller, *Principles of Social Justice*, p. 25. Of course, Miller then needs to show that there is less disagreement about the principles of justice governing different modes of relationship. How, for example, should we understand the healthcare debate on Miller's model? One plausible interpretation is that it represents a dispute about which mode of relationship healthcare belongs to – in particular whether it belongs to the citizenship relationship, or to the market relationship. However, if we cannot agree about *when* different relationships apply, then it is not clear that a pluralist theory centred on modes of relationship really is subject to less disagreement than a theory centred on the meanings of social goods.

⁵¹ Walzer, *Thick and Thin*, p. 27. For a similar objection to Walzer's approach, see Dworkin, 'What Justice Isn't', p. 216.

that: 'justice requires that the society *be faithful to the disagreements*, providing institutional channels for their expression, adjudicative mechanisms, and alternative distributions.'⁵²

However, as Dworkin notes, it is insufficiently clear what it would mean to be faithful to disagreements about justice. For example, does providing 'alternative distributions', mean distributing the same good according to different principles in different localities? This response seems unsatisfactory if there are also competing views about the social meanings of goods at a local level.

As Vallentyne suggests, the idea that a response-dependent account can reflect the fact of disagreement should not be dismissed as obviously implausible. Perhaps popular disagreement about justice implies that some actions are neither just nor unjust:

'Response-dependent accounts do not necessarily assume that all [relevant individuals] have exactly the same responsive dispositions. In the moral case, for example, some Bs may approve under the specified circumstances of a certain form of affirmative action, and others may disapprove. As a result, on a response-dependent account of wrongness and rightness, it may turn out that the given form of affirmative action may be neither permissible (since not all beings approve of it), nor impermissible (since not all disapprove of it) ... Morality may not divide things quite so neatly into just the two categories of permissible and impermissible. Of course, if there is too much disagreement among the beings, and the middle category is too large, then the response-dependent accounts are implausible. The point here is simply that a limited disagreement among the beings about some cases – and so a limited middle category of assessment – does not create major problems for response-dependent accounts.'⁵³

But Vallentyne is surely also correct to note that any such middle category must be limited, if it is not to seriously undermine the appeal of a response-dependent account. Thus the idea that justice *itself* is constituted by disagreement needs further explanation and defence if it is to be persuasive. Furthermore, there is an alternative and perhaps more convincing interpretation of Walzer's claim that we should provide institutional channels for the expression of

⁵² Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books Inc., 1983), p. 313. Emphasis added.

⁵³ Vallentyne, 'Response-dependence', p. 103.

disagreements about justice: that providing such channels is an appropriate response to the value of democracy.

The third strategy in the face of disagreement is to try to explain it away. In particular, we might seek to show that the views of some parties in the dispute do not count, because they rest on false empirical beliefs or are distorted by self-interest. We might also seek out a deeper level of consensus, beneath more superficial disagreements. For example, Walzer suggests that we are often blind to the true extent of agreement about the social meanings of goods: ‘agreements on the most critical social goods are commonly both deep and long lasting, so that we are likely to recognize them and understand how they change over time and how they come into dispute only if we turn away from more immediate and local arguments and take the long view.’⁵⁴ This response to the issue of disagreement brings to the fore an extensive body of literature addressing the question of the source and extent of moral disagreement. Some philosophers and social scientists have argued that almost all disagreement on moral questions is, in fact, rooted in different empirical beliefs, logical errors or contextual differences. Others have maintained that, although such non-moral factors may explain a significant amount of apparent moral disagreement, they do not account for it all. For example, Doris and Stich argue that there is a distinctive southern ‘honor culture’ in the United States, which cannot be accounted for in terms of differing empirical beliefs.⁵⁵ In either case, the appearance of disagreement presents a challenge for the response-dependent account: to pick out some opinions over others; to show why, in face of apparently opposing views, *these* are the attitudes that count. This points to a deeper problem with the response-dependent account, which I discuss further in the next section and in the following chapter.

⁵⁴ Walzer, *Thick and Thin*, p. 28.

⁵⁵ John Doris and Stephen Stich, ‘Moral Psychology: Empirical Approaches’, *The Stanford Encyclopedia of Philosophy* (Winter 2012 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2012/entries/moral-psych-emp/>.

4.2. The problem of 'unjust' attitudes

Rather than being concerned that public opinion is beset by disagreement, we might be troubled instead by the fact that public opinion can, and sometimes does, coalesce around deeply objectionable views. If public opinion determines the correct theory of justice, what basis do we have to identify these attitudes as unjust? Both Miller and Walzer are acutely aware of this objection to the project of working up a theory of justice from within the parameters of public opinion. As discussed earlier, Miller emphasizes the critical as well as interpretive role of theorizing about justice; that 'A theory of justice should correct for various biases and distortions of perspective that are liable to infect popular opinion.'⁵⁶ Walzer, too, strongly rejects the view that his method of social criticism leaves him without the resources to condemn slavery, or Nazi atrocities:

'Clearly it is possible for individuals within a society to get things wrong, even fundamentally wrong, and it is also possible for groups of individuals to do the same things. We should think of the Nazi case in these terms. It would strain the imagination to describe a fully elaborated world of complex meanings of a Nazi sort; in any case, no such world has ever existed. Within German or European or Western culture, the Nazis were an aberration, and in so far as we can make out their distributive principles – air for Aryans, gas for Jews – we can readily say that these are objectively wrong, immoral, monstrous. *All the resources necessary for a judgement of this sort are already available, the products of a long history of social construction.*'⁵⁷

Crucially, Walzer suggests here that not only can we can condemn these views and practices, we can do so on the basis of commitments *internal* to public opinion. It is helpful to distinguish, within Walzer's work, two ways of supporting this critical stance. First, Walzer argues that local thick understandings of justice coexist with a universal 'thin' or minimal morality. One way of interpreting this move is in terms of a shift to a mixed view, on which the truth of some normative facts is partly constituted by social meanings whilst the truth of others is independent of all human beliefs and responses. However, there are serious

⁵⁶ Miller, 'A Response', p. 354.

⁵⁷ Walzer, 'Objectivity and Social Meaning', p. 47. Emphasis added.

drawbacks to such an account, with its 'bifurcated' conception of morality.⁵⁸ Moreover, it is unclear whether it accurately reflects Walzer's own conception of the nature of the universal 'thin' component of morality. A mixed account rules out some practices as simply unjust anywhere and everywhere, regardless of actual opinions and practices. However, Walzer suggests that 'minimalism [the universal code] is neither objective nor unexpressive. It is reiteratively bound up with the maximal moralities created here and here and here, in specific times and places.'⁵⁹ In other words, the universal code is not true independently of actual social meanings; rather it consists of what is shared among otherwise diverse local meanings. In which case this response to the problem of 'unjust' social meanings depends on demonstrating, empirically, that there is a common core of social meanings: a core that underlies apparently conflicting local understandings and rules out the most egregious injustices. On this second interpretation, Walzer's appeal to a universal thin morality is closely tied to Miller's argument that the role of political theory is to draw out the common underlying principles that structure public opinion – an idea that is discussed briefly below and explored further in chapter 8.

The second response to the problem of 'unjust' attitudes centres on Walzer's interpretation of the concept of social meaning. Rather than arguing that we should reject some social meanings, Walzer builds normative constraints into the idea of social meaning itself:⁶⁰ 'I suppose that [social meanings] must meet certain criteria – non-substantive but not merely formal. They must actually be shared across a society, among a group of people with a common life; and the sharing cannot be the result of radical coercion.'⁶¹ This does not, Walzer goes on to explain, require anything like the strict egalitarianism of a Habermasian ideal

⁵⁸ Cuneo, 'Are Moral Qualities Response-dependent?', p. 587.

⁵⁹ Walzer, *Thick and Thin*, p. 7

⁶⁰ For a similar observation about Walzer's idea of social meaning (but in a less critical mode) see Lyle A. Downing and Robert B. Thigpen, 'Beyond Shared Understandings', *Political Theory*, 14 (1986), pp. 451-72. They argue that Walzer understands justice as respect for common life. Thus a society that lacks anything that can be regarded as a common life is unjust.

⁶¹ Walzer, *Thick and Thin*, p. 27.

speech situation, but it does prohibit direct coercion: the 'extorted agreement of slaves to their slavery ... should not count in establishing the common understanding of a society.'⁶²

Thus, Walzer argues, slavery is not, and cannot be just for any society; rather a society that accepts slavery is one that simply lacks any shared understandings.

This argument is developed further in relation to societies in which women are treated as 'objects of exchange.' Walzer argues that our attitude towards such gendered practices should depend on the role that women play in their construction and maintenance:

'If they [women] have played no part and do not go along, then the exchanges cannot be described as just. We can only report on the disagreement. Or perhaps we can say, as I would be inclined to say, that the exchanges are unjust, because in this case the objects are also human subjects, capable (as tables and lives are not) of going along or not, and the resistance of the constructed object nullifies the construction ... the theory of social construction implies (some sort of) human agency and requires the recognition of women and men as agents (of some sort).'⁶³

There is some uncertainty here about whether we ought to call the society in which women, without their participation, are treated as objects of exchange unjust, or whether it occupies an intermediate category: one in which we should withhold the judgement of either justice or injustice. Either way, Walzer's emphasis on universal human agency and the participation of women suggests that there is a fundamental egalitarian ideal underpinning his theory. We should not allow the opinion-independent character of this commitment to be obscured by Walzer's claim that the egalitarian ideal is internal to the method of social construction itself. In this respect, I concur with Galston's claim that there is tension between Walzer's professed methodology and the manner in which he in fact reaches his substantive conclusions: 'What standing can he claim for broad propositions about justice, the minimal code, human nature, and social criticism that could conceivably be consistent with his professed anti-Platonist

⁶² Ibid, p. 27.

⁶³ Walzer, 'Objectivity and Social Meaning', p. 47. Emphasis added

relativism – that is, with his insistence on remaining inside the cave and his conviction that there are many diverse caves?’⁶⁴

It is helpful to note here that we might have a different kind of concern about Walzer’s account: not so much about the substantive implications of his theory of justice, but about the mere fact that it seems to allow what is just to change simply because our responses change. In other words, it seems to admit of ‘the unacceptable possibility of an object remaining intrinsically unaltered while its value changes due solely to a change in us or in the standard conditions.’⁶⁵ In the case of colours, would redness and greenness really change if we all suddenly became colour blind? Similarly, in the case of moral values, can what is just alter simply in response to a change in our dispositions to respond? Some theorists of response-dependence have responded to this worry by tying moral values not to the responses of whatever people happen to exist, but rather to the responses of us as we actually are.⁶⁶ Thus they avoid committing themselves to the counterfactual claim that, were we to be differently disposed, moral values would be different. It is difficult to locate Walzer’s view, since he does not situate his account in relation to the meta-ethical literature. However, some of his discussion suggests that he is prepared to bite the bullet on this point; admitting, for example, that the morality of treating women as objects of exchange altered in response to changes in our attitudes to such practices. Rather than criticizing Walzer on the grounds that this counterfactual claim is simply implausible, my approach is to start by taking the response-dependent account seriously and to show that it is subject to a fundamental internal tension.

There is a third approach to reconciling the critical purpose of normative theory with the response-dependent account of the status of public opinion. This approach is suggested by

⁶⁴ William A. Galston, ‘Community, Democracy, Philosophy: The Political Thought of Michael Walzer’, *Political Theory*, 17 (1989), pp. 119-30, at p. 126.

⁶⁵ Holland, ‘Dispositional Theories of Value’, p. 189.

⁶⁶ Dreier, ‘Meta-Ethics and Normative Commitment’, p. 243. For discussion of a potential problem with this move, see Holland, ‘Dispositional Theories of Value.’

both theorists, but developed most fully by Miller. Specifically, Miller emphasizes that political theory should identify ways in which public opinion is incoherent, inconsistent, biased or empirically ill-founded. Crucially, however, we can resolve the tensions and failings to which public opinion is often subject, whilst remaining within the parameters set by its most fundamental underlying commitments. Thus Miller describes the task of developing a theory of justice as to explore:

‘how far differing views about what justice requires can be reconciled by showing that they stem from *shared beliefs at a deeper level*. My aim in this book is to discover *the underlying principles that people use* when they judge some aspect of their society to be just or unjust, and then to show that these principles are coherent, both separately and when taken to together ... I do not mean to imply that our theory of justice should be nothing more than an aggregate opinion poll. Popular beliefs about social justice may turn out to be defective in various ways; for instance, they may prove to conceal deep contradictions, or involve serious factual errors. We need to analyze the principles at stake to show that they can withstand philosophical scrutiny.’⁶⁷

Walzer similarly sees the removal of inconsistencies and tensions in popular understandings as a key part of the critical work of political theory. Thus he argues that ‘Social criticism in maximalist terms can call into question, can even overturn, the moral maximum itself, by exposing its internal tensions and contradictions.’⁶⁸ By correcting empirical errors, being alert to the distorting effects of self-interest and looking to the more fundamental principles that structure popular attitudes, we can use public opinion as a critical mirror on itself. For both theorists, the distinction between specific judgements and underlying principles plays a particularly important role in resolving the problem of exclusionary attitudes. Thus political theorists should seek to show how more general ideals *that people already endorse* disrupt or challenge some of their more specific practices: ‘What social critics commonly do is to hold the idea, or some more or less elaborated interpretation of the idea, over against the instance of the idea ... They say, if careers are open to talents, then why are they not open to the talents

⁶⁷ Miller, *Principles of Social Justice*, p. ix

⁶⁸ Walzer, *Thick and Thin*, p. 47.

of Jews, or blacks, or women?’⁶⁹ Thus in refusing to bend our theory to people’s expressed views we are not necessarily betraying the view that justice is constituted by popular attitudes; rather we are seeking to ground our theory in public opinion at a deeper level.⁷⁰

5. Conclusion

Chapter 7 began the task of exploring how deep the commitment to public attitudes can go in normative political theory. The strongest view of the status of public opinion holds that public attitudes (under certain conditions or suitably corrected) constitute or determine the demands of justice. This view belongs to the family of response-dependent theories of moral value: accounts that treat human attitudes or dispositions as prior to the moral facts.

The first aim of chapter 7 was interpretive. I discussed the role of public opinion in the work of David Miller and Michael Walzer, asking, in particular, whether either understands the status of public attitudes in response-dependent terms. I suggested that both theorists, in some moments, seem to endorse this idea that human attitudes or responses are prior to the facts about justice. However, a close examination of Miller and Walzer’s accounts of justice reveals the complex role played by public opinion. In particular, it is unclear how we should understand the relationship between three key commitments in Miller’s work: fidelity to public opinion, contextual pluralism and political feasibility.

The second objective was to outline the major challenge facing a response-dependent account of the status of public attitudes. First, there is a problem of disagreement: how can public opinion determine the truth about justice if popular attitudes are multiple and conflicting? Secondly, public opinion may, and sometimes does, coalesce around positions that any

⁶⁹ Walzer, ‘Objectivity and Social Meaning’, p. 46.

⁷⁰ MacIntyre’s discussion of patriotism involves a similar account of the structure of public opinion. See Alisdair MacIntyre, ‘Is Patriotism a Virtue?’, in Derek Matravers and Jon Pike, eds., *Debates in contemporary political philosophy: An anthology* (London: Routledge, 2003), pp. 286-300, at p. 296.

plausible theory of justice must surely condemn. Ultimately, these two objections point to the same core problem: how can a response-dependent account select or prioritize some opinions over others, whilst remaining committed to the idea that justice is constituted by popular attitudes? I identified two problematic strategies for responding to this difficulty in Walzer's work: first, an appeal to a universal thin morality and, secondly, a moralized interpretation of the concept of social meaning itself. A more promising approach lies in Miller's suggestion that we can correct errors or biases within public opinion, whilst remaining within the parameters set by its most fundamental commitments. In other words, we can use public opinion as a critical lens on itself. This idea is explored in greater depth in chapter 8.

Chapter 8 Response-dependence, Idealization and the Structure of Public Opinion

1. Introduction

I have shown that neither Miller nor Walzer, in arguing for a deep role for public opinion in normative political theory, endorses a simple subjectivism or an uncritical relativism. They (at least in places) suggest that justice is determined by public understandings whilst at the same time employing their theories as a basis from which critically to assess existing attitudes and practices. Whereas Dworkin objects that Walzer betrays the fundamental role of justice as ‘our critic not our mirror’¹, it is in fact more helpful to see Walzer as searching for a way in which justice can occupy *both* of these roles. Chapter 7 discussed the means by which Miller and Walzer seek to effect this reconciliation. I identified the most promising strategy as Miller’s account of the ways in which political theorists can refine and develop public opinion whilst remaining within the parameters set by its most fundamental commitments. This approach, he argues, leaves ‘plenty of scope for theories of justice that aim to be coherent, empirically sound and impartial in ways that popular opinion often is not, *and yet can be justified to people by appeal to basic beliefs that they already hold.*’²

Chapter 8 further explores this strategy, focussing in particular on the idea that justice is constituted by the fundamental principles that structure popular attitudes. I argue that this approach ultimately fails to fulfil its promise of a consistently response-dependent account of the status of public opinion that does not compromise on the critical role of political theory. I highlight the extent to which Miller’s appeal to people’s ‘basic beliefs’ or ‘underlying principles’ implicates us in contested empirical issues about the nature of moral and political

¹ Ronald Dworkin, ‘What Justice Isn’t’, in his *A Matter of Principle* (Cambridge, Mass: Harvard University Press, 1986), pp. 214–21, at p. 219.

² David Miller, ‘A Response’, in Daniel A. Bell and Avner de-Shalit, eds., *Forms of Justice: Critical Perspectives on David Miller’s Political Philosophy* (Lanham: Rowman & Littlefield Publishers, 2003), pp. 349–72, at p. 353.

judgement. Specifically, his approach is underpinned by a hierarchical picture of public opinion, in which our particular judgements are underpinned by more general principles and are susceptible to change via the correction of intervening empirical beliefs. I challenge this picture of the structure of popular opinion by drawing on recent research in moral psychology, which shows that reasoning from more general principles sometimes functions as a post-hoc rationalization of particular judgements to which we are already committed. The implication of this evidence is to undermine any general move to locate ‘real’ public opinion in supposedly fundamental underlying principles rather than judgements about more concrete cases.

The second aim of chapter 8 is to situate this argument in relation to a recent exchange between David Enoch and David Sobel about whether idealizing response-dependent theories of moral value are subject to a fundamental tension. Enoch’s central claim is that such accounts face a dilemma: maintain that moral values are constituted by actual attitudes or responses and they are extensionally inadequate; move away from actual responses via an idealizing condition and they either betray the underlying response-dependent character of the account or become implausibly ad hoc. In response, Sobel has pointed out that although theorists of response-dependence are not entitled to assume the existence of response-independent moral facts, they are entitled to assume that there are non-moral facts – in particular facts about what the world would be like if it was structured according to rival moral visions. In appealing to *these* facts, we can justify idealizing moves away from actual beliefs or responses, without implicitly undermining the response-dependent character of the account. I suggest that Sobel is right that not all idealizing moves are in principle unavailable to the response-dependent account. However, the empirical evidence highlighted above suggests that the kinds of idealizing moves that are available will not produce a reasonably determinate and extensionally adequate theory.

1.1. Chapter outline

The chapter proceeds in two main parts. Section 2 begins by drawing out a picture of the structure of moral and political judgement that plays a crucial role in Miller's account. I then subject this picture to empirical challenge, highlighting evidence that shows that public attitudes often do not behave in the way that Miller's account suggests.

In section 3, this empirically-based critique of Miller is used to intervene in a recent meta-ethical debate between Enoch and Sobel. I argue that Enoch is right to conclude that idealizing response-dependent theories are subject to a fundamental problem, but that we should rest this conclusion on different grounds.

2. What do the people *really* think? General principles versus particular judgements

Throughout this thesis, I have emphasized the complexity of public opinion on justice-related issues. In one way, this messiness supports the notion of political theory as a fundamentally interpretive activity. The complexity of public attitudes offers an opportunity to the political theorist in interpretive mode: she can think about her job as sorting or prioritizing among the various components of popular attitudes and she is not committed to all of the content of public attitudes as they initially present themselves. Miller adopts this optimistic perspective on the tensions within public attitudes and it also gained some support in chapter 3. There I discussed research showing that people have divergent responses to the idea of deserved rewards for lucky talents, depending on whether this issue is framed in abstract or in concrete terms. I went on to argue that the conflict between principled and case-specific components of popular thought can be viewed in a positive light if we are interested in popular attitudes for epistemic reasons. However, if we take public attitudes instead as fixing (rather than merely helping us to track) the correct normative theory, then such tensions do become problematic. From the epistemic perspective, I suggested that political philosophers can usefully draw on

fragments of public opinion, without seeking a coherent overall picture of public attitudes. In contrast, the response-dependent account *does* depend on identifying which, among the various elements of popular attitudes, represent what people *really* think.

From a philosophical perspective, it is tempting to locate public opinion in people's most general or principled commitments. As discussed in chapter 7, both Miller and Walzer suggest that there are resources within public opinion, at a deeper level, to condemn many exclusionary attitudes and practices. Miller, in particular, distinguishes on a number of occasions between 'people's concrete judgements about particular institutions or practices ... [and] the underlying principles that inform these judgements.'³ Crucially, he goes on to suggest that it is the latter to which political theorists should attend in developing an account of the demands of justice. The following passage illustrates Miller's view about the relationship between principles, facts and particular judgments in popular thought: 'Their beliefs might rest on erroneous factual assumptions – *they might apply a principle to a situation thinking that it had features A, B, C, whereas in fact it has features D, E, and F (if they knew that, they would apply a different principle)*.'⁴ Similarly, Miller argues that it is important to understand the bases of people's distributive preferences in order to 'help us to predict what will happen if the circumstances alter, or if the people whose behavior we are trying to analyze receive new information.'⁵ For example, he suggests that if people support inequality on incentive grounds, their beliefs or behaviour are likely to change in response to new information about the necessity or effectiveness of incentives, whereas their commitment to inequality will be unmoved if it is based instead on a belief in desert.

One kind of worry we might have about this account is that the general principles people espouse are not always morally more attractive than their concrete beliefs and practices. For

³ David Miller, 'Two Ways to Think About Justice', *Politics, Philosophy & Economics*, 1 (2002), pp. 5-28, at p. 7.

⁴ Miller, 'A Response', p. 352.

⁵ David Miller, *Principles of Social Justice* (Cambridge: Harvard University Press, 1999), p. 49.

example, Galston notes, in response to Walzer, that: 'it might be, conversely, that the practices of a community are preferable to its principles – witness the complaints of conservative Afrikaners that the Botha government's modest concessions dilute the doctrinal purity of apartheid.'⁶ A second concern is whether public opinion really behaves in the orderly manner implied by Miller's account. For example, can we reliably make counterfactual claims about what people would think if their empirical beliefs were challenged? Recent work in moral psychology points to two problematic assumptions about the structure of public opinion within the commonsense picture outlined by Miller: first, the idea that our judgements are formed by the application of more general principles to which we are more firmly committed; secondly, the idea that empirical beliefs intervene between general principles and particular judgements and are susceptible to empirically-based correction, leading to the alteration of the judgements. For example, what if people are simply committed to certain inequalities and will reach for a variety of arguments to support their inegalitarian judgements? Thus, if incentives are shown to be ineffective, rather than reconsidering their position as Miller suggests, they might instead reach for a desert-based defence of inequality. This phenomenon has been termed 'motivated moral reasoning' (MMR): a process in which 'an individual has an affective stake in perceiving a given act or person as either moral or immoral, and this preference alters reasoning processes in a way that adjusts moral assessments in line with the desired conclusion.'⁷ This view of moral reasoning is closely associated with the 'social intuitionist' perspective in moral psychology, advanced most notably by Jonathan Haidt. Social

⁶ William A. Galston, 'Community, Democracy, Philosophy: The Political Thought of Michael Walzer', *Political Theory*, 17 (1989), pp. 119-30, at p. 125.

⁷ Peter H. Ditto, David A. Pizarro and David Tannenbaum, 'Motivated Moral Reasoning', *Psychology of Learning and Motivation*, 50 (2009), pp. 307-38, at p. 312.

intuitionists regard moral reasoning as largely ‘epiphenomenal’⁸; typically ‘a post-hoc process in which we search for evidence to support our initial intuitive reaction.’⁹

The contrast between these two pictures of moral thought is nicely captured by a comparison between the reasoning of barristers and judges: ‘Whereas attorneys’ accepted role is to work from a particular conclusion “backward” to construct a convincing foundation for their case, the Justices are to go about their work in precisely the opposite direction, working “forward” to combine fact patterns and legal principles in a way that leads them agnostically to whatever conclusion these facts and principles seem to demand.’¹⁰ We can see that Miller, in the passages cited previously, assumes that public opinion works according to the second judge-like model. However, a wide range of empirical evidence has been brought to bear to support the view that we often think more like barristers in an adversarial system: ‘people (like attorneys) often have a preference for reaching one conclusion over another, and these directional motivations serve to tip judgment processes in favour of whatever conclusion is preferred.’¹¹

Experimental research shows that individuals will sometimes hold firm to their judgements about particular cases, even when the facts of the case are manipulated such that the principles that purportedly justify the judgements no longer apply. The classic case here is attitudes towards incest. When individuals are asked about the morality of incest, they tend to say that it is wrong; it is wrong, they argue, because it leads to harmful consequences. Researchers then present respondents with cases of incest that are carefully constructed such that no negative consequences can possibly arise. Given that respondents continue to insist

⁸ Jeanette Kennett and Cordelia Fine, ‘Will the Real Moral Judgment Please Stand Up: The Implications of Social Intuitionist Models of Cognition for Meta-ethics and Moral Psychology’, *Ethical Theory and Moral Practice*, 12 (2009), pp. 77-96, at p. 84.

⁹ Jonathan Haidt, ‘The New Synthesis in Moral Psychology’, *Science*, 316 (2007), pp. 998-1002, at p. 998.

¹⁰ Ditto et al, ‘Will the Real Moral Judgment Please Stand Up’, p. 310.

¹¹ Ibid, p. 310. A crucial difference is that, unlike barristers, we are often unaware that our reasoning is working backwards from our desired conclusion. See this section for further discussion.

that incest is wrong in these non-harmful cases, the suggestion is that their initial judgement about the immorality of incest was not, in fact, based on the principles brought forward to justify it.¹² Research has also shown that individuals will recruit either consequentialist or deontological principles depending on which supports their preferred moral judgements. For example, political conservatives (but not liberals) endorse more consequentialist justifications for American-caused civilian casualties than for Iraqi-caused civilian casualties.¹³ Another common approach is to present research participants with alternative vignettes, in which individuals carry out positive or negative acts, and ask for their assessments of intentionality or responsibility. For example, in one study, participants were told that a man was speeding home in bad weather and was involved in an accident causing injury to others. Respondents were significantly more likely to say that the man had control over the car when he was rushing home to hide drugs from his parents than when he was hurrying to hide a present. Another well known study described a CEO who cares only about profits, but, as a foreseeable side effect, either benefits or harms the environment. Respondents were significantly more likely to say that the harmful side effect was brought about intentionally.¹⁴ The wider message from these and similar studies is that ‘judgements that an individual is “bad” or “good” often come *prior to* rather than *as a product of* more fine-grained judgements of intentionality, controllability, and causality, and these component assessments are then “bent” in a direction consistent with the overall moral evaluation.’¹⁵

A range of research has also revealed the ways in which apparently empirical assumptions can be shaped by prior moral commitments. Our normative beliefs can shape both the content of our empirical beliefs and the manner in which we assess the empirical evidence. For example,

¹² Jonathan Haidt, Fredrik Björklund, and Scott Murphy, ‘Moral Dumbfounding: When Intuition Finds No Reason’ (2010), Unpublished manuscript, University of Virginia.

¹³ Ditto et al., ‘Motivated Moral Reasoning’, p. 329.

¹⁴ Joshua Knobe, ‘Intentional action and side effects in ordinary language’, *Analysis*, 63 (2003), pp. 190-94.

¹⁵ Ditto et al. ‘Motivated Moral Reasoning’, p. 316. Original emphasis.

in one study participants were given a description of a man who walked out of a restaurant without paying – either because he found out his daughter had been in an accident and forgot to pay when leaving in a hurry, or because he didn't like paying and tried to get away with stealing when he could. Those presented with the second 'high blame' scenario recalled the price of dinner as significantly higher a week later, with the degree of initial blame impacting the extent to which the size of the bill was exaggerated.¹⁶ Thus even apparently straightforward and objective empirical facts seem to be potentially subject to the phenomenon of motivated reasoning. Research has also found that people employ less rigorous standards for the evaluation of preference-consistent than preference-inconsistent information.¹⁷ The crucial implication of this body of evidence is that we cannot make any straightforward counter-factual claims about what people *would* think if they were to appreciate their empirical mistakes. To do so is to neglect the complex ways in which our normative judgements and empirical beliefs are often interrelated.

It is important to note that the claim being advanced here is not that we consciously or deliberately select empirical claims and principles according to their tendency to support judgements to which we are already committed – although of course we may also do this in some cases. Rather, the phenomenon of MMR is a sub-conscious one, in which a preference 'operates implicitly to bend but not break normative rules of decision making, leaving behind little introspective evidence of an untoward decision process.'¹⁸ Thus it is part of the nature of MMR that it is not easy to identify in everyday life. Moreover, most research into MMR has focussed on questions of individual ethics. For both of these reasons, further work is needed to establish how this phenomenon applies to political issues and in more naturalistic settings. Where might we find evidence of MMR in the political domain? One potential area is

¹⁶ Ibid, p. 318.

¹⁷ Charles S. Taber and Milton Lodge, 'Motivated Scepticism in the Evaluation of Political Beliefs', *American Journal of Political Science*, 50 (2006), pp. 755-69.

¹⁸ Ditto et al., 'Motivated Moral Reasoning', p. 312.

international aid, where people often cite the problems of waste and corruption as reasons not to give. For example, more than half of respondents to a British survey agreed that ‘corruption in poor countries makes it pointless to donate money’.¹⁹ The lesson of the literature on MMR is that we should not be too quick to assume that attitudes towards giving will therefore shift in response to evidence about the prevalence or significance of corruption. We should also consider the possibility of a pattern of thought that parallels the incest study: in which people initially bring forth some more general justification for their judgement but then hold firm to the judgement in the face of challenges to the purported justification.²⁰

The social intuitionist picture of the nature of moral judgement outlined above has been subject to a number of challenges. Specifically, there are three central ways in which critics have sought to show that moral reasoning is psychologically more efficacious than the social intuitionist account acknowledges. First, there is evidence to suggest that reflective reasoning can sometimes lead us to set aside our initial intuitive responses: ‘in cases in which an individual’s reflectively endorsed values lead her to regard her intuitive reactions as inappropriate, the intuitions are discounted rather than rationalized.’²¹ For example, spontaneous intuitions are sometimes blocked or resisted if people become aware they have a tendency towards bias and are motivated to override it, or if they are alerted to the role of mood in shaping their judgements. Secondly, it has been argued that reasoning plays an important role in shaping the automatic responses on which theorists such as Haidt place so much weight. On this account, the exercise of moral judgement may generally be an automatic process; however, these automatic responses have themselves been formed through prior

¹⁹ TNS, *Public Attitudes Towards Development*, TNS Report prepared for COI on behalf of the Department for International Development (Spring 2010), p. 25. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/67684/public-attitudes-april10.pdf

²⁰ I suggest a further example of MMR in the political domain in the conclusion to this thesis, where I explore public attitudes towards inheritance tax.

²¹ Kennett and Fine, ‘Will the Real Moral Judgment Please Stand Up’, p. 91.

processes of rational reflection. Finally, and as social intuitionists have themselves acknowledged, reasoning can have an important impact in interpersonal contexts.

For a number of reasons then some of Haidt's claims about the nature of moral judgement, such as the alleged 'impotence of controlled reflective processes in the formation and revision of moral judgment'²² are too sweeping. The most plausible reading of existing evidence points to a differentiated picture of moral and political judgement: a role for both reflective reasoning and automatic responses, with the psychological force of these systems differing according to context. There are still many unanswered empirical questions, in particular concerning the generalisability of the social intuitionist position across issues and individuals. But these further questions can be set aside for now since my argument depends on recognizing the phenomenon of MMR only to a very limited extent. The aim is simply to challenge any general move to locate people's genuine beliefs at the level of their most general or principled commitments. Recent psychological research is sufficient to demonstrate that we cannot simply *assume* that people are more fundamentally committed to their purported 'underlying principles' than to their apparently more superficial judgements about particular cases. In other words, my aim is not to establish the opposite of Miller's claim – to suggest that concrete judgements are always more reflective of real public opinion than more general principles.²³ The thought is simply that we cannot divide public opinion into different levels and consistently prioritize the more general over the particular.

It is also important to note that the social intuitionist account is, in the first instance, a claim about the place, within moral judgement, of automatic versus more reflective and controlled processes. Specifically, it proposes 'a primary role for fast, automatic and affectively charged

²² Kennett and Fine, 'Will the Real Moral Judgment Please Stand Up', p. 84.

²³ Note that I treat the issue of which attitudes constitute the agent's real moral convictions as an empirical question. Thus I do not address the question of whether social intuitionism threatens the existence of anything that plausibly counts as genuine moral judgment. For the distinction between these issues, see Kennett and Fine, 'Will the Real Moral Judgment Please Stand Up', pp. 80-81.

moral intuitions in the formation of moral judgements.’²⁴ In contrast, my concern is most directly with the relationship between public opinion at the *general* versus the *particular* level. Therefore there is a question to be addressed about the relationship between these two sets of distinctions. Sinnott-Armstrong argues that we can helpfully understand some important philosophical paradoxes as involving a conflict between abstract and more concrete intuitions – where intuitions are understood as ‘inclinations to believe claims whose attractiveness does not depend on any conscious inference.’²⁵ In other words, he suggests that both concrete and principled beliefs can be automatic. This complicates the picture somewhat, since we are dealing with two (related, but not identical) contrasts: between general and particular levels of thought and between automatic and consciously controlled responses. However, the direction of Sinnott-Armstrong’s argument is friendly to the aim of this chapter: to problematize the assumption that public opinion is best located at the level of ‘fundamental’ principles. Given the existence of conflicting intuitions at abstract and concrete levels, Sinnott-Armstrong suggests that in some cases it is difficult to identify what people really think and in some cases there simply is no right answer as to where real public opinion lies.

This section has highlighted a crucial assumption within Miller’s approach to public opinion: that people’s ‘real’ beliefs are consistently located in the most general or principled elements of popular thought. A brief look at some evidence about the behaviour of public attitudes reveals that this assumption is empirically untenable. This, in turn, suggests a fundamental problem with Miller’s initially appealing approach to reconciling a response-dependent view of the status of popular attitudes with the critical function of a normative theory of justice. If the focus on the general principles that structure popular attitudes cannot be supported as account of what people *really* think, then how can it be justified – except as a claim about

²⁴ Ibid, p. 77.

²⁵ Walter Sinnott-Armstrong, ‘Abstract + Concrete = Paradox’, in Joshua Knobe and Shaun Nichols, eds, *Experimental Philosophy* (Oxford: Oxford University Press, 2008), pp. 209-30, at p. 212.

what they *ought* to think? Although the call to attend to the fundamental principles that structure public opinion is initially appealing, we should instead admit of three possibilities:

- In some cases of conflict between particular judgements and more general principles, genuine public opinion is more plausibly located at the concrete level.
- In some cases in which we confront complex patterns of attitudes, we lack the evidence to judge which level of opinion represents what people really believe.
- In some cases there may simply be *no right answer* to the question of what people ‘really’ think. Rather, different considerations are elicited at different levels, perhaps because different psychological systems are activated, and we can do no more than observe this plurality.

3. Response-dependence and idealization

3.1. No rationale for idealization?

Section 2 expressed the concern that in consistently prioritizing popular principles over judgments, without regard to the question of which is actually psychologically more basic, we must in fact be driven by normative commitments that are independent of public opinion. This worry about Miller’s account parallels a more general critique of idealizing response-dependent theories. As discussed in the previous chapter, the appeal of this family of meta-ethical views lies in the fact that they tie moral properties to human attitudes or responses, whilst at the same time maintaining that not *all* of the responses we happen to have – the ill-informed, the biased or unreflective – count:

‘These accounts are highly attractive in that they appear to incorporate the plausible elements of each of subjectivism and objectivism without their corresponding implausible elements. Like subjectivism, response-dependent accounts ground normativity in the concerns and attitudes of mental beings – and thus avoid

postulating mysterious objectively prescriptive attitudes. Like objectivism, plausible response-dependent accounts deny that normativity is grounded in the concerns and attitudes that we happen to have – *it is only certain sorts of mental being under certain sorts of condition that are relevant. Because we may not meet these conditions, our responses may well be in error – both individually and collectively.*²⁶

This combination of features, I have suggested, is also reflected in Miller and Walzer's accounts of the relationship between justice and public opinion. However, the basis of the appeal of idealizing response-dependent accounts is also the source of a fundamental tension. Several theorists have questioned whether a response-dependent account can motivate its *specific* idealizing conditions in a non-question begging way: how are we to know that *these* are the right response-conditions, or that *this* is the right procedure for selecting among competing views, without appealing to the capacity of the theory to generate the right answers? David Enoch has recently formulated this critique as a more general doubt about whether *any* idealization can be justified in a manner that is consistent with the underlying character of the response-dependent account. I will outline the main steps in Enoch's argument, before considering a recent critical response and exploring how we should view this debate in light of the empirical issues raised in the previous section.

The most obvious answer to the question 'why idealize' is that the idealization is needed to track the moral facts in a reliable way. However, this epistemic argument is not available to response-dependent theories, which hold that an agent being disposed to value X or to regard X as right or just *is what makes* X valuable, right or just. Enoch explains this problem by drawing a contrast with a situation in which we use a watch to tell the time:

'The reading of the watch tracks the time – which is independent of it – only when all goes well ... So there is reason to make sure – by idealizing – that all goes well ... Had the time depended on the reading of my watch, had the reading of my watch made certain time-facts true, there would have been no reason (not this reason anyway) to "idealize" my watch and see to it that the batteries are fully charged. In such a case,

²⁶ Peter Vallentyne, 'Response-dependence, Rigidification and Objectivity', *Erkenntnis*, 44 (1996), pp. 101-12, at p. 101.

whatever the reading would be, that would be the right reading, because that this is the reading would make it right.'²⁷

Enoch then goes on to consider the possibility that we might idealize precisely in order to achieve extensional adequacy. However, this rationale looks unconvincing, since the capacity to generate appealing answers is not sufficient for a theory to be compelling. Given that there are, at least in principle, many possible theoretical routes to the same conclusions, a theory must have other virtues. It is important to note that is crucial to Enoch's argument here that response-dependent accounts are not initially neutral between actual and idealized responses. It is because idealizing response-dependent accounts *begin* by focussing on actual human responses that the idealizing move looks objectionably ad hoc: it represents a way of patching up an otherwise inadequate account.²⁸ However, we need not consider this caveat further, since Enoch's picture captures nicely the structure of both Miller and Walzer's accounts. They argue *initially* for a deep engagement, within political theory, with people's *actual* views and practices. Then, in recognition of the problematic answers this generates in some cases, they defend certain idealizing moves away from these beliefs. Thus Miller and Walzer are fair targets for Enoch's challenge: what plausible justification can they offer for their idealizing moves, which is consistent with the view that justice is constituted or determined by popular attitudes?

Thirdly, Enoch considers the possibility that idealization might be motivated not by an illicit appeal to response-independent moral facts or as an ad hoc attempt to secure extensional adequacy, but by our 'justificatory practices and our beliefs about them.'²⁹ There are certain standards contained within our justificatory practices that seem to support idealization; for example, we regard ourselves as fallible in our normative beliefs. However, Enoch notes that

²⁷ Enoch, 'Why Idealize?', p. 764.

²⁸ For criticism of this assumption, see David Sobel, 'Subjectivism and Idealization', *Ethics*, 119 (2009), pp. 336-52, at pp. 347-9

²⁹ Enoch, 'Why Idealize?', p. 769.

there is a powerful alternative explanation of these elements of our everyday justificatory practices: that they reflect a commitment to robust realism. Thus it is not clear that the defender of an idealizing response-dependent account can appeal to our everyday justificatory practices in order to motivate the idealizing move – at least in so far as they are advocating this account as an alternative to robust realism. Having reviewed, and rejected, these three potential justifications for idealization, Enoch concludes that response-dependent accounts face a dilemma: ‘they must either embrace the ad-hoc-ness of the idealization or else settle for actual nonidealized responses. If actual-response-dependence views are as implausible as they seem, perhaps, then this should be taken not so much as a reason to idealize, but rather as a reason to reject response-dependence theories of normativity altogether.’³⁰

A clarificatory note about the notion of idealization is helpful here. We might think that prioritizing principles over particular judgements does not represent an idealizing move, since we look to the principles that people are *actually* committed to, not, for example, those they would endorse if they were more rational. On the other hand, correcting for empirical errors in public opinion does seem to involve an idealizing move: it turns our attention to the beliefs people *would* endorse if they had a better appreciation of the facts. We can set this complication aside, since the argument presented here does not depend on the extent to which we can justifiably regard the moves that Miller and Walzer make in working up public opinion as forms of idealization. As Enoch argues, theories that privilege some responses over others, without idealizing, face a similar problem: ‘like idealization they demand some philosophical rationale. *Why ... do some ... [views] but not all count?*’³¹ My suggestion was that Miller’s appeal to the underlying principles that structure public opinion initially seems to sidestep Enoch’s challenge: if justice is constituted by popular understandings, surely what should count are people’s most fundamental commitments? However, on closer reflection I

³⁰ Ibid, p. 761.

³¹ Ibid, footnote 48 to p. 783.

argued that Miller is vulnerable to precisely the problem outlined by Enoch, since the identification of real public opinion with the principled components of popular thought is not empirically plausible.

3.2. Idealization as acquaintance with the non-moral facts

Enoch's argument has been subject to a critical response from David Sobel, who argues that there is a convincing justification for idealization that is neglected by Enoch: 'The rationale for granting the idealized agent information and experience is to provide her with a more accurate understanding of what the option she is considering would really be like.'³² Sobel focuses specifically on informed desire accounts of well-being. Thus, he argues:

'Our informed desires are, in a sense, more genuinely for their object. And such desires are what we ordinarily would have referred to as what we "really want". The objects of our desires have nature not of our making. Sometimes our desires are responsive to the truth about the nature of their object, and sometimes they are not. I think this justifies the subjectivist in grouping such desires together and granting them special authority.'³³

What would this argument look like transposed to questions of justice? And does it provide a way of disarming Enoch's critique? Sobel's claim is that response-dependent accounts can legitimately idealize, to the extent that they can privilege beliefs 'that are more attuned to their object'.³⁴ We cannot, consistently with a response-dependent account of justice, assume response-independent *moral* facts about what is just. However, we *are* entitled to assume response-independent facts about what worlds ordered according to rival visions of justice would look like and we can legitimately grant idealized agents access to those facts. Sobel's basic claim is right: he shows that there is a plausible justification for idealization that is in principle available to the response-dependent theory. However, to work out what this claim

³² Sobel, 'Subjectivism and Idealization', p. 343.

³³ Ibid, p. 347. Given his focus on the issue of well-being, my argument is not intended as a direct critique of Sobel. Rather, I am interested in assessing the value of Sobel's claim for response-dependent theories of morality, and justice in particular.

³⁴ Ibid, p. 348.

implies for the response-dependent account, we need to recall the evidence discussed in the previous section about the complex structure of popular attitudes. Sobel's appeal to the non-moral facts serves to rescue the response-dependent account only if we depict the process of correcting for empirical errors or ignorance in deceptively simple terms.

To see this, it is useful to return to one of Miller's observations about the shape of public opinion. Miller argues that disagreement between individuals tends to be located less at the level of principles of justice and more at the level of the implications of those principles in the here and now. For example, he notes that: 'we find widespread agreement between rich and poor, men and women, on the principles that jobs and offices should be allocated on the basis of merit, but significant disagreement about the extent to which jobs and offices are actually allocated by meritocratic criteria – the worse-off groups being more likely to think that their society operates in unjust ways.'³⁵ Miller is surely right about this pattern in expressed opinion. However, the message of the previous section is that this does not necessarily license us to make counterfactual claims about what people would believe if their empirical judgements were to be challenged, because in some cases those empirical claims are already shaped by their normative commitments. On a straightforward picture of public opinion, if we are all committed to meritocracy then our ideal judgements, involving a proper understanding of what the meritocratic option would look like, should converge. Thus we have answer as to the demands of justice. In contrast, I have suggested that because causality in public opinion runs in both directions, we cannot make reliable judgements about what idealized agents with a proper understanding of the empirical facts would believe. In other words, the inclusion of an (in principle acceptable) idealizing move leaves us in a bad epistemic position.³⁶ Thus the problem facing a response-dependent account is slightly different from the one suggested by

³⁵ Miller, *Principles of Social Justice*, p. 262.

³⁶ For an argument with a similar structure, in a different context, see Matthew Kieran, 'Why Ideal Critics are not Ideal: Aesthetic Character, Motivation and Value', *British Journal of Aesthetics*, 48 (2008), pp. 278-94. Kieran argues that the view that the value of artistic work is fixed by the responses of our ideal counterpart leaves us in a similar situation of indeterminacy.

Enoch, but the eventual upshot is the same. It is not that we cannot plausibly and legitimately motivate any idealization, but rather that it is very difficult to judge the implications of the available idealizing moves. Thus, given a more empirically informed picture of the shape of popular attitudes, Sobel's core claim will not yield a reasonably determinate and extensionally adequate theory of justice.

4. Conclusion

'a pluralistic, critical, and practical theory of justice that navigates between the extremes of complacent relativism and Platonic liberalism.'³⁷

This comment, in a collection of essays exploring David Miller's political philosophy, nicely summarizes what both Miller and Walzer are looking for in a theory of justice. I have argued, however, that they face serious difficulties in the way in which they employ public opinion to steer this challenging course. In order to evade the charge of complacent relativism, they have to make idealizing moves away from actual opinion. However, they then confront the problem of adequately motivating this process of idealization without implicitly appealing to a domain of response-independent 'Platonic' normative facts.

I identified a potentially promising response to this challenge in Miller's account of the various ways in which political theory can work up public opinion: correcting, for example, for the distorting effects of self-interest and empirical errors. Central to this account is a view about the structure of public opinion, in which (sometimes illiberal and often confused) particular judgements are underpinned by more liberal and more consistent general principles. However, this view is challenged by recent empirical evidence suggesting that the general principles that people apparently endorse are sometimes psychologically less basic than their particular judgements. In light of evidence that people sometimes hold firm to their more specific

³⁷ Daniel Bell and Avner de-Shalit, 'Introduction', in Bell and de-Shalit, eds., *Forms of Justice: Critical Perspectives on David Miller's Political Philosophy* (Lanham: Rowman & Littlefield Publishers, 2003), pp. 1-9, at p. 8

convictions in the face of conflict with their more general principles, on what basis can we maintain that the principles represent what people *really* think? This suggests that we cannot consistently prioritize people's general principles over their particular judgements without implicitly appealing to commitments independent of public opinion. I acknowledged, with Sobel, that a response-dependent account is entitled to appeal to *some* response-independent facts in order to motivate its idealizing moves away from actual opinion. However, the empirical evidence discussed in this chapter suggests that Sobel's claim does not resolve the difficulty facing the response-dependent theorist: how to secure a reasonably determinate and extensionally adequate theory without importing response-independent normative commitments.

I have suggested that the problem facing Miller's account stems from structural features it shares with a wider family of views about the nature of moral values. Of course, a comprehensive evaluation of response-dependent accounts would require an assessment of the relative strengths and weaknesses of alternative meta-ethical views: versions of robust moral realism and objective constructivist views, as well as various forms of subjectivism and non-cognitivism. Such an assessment is far beyond the scope of the thesis. Thus, it is still open to the response-dependent theorist to argue that their account is more plausible all things considered – particularly given the metaphysical and epistemological difficulties facing robust realism. However, this chapter has sought to show that they will need to overcome a very significant difficulty in order to do so. As well as drawing this substantive conclusion, chapter 8 has sought to make two more general points about the way in which the debate about the status of public opinion in normative political theory is best pursued. First, this issue should be situated within a closely related body of meta-ethical literature. Secondly, the meta-ethical debate can, in turn, be productively viewed from the perspective of recent empirical research into the nature and structure of moral and political judgement.

Chapter 9 Conclusion

Chapter 9 reviews and illustrates the main arguments of the thesis through a discussion of public attitudes towards inheritance tax (IHT). This issue provides a useful case study for thinking about the relationship between political theory and public opinion for two reasons. First, there is a clear overall pattern to public opinion, with studies consistently reporting strong and widespread hostility towards IHT. However, as with most normative issues, this overall trend in attitudes masks more complex patterns of opinion; patterns that raise important questions for how we connect political theory with public attitudes. Secondly, and in contrast to the public, many political theorists are supportive of IHT. Whether we favour equality of opportunity or outcome, sufficiency, desert, or we believe in the virtues of market competition, we will see good reasons to tax inheritances. Thus there is something of an overlapping consensus on this issue within contemporary political philosophy.¹ Moreover, theorists have convincingly demonstrated the weakness of common moral arguments against IHT, such as the claim that it involves unfair ‘double taxation’ or that it objectionably penalizes the virtuous desire to benefit one’s children.² The question of the role of public opinion comes into view most starkly in such a case of conflict between public and philosophical beliefs. It forces us to consider whether political theorists have any reason to give ground to popular views that are contrary to their own normative convictions.

The chapter begins by briefly reviewing some recent empirical evidence about attitudes towards IHT in the UK and the US. Secondly, I revisit the question of why political theorists should care about public attitudes, reviewing and illustrating each of the four main arguments:

¹ For the observation that free market conservatives, as well as egalitarians of various forms, should favour inheritance tax, see Martin O’Neill, ‘Death and taxes: social justice and the politics of inheritance tax’, *Renewal*, 15 (2007), pp. 62-71, at p. 66. Although note that there is also a market incentives argument in favour of the freedom to bequeath.

² For a critique of the ‘tax on love’ and ‘double taxation’ objections, see Stuart White, ‘What (if Anything) is Wrong with Inheritance Tax?’, *The Political Quarterly*, 79 (2008), pp. 162-71.

about feasibility, democracy, the epistemic value of public attitudes and a response-dependent account. The third and final part of the chapter summarizes both the critical and the positive messages of this thesis concerning the contribution of public opinion research to normative political theory.

1. Popular opposition to inheritance tax: evidence from the UK and US

As of January 2013, estates valued below £325,000 were not subject to UK IHT. The value of any estate above this level is taxed at 40%. In 2007, the threshold was doubled for couples, giving a joint tax free allowance of £650,000. In the United States, federal estate tax has a complex recent history. Exemptions have risen significantly since 2001, giving a current tax free threshold of \$5.25 million and a top rate of 40%.³ As in the UK, the tax free threshold is effectively doubled for couples.

Recent estimates suggest that only 3% of UK estates and 0.1% of US estates are subject to IHT.⁴ Yet studies of public attitudes in both countries have consistently found evidence of widespread opposition to the taxation of inherited wealth and enthusiasm for repeal. For example, over two thirds of respondents to the 2002 American National Election Studies stated that they were in favour of ‘doing away with’ estate tax. Almost half declared themselves strongly in favour of repeal.⁵ Opposition is slightly less widespread in the UK, but still just over half of respondents to a Fabian Poll in 2000 agreed that ‘no inheritances should

³ The Economic Growth and Tax Relief Reconciliation Act of 2001 provided for periodic increases in the exemption amount, to reach \$3.5 million by 2009, with total repeal due in 2010. After 2010, top rates were scheduled to revert to the 2001 level, with the 2002 exemption level. However, the total repeal never took effect, as in 2010 Congress passed legislation reinstating federal estate tax. This legislation set a top rate of 35% for 2011-12 and a tax free exemption of \$5 million per person. The American Taxpayer Relief Act, passed in January 2013, gave rise to the current regime. Note that many US states also have their own estate taxes. I focus here on estate tax at the federal level, since this is the issue in relation to which most public opinion data is available.

⁴ See HM Revenue & Customs, ‘Inheritance Tax Statistics 2010-11’, available at <http://www.hmrc.gov.uk/statistics/inheritance/commentary.pdf>; Tax Policy Centre, ‘Estate and Gift Taxes’, available at <http://www.taxpolicycenter.org/taxtopics/estatetax.cfm>. Estimates for the UK were 6% at the peak of the housing market in 2007.

⁵ Larry M. Bartels, *Unequal Democracy: The Political Economy of the New Gilded Age* (Princeton: Princeton University Press, 2008), p. 199.

be taxed.’ A recent deliberative workshop found similar levels of opposition among a smaller group of participants.⁶

There is a puzzle here about why so many people oppose the taxation of inherited wealth, apparently against their own self-interest. Indeed, there is some evidence that opposition to inheritance tax is *stronger* among those who are least likely to pay.⁷ What is the source of this ‘strange public appeal of estate tax repeal’?⁸ Research has identified a diverse set of empirical and normative considerations that may be at work. For example, people tend to overestimate their own relative wealth, at least when considering the liability of their estate to taxation. For example, one study found that 20% of US citizens placed themselves in the top 1% of estates, which would, at that time, have been subject to federal estate tax.⁹ However, this empirical belief is insufficient to account for opposition to IHT across the socio-economic spectrum, including among those who are unlikely, and recognize that they are unlikely, to pay. Perhaps concerns about government waste and inefficiency or the fear of discouraging enterprise play some role. However, these issues do not easily account for the *special* unpopularity of IHT compared to other forms of taxation. Thus it seems we must also look to the moral reasons people offer against IHT, such as the feeling that it unfairly taxes wealth that has already been taxed, or is contrary to desert. However, again it is unclear why these views would lead to particular antipathy towards IHT. Most fundamentally, the taxation of inherited wealth seems to conflict with a widespread sense that people have a right to dispose of the resources they possess in order to benefit their own children. Thus O’Neill notes that: ‘Many arguments against IHT involve the libertarian intuition that one has an independent moral entitlement

⁶ Miranda Lewis and Stuart White, ‘Inheritance tax: what do the people think? Evidence from deliberative workshops’, in Will Paxton and Stuart White, eds., *The citizen’s stake: Exploring the future of universal assets policies* (Bristol: The Policy Press, 2006), pp. 15-35 at p. 15. Lewis and White report a small shift towards more favourable assessments of inheritance by the end of the workshops. See section 2.1 for further discussion.

⁷ Ibid, pp. 21-22.

⁸ Bartels, *Unequal Democracy*, p. 222.

⁹ See O’Neill, ‘Death and taxes’, p. 63.

[to] one's current pre-tax wealth or income.'¹⁰ However, to the extent that there is a libertarian intuition at work, it appears to be an intuition that is triggered particularly strongly in the specific context of thinking about family bequests.

In reviewing my account of each of the four main potential justifications for integrating public opinion and political theory, I will also further explore some competing explanations of public opposition to IHT. In so doing, this chapter revisits some important issues about the structure of public attitudes: particularly the relationship between normative principles and more specific judgements, which has been a recurring theme in the thesis. More generally, I will reiterate that an answer to the question of the role of public opinion in normative political theory must be differentiated, taking account of the interconnected issues of why we care about public attitudes, the research methods we employ and the nature of the issue at stake.

2. Some good and some bad reasons to care about public opinion

2.1. The complexity of public attitudes as a mediator of political feasibility

Chapter 4 discussed how the question of the role of public opinion is bound up with debates about the meaning and value of realism in political theory. Specifically, I traced two distinct forms of critique that identify something problematic in the way political theory relates to real politics. Detachment realism locates the problem in the failure of political theory to offer enough in the way of guidance for real world political action. The displacement critique instead suggests that political theory in some way threatens or disrespects democratic politics. These accounts of realism are in important ways opposed. Most significantly for the purposes of this thesis, they have very different implications for the place of public opinion.

Chapter 4 then further explored a key issue raised by the detachment critique – the place of feasibility considerations in normative political theory. The concern with feasibility in turn

¹⁰ Ibid, p. 65.

motivates an interest in public opinion, since public attitudes, in a democratic system, are a major determinant of what is politically possible. Chapter 4 considered both the theoretical and empirical issues raised by this argument. On the theoretical side: What is the status of feasibility considerations in political theory? Are public attitudes, in principle, a component of feasibility? To what extent does the demand for feasibility answer the concerns of the detachment realist? On the empirical side, I briefly discussed some empirical evidence about the role of mass opinion in shaping political outcomes. Chapter 4 endorsed the broad contours of the argument from feasibility, whilst emphasizing that it is more complex and difficult to pursue than has been recognized in much of the existing literature.

The history of estate tax repeal in the US serves to reinforce two major messages of the earlier discussion of feasibility and public opinion, concerning how mass opinion influences politics and how public opinion is itself shaped. First, it illustrates the crucial empirical point that the feasibility role of public opinion is variable, because the impact of public opinion is mediated by political institutions, the behaviour of elite political actors and the nature of the issue at stake. In other words, there is no *general* answer as to whether, and to what extent, a concern with feasibility should in turn motivate a serious engagement with public attitudes. As Bartels emphasizes, the puzzle of the politics of estate tax in the US is how such an unpopular tax has survived for so long. The answer, he suggests lies in 'the power of the status quo in the legislative process [and] also the limited force of public sentiment when it happens to conflict with the ideological convictions of strategically placed political elites.'¹¹ The history of estate tax repeal attempts in the US is one of Democratic politicians mobilizing to resist repeal attempts, even against pressure from constituents. For example, a Republican attempt to significantly reduce inheritance tax in 2006 failed in the face of a filibuster in the Senate. This was despite the proposal being packaged together with an increase in the federal minimum

¹¹ Bartels, *Unequal Democracy*, p. 222. Bartels notes that similar institutional factors have served to erode the federal minimum wage in the face of strong public support for increases.

wage that was both popular with the public and strongly supported by Democratic Senators. It is easy to look at the Bush cuts to inheritance tax and conclude that they were driven, or at least enabled, by public antipathy. Yet a more careful look at the history of the politics of estate tax shows that we should resist this assumption: 'Strong public support for estate tax repeal was certainly not sufficient, and probably not necessary, for repeal to happen.'¹²

The case of estate tax also highlights the need to look beyond formal legislative processes when exploring issues of political feasibility. For example, Bartels discusses how the Bush administration found it easy to reduce effective estate tax by cutting staff numbers at the IRS and undermining enforcement, 'underlining the capacity of those who execute the laws to shape policy through quiet shifts in priorities and procedures.'¹³ This illustrates the range of tools that political elites have at their disposal to shape public policy, some of which are relatively hidden from public scrutiny. This example of the subtle ways in which policy is effectively shaped speaks to a broader claim in chapter 4 about the barriers to forming reliable judgements of political feasibility.

As well as representing a parameter that shapes what is politically possible in the short-term, public opinion is subject to change and therefore is also a potential site of influence for political theory. Thus the feasibility argument raises an important question about whether, to what extent, and under what conditions, public opinion can be shaped by the characteristic outputs of political theory – namely rational arguments about moral and political ideals. What is the relationship between good argument, as judged by the standards of political theory, and effective political persuasion? Chapter 4 noted that much recent work in political psychology highlights the political centrality of framing and emotional appeals. Yet we should not exaggerate this perspective, to the point of radical scepticism about the power of rational argument in politics. Again the issue of IHT is helpfully illustrative on this point. A common

¹² Ibid, p. 219.

¹³ Ibid, p. 221.

narrative about the recent politics of estate tax in the US emphasizes the success of right wing political elites, and conservative think tanks in particular, in manipulating public opinion and fuelling popular opposition to IHT.¹⁴ However, a more careful look at the history of public attitudes suggests that this account is easily exaggerated. For example, it is commonly noted that right wing political actors have cleverly framed estate tax as a 'death tax'. Yet empirical evidence suggests that this framing is probably less significant in swaying public attitudes than is often assumed. One split sample survey found only a few percentage points difference in responses to questions about 'death tax' and 'estate tax'.¹⁵ Most fundamentally, opposition to the taxation of inherited wealth was widespread long before the mobilization of right-wing networks on this issue. Although representative survey data is available only from the mid 90s, twenty years earlier Hochschild concluded that 'no one is enthusiastic about, and very few even accept, inheritance taxes. On this point, the sanctity of private property overwhelms the principle of equality in the political domain.'¹⁶

Thus the claim that opposition to IHT was created through the manipulation of public opinion by right wing political elites does not stand up to scrutiny. At the same time, however, we should not be overly optimistic about the prospects of correcting 'our common irrationalities about death and taxes'¹⁷ through the force of rational argument. These widespread irrationalities are both empirical and normative. On the empirical side, there is evidence of significant levels of misinformation about IHT and who is liable. For example, nearly half of respondents to a US survey said that most families have to pay estate tax. Holding this view did

¹⁴ See, for example, Karen Rowlingson, 'Is the Death of Inheritance Tax Inevitable? Lessons from America', *The Political Quarterly*, 69 (2008), pp. 153-61.

¹⁵ Bartels, *Unequal Democracy*, p. 198. Of course those people presented with the 'estate tax' version might *already* have heard the 'death tax' frame and thus themselves be translating the issue into these terms. Nevertheless, this evidence suggests we should be cautious about the persuasive power of the 'death tax' label.

¹⁶ Jennifer Hochschild, *What's Fair? American Beliefs about Distributive Justice* (Harvard, Mass: Harvard University Press, 1986), p. 280. Cited in Bartels, *Unequal Democracy*, p. 215. Bartels also reports a (non-representative) survey by Fortune magazine in 1935, in which over half of respondents said that there should be no limits on inheritance.

¹⁷ O'Neill, 'Death and taxes', p. 71.

increase the likelihood of favouring abolition by around 10%, but a majority would oppose estate tax even in the absence of this empirical misconception.¹⁸ Moreover, as chapter 8 warned, we should be cautious about assuming that simply pointing out such empirical mistakes will be effective in shifting popular attitudes.

On the normative side, I noted that political theorists have convincingly demonstrated that there are fatal flaws in the most common arguments offered against IHT. The worry about ‘double taxation’ makes little sense, either in general or as a specific objection to inheritance tax. And, if we really care about desert, surely we should oppose unearned windfalls for those lucky to be born into wealthy families?¹⁹ What are the prospects of deploying these arguments to effect change in public opinion? On the basis of her in-depth interviews, Hochschild drew the pessimistic conclusion that ‘policymakers who seek revenues and support for government expenditures should not publicize inheritance taxes, even for the very wealthy.’²⁰ In other words, the best we can hope for is to keep IHT below the political radar; it would be politically naive for progressives to mobilize on this issue. In contrast, others have urged that supporters of IHT should actively try to win the public round. For example, O’Neill urges that ‘Only by making the progressive case for inheritance tax forcefully and in a principled way can social democrats hope to wrest this issue from the Conservatives.’²¹

The UK deliberative workshop mentioned earlier provides some evidence to help us adjudicate between these two perspectives. Workshop participants answered a survey gauging their attitudes towards IHT both at the start and end of the research. Between these two measurements participants were presented with empirical information about how the

¹⁸ Joel Slemrod, ‘The Role of Misconceptions in Support for Regressive Tax Reform’, *National Tax Journal*, 59 (2006), pp. 57-75, at p. 69.

¹⁹ However, one interesting feature of public attitudes is that people often think about IHT as, in an important way, being imposed on the donor. This accounts for Lewis and White’s finding that people see a more natural connection between inheritance tax and spending on social care for the elderly, rather than on the child trust fund, or early years support. See Lewis and White, ‘Inheritance tax’, p. 32.

²⁰ Hochschild, *What’s Fair?*, p. 280. Cited in Bartels, *Unequal Democracy*, p. 215.

²¹ O’Neill, ‘Death and taxes’, p. 62.

inheritance tax system works, as well as normative arguments on both sides. What does this exercise suggest about the kinds of arguments, if any, that are effective in changing people's views? First, Lewis and White do report a small shift towards more favourable attitudes towards IHT. However, the difference came from an increase in the numbers saying a straightforward 'yes' to IHT and a decrease in those saying it 'depends on the estate' and 'don't know', rather than any decrease in outright opposition.²² Secondly, they note that pointing out to people who mentioned desert as a reason for opposing IHT that this should instead imply support had little impact.

Are there any promising strategies for reshaping popular attitudes towards IHT in a progressive direction? Rather than seeking to change the attitudes themselves, the most effective approach seems to be to put this issue in the context of wider tax and spending decisions. In other words, supporters of IHT are likely to be more successful if they frame the case for IHT as a case *against* increasing other forms of taxation or cutting spending. This strategy is reinforced by some broader evidence suggesting that 'con' arguments tend to be politically more persuasive than 'pro' arguments.²³ Moreover, put in the context of wider tax and spending decisions, some of the moral arguments that are relatively ineffectual in isolation might also start to get a grip. As Lewis and White note, 'Someone might start off viewing IHT, considered in the abstract and in isolation, as unfair. But when they then consider what might replace it, or what spending might cut to pay for its abolition, they might see abolition of IHT as also risking unfairness, and so might come round in favour of IHT on this basis.'²⁴

²² A plausible interpretation of this data is that it was not possible to change the views of clear opponents of inheritance tax, but that those who were initially uncertain were susceptible to influence by progressive arguments. However, we cannot conclude this firmly from the data, since we cannot match up individual responses - the similar distribution of final responses might mask significant churn.

²³ Michael D. Cobb and James H. Kuklinski, 'Changing Minds: Political Arguments and Political Persuasion', *American Journal of Political Science*, 41 (1997), pp. 88-121.

²⁴ Lewis and White, 'Inheritance tax', p. 28.

2.2. Two arguments from democracy: underlabourer not restraint

Part II considered whether there is a democratic case for political theorists to take account of evidence about public attitudes. If we care about democracy, shouldn't we also do political theory in a more democratic way, by developing theories that reflect the beliefs of our fellow citizens? This question was linked to the second 'displacement' form of realism, which sees something anti-democratic in the practice of political theory. Thus I asked whether giving public opinion a more central role in political theory can serve to relieve an alleged tension between theory and democracy.

Part II outlined and rejected a model of thinking about the role of public opinion in political theory that I termed democratic restraint: an approach on which the theorist modifies or restrains her normative theory in response to evidence about public opinion and thereby claims increased democratic legitimacy for her account. Such an approach, I argued, increases the political claims of normative theory in an unappealing way. Moreover, it rests, at a deeper level, on a problematic conception of the nature of democratic legitimacy. The democratic restraint model was contrasted with a more plausible democratic underlabourer account. On this second approach, we do not try to democratize our normative theories; rather political theorists seek to make a meaningful contribution to public political debate. The underlabourer account directs our attention towards a different kind of evidence about public opinion, concerning the public accessibility of normative argument rather than the substantive content of popular attitudes.

The issue of IHT provides an example of how political theorists can make good on this democratic underlabourer model. In particular, a number of theorists have written relatively accessible articles, using non-technical language, to address the morality and politics of IHT. Even more directly, political theorists acted as expert witnesses in the IPPR-led deliberative workshop discussed in the previous section. Whilst some participants disagreed strongly with

views advanced by the theorists, there is no suggestion that they were unable to understand or engage with their arguments. In part II, I suggested that political theory is likely to do better in terms of public accessibility when it presents itself at the fairly concrete level at which people typically engage with political issues. The IHT case seems to bear this out.

Part II also considered what my critique of the democratic restraint model implies for the wider question of the contribution of opinion research to democracy. I emphasized that, given the claim that democratic legitimacy is a matter of honouring people's decisions and not merely tracking their preferences, opinion research must meet a number of conditions if it is potentially to serve a democratic purpose. Specifically, it must be connected with wider decision-making processes; these connections must be transparent to participants who in turn intend their contributions to influence further decision-making; and the terms of the research must reflect the form in which actual decisions will be made. Given these conditions, to bring IHT policy closer to the findings of public opinion research would not necessarily be to make policy more democratic. This is not simply the point that asking people about IHT in isolation, as many studies do, does not accurately capture their overall policy preferences when other factors are taken into account. Most studies of public opinion, including in the area of IHT, do not tend to meet the conditions outlined above. Thus they offer, at most, the possibility of better tracking people's preferences. They cannot capture the real value of democratic legitimacy, which is to honour people's decisions.

2.3. Selected forms of public opinion as an epistemic resource

Public attitudes towards IHT exhibit many of the troubling features that might lead us to conclude that popular beliefs hold little or no epistemic value for normative political theory. There is a disconnect between many people's views on this policy issue and the more general principles they endorse, which suggests that they have not thought deeply about the values at stake in the issue of IHT. Moreover, public attitudes seem to be bound up with significant

empirical misconceptions about the nature and reach of current taxation regimes. More positively, it seems that public attitudes towards IHT cannot be straightforwardly dismissed as involving a rationalization of self-interest. As discussed earlier, many people oppose IHT despite being likely net beneficiaries. However, even on this point, a closer look at the evidence suggests a more pessimistic assessment. In particular, Bartels identifies people's assessment of their *own* tax burden as the best predictor of patterns of support for estate tax repeal. In contrast, more relevant views about whether the rich pay too much or too little tax have no discernible effect. In other words, *perceived* self-interest might be at work in shaping attitudes towards IHT, but for many citizens it is a deeply misconceived sense of their own interests.

Should we then conclude that public attitudes are, from an epistemic perspective, of no interest to the political theorist who is interested in the rights and wrongs of IHT? In chapter 3, I defended two ways of engaging with public opinion from an epistemic perspective. First, there is value in seeking public responses to carefully constructed hypothetical cases, as an input into the considered judgements side of a process of reflective equilibrium. This method could usefully be applied to the issue of IHT. It is very difficult for a political theorist who has thought at length about the nature and value of equality of opportunity to form judgements about concrete cases of intergenerational wealth transfers that are not simply inferences from their favoured general principle. Thus from the perspective of the process of reflective equilibrium, the apparent disconnect between public attitudes towards IHT and more general values can be viewed more positively. Moreover, by constructing a range of concrete cases, with different contexts, focus and language, we might better understand the bases and parameters of public opposition to the taxation of inherited wealth. For example, do people's responses differ when cases are focussed on potential recipients versus potential donors? Is there any effect from the way in which wealth has been accumulated? The argument of

chapter 3 suggests that these are questions that are best explored through presenting people with carefully constructed examples, rather than seeking opinions in the abstract.

I emphasized in chapter 3 that political theorists should not simply defer to public opinion, since neither concrete judgements nor principles are sovereign within the process of reflective equilibrium. Thus the claim here is not that the political theorist would have to give up her support for IHT, even in the face of evidence of consistent contrary public judgements. However, I did suggest that, once we recognize the priority of popular concrete judgements, if the political theorist is *never* prepared to give ground, this reveals something about her method. Specifically, she faces the suspicion that she is not, in fact, engaged in reflective equilibrium at all – in the sense that concrete pre-principle judgements do not, for her, play any justificatory role.

The second way of engaging with public opinion defended in chapter 3 was a much more open process, in which we investigate people's lived experiences and explore how they talk about political issues in their own language. In particular, I suggested that qualitative research can help to set important normative research agendas, by revealing how values cluster and conflict in the real world. A variety of approaches of this broadly bottom-up variety could productively be applied to the area of IHT. For example, we might undertake in-depth qualitative interviews with a range of families, to explore in a more open-ended way how they think about and frame the issue of intergenerational wealth transfers. Perhaps exploring in greater depth why many people seem to think that passing on wealth is an important expression of parental love that should be protected might reveal something of interest to debates in contemporary political theory about the meaning of family relationships? For example, it would be interesting to investigate whether thinking about wealth transfers as central to the meaning of family relationships is related to other more desirable attitudes towards family life and parenting practices.

2.4. Response-dependence and the structure of public opinion

Part III explored the idea that public opinion goes all the way down in political theory: that political theorists are engaged in an essentially interpretive exercise whose parameters are set by popular views. Part III focussed, in particular, on the idea that public attitudes partly constitute the demands of justice. I argued that this view, if it is to be distinct from the epistemic argument, is best understood as involving an idealizing response-dependent account of moral value. The major challenge for such an account is to show how a theory of justice can both be determined by public attitudes and retain a critical role in relation to existing beliefs and practices. The most promising way of negotiating this path is David Miller's suggestion that the role of the political theorist is to render popular attitudes consistent and coherent, in particular by uncovering the deeper normative principles that structure public views. However, part III highlighted a problematic empirical assumption in Miller's approach: the view that 'real' public opinion is consistently located at the level of people's more general or principled normative positions.

Again, a closer look at the evidence on IHT illustrates this argument. As discussed above, studies of US public opinion have consistently revealed hostility towards estate tax, with opposition spread across the social and economic spectrum. Yet, at the same time, most Americans strongly espouse the value of equality of opportunity. For example, on average nearly 90% of respondents to the National Election Studies between 1984 and 2004 agreed that 'Our society should do whatever it can to ensure that everyone has an equal opportunity to succeed.' This is a very strong claim about the extent to which equality of opportunity should be pursued; a stance that seems at odds with widespread opposition to the taxation of inherited wealth.²⁵ Interestingly, opposition to IHT does not seem to be impacted by

²⁵ Of course, there are limits to what we can conclude on the basis of a single survey item. For example, the results might be shaped by the mention of 'society' rather than 'government', especially in the US context. Moreover, it could be that people mean something rather weak by equality of opportunity,

perceptions of government waste. Thus the apparent mismatch between values and policy judgements cannot simply be explained away by these intervening empirical beliefs. Moreover, there is a tendency to oppose IHT even among those who think that the rich pay too little federal income tax, believe that inequality has increased *and* see this as a bad thing.²⁶ It seems then that many Americans simply fail to understand or to recognize the policy implications of their *own* deeper values. According to the model suggested by Miller, we might correct this error in public attitudes, whilst remaining true to public opinion at a deeper level. In other words, there is a sense in which many Americans should or would support estate tax, if they properly understood the significance of their own value commitments. Thus the political theorist can advocate for inheritance tax from *within* the terms of public opinion.

However, part III emphasized the difficulty of making such counterfactual claims about what people *would* think if they were to connect their policy judgements more effectively to their deeper values. In so doing, we assume a particular picture of the structure of public attitudes, in which people are more firmly committed to the general principles they espouse than to their more concrete judgements. Against this, in some cases there simply seems to be no answer as to which of principles and judgements is psychologically more basic. In other instances, there is evidence that it is the more specific judgements that are more robustly held. Indeed, there is some interesting evidence about attitudes towards IHT that is plausibly interpreted according to the latter model. White describes how people often begin a critique of IHT by claiming that it undermines the value of desert, because it takes money away from people who have worked hard for it all their lives. Yet when this desert claim is challenged, by pointing out that inheritances represent an unearned windfall from the relevant point of view of the recipient, people do not seem to reconsider, or even to question their position. Instead,

such as non-discrimination. However, it seems more likely that many people have at least a moderate view of equality of opportunity, involving individuals having equal chances to develop their skills and abilities – which would favour IHT.

²⁶ Bartels, 'Unequal Democracy', p. 200.

they immediately seek some other grounds for their opposition to IHT, for example by shifting from individuals to families as the deserving entity: 'Confronted with this argument, participants in effect replied that it is the family rather than the individual that is the relevant unit of reward when it comes to wealth. Hence, wealth should be permitted to stay within families as they have worked to deserve it.'²⁷

Here, then, we have another example of a case in which a normative principle that is commonly invoked to justify a policy judgement appears not to explain why people really make that judgement. Chapter 8 suggested that we should be similarly cautious about invoking empirical or quasi-empirical beliefs, such as views about government competence, as *the basis* for people's moral judgments. Lewis and White suggest that distrust in government is among the factors that are 'especially prevalent and influential in *shaping* people's judgements.'²⁸ No doubt claims that government is incompetent or wasteful are prominent when people are asked to account for their opposition to inheritance tax. However, as discussed in part III, we should not move too quickly from this observation to the assumption that these are the real bases for people's beliefs, as opposed to post-hoc rationalisations of a position to which they are already committed.

Further evidence is needed about the structure of public attitudes in this area. However, there is at least some reason to think that popular opposition to inheritance tax might be more basic than any more general normative principle, as well as relatively insensitive to apparently central empirical beliefs about government competence. Such a picture reinforces a major argument of part III: that the idea of basing political theory on the general principles that structure popular attitudes is empirically problematic and therefore cannot provide the response-dependent account with what it needs: a plausible way of idealizing away from

²⁷ Lewis and White, 'Inheritance tax', p. 27.

²⁸ Ibid, p. 22. Emphasis added.

actual attitudes that is consistent with the view that the attitudes determine the moral facts and not vice versa.

3. Summary

This thesis has both negative and positive messages about the contribution of public opinion research to normative political theory. Negatively, I have rejected two ways of seeking to justify a role for public opinion in political theory: through the democratic restraint model and on the basis of a response-dependent account of the status of public attitudes. I also argued that there is no straightforward or generalized feasibility case for engaging with evidence about public opinion. In addition to getting clearer about *why* we should, and should not, care about public attitudes, the thesis noted that political theorists face some difficult methodological questions concerning *how* we effectively integrate normative theory with the study of public attitudes. The most pressing aspect of this problem centres on the mismatch between the framing of debate in political theory and the terms in which people typically formulate their political views. How can we effectively engage public opinion on the unfamiliar terrain of normative political theory?

I have criticized two characteristic patterns in the way in which political theorists approach public opinion. First, since much of political theory is dedicated to the search for general theories or principles, there is a natural tendency to approach public opinion in a similar way: by looking for the general principles that structure public attitudes. Chapter 3 emphasized the methodological difficulties in pursuing this project and chapter 8 suggested that a hierarchical view of the structure of public opinion undermines Miller's treatment of public attitudes. Secondly, there is a tendency for political theorists to focus on the relationship between the substantive content of public opinion and the content of political theory. I rejected the search for greater congruence between the substantive content of political theory and the content of public attitudes in two places. First, it is a misconceived response to the value of democratic

legitimacy. Secondly, the focus on the substantive content of public attitudes leads to an unhelpful neglect of crucial issues of framing in relation to issues of political feasibility.

More positively, the thesis has sought to show that there are some good reasons for political theorists to take an interest in what the wider public think. At least two forms of evidence about public opinion are valuable from an epistemic perspective: first, public responses to hypothetical thought experiments represent an important input into the considered judgements side of the process of reflective equilibrium; secondly, political theorists can usefully employ qualitative evidence that reveals the details of people's views and experiences. Moreover, these approaches mitigate some of the methodological problems that have confronted efforts to integrate political theory and public opinion. Secondly, although the feasibility case is difficult to put into practice, it is theoretically coherent and has some empirical backing. I also suggested that we can make progress in areas in which debates about feasibility centre on specific behavioural predictions that are amenable to testing through natural or constructed experiments. Thirdly, there is a democratic role for a different kind of evidence about public attitudes on the underlabourer model – specifically evidence about the public accessibility of political theory.

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