

DEMOCRATISING PUBLIC REASON

HENRIK D. KUGELBERG
ST ANTONY'S COLLEGE
UNIVERSITY OF OXFORD



February 2021
86 500 words

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

ABSTRACT

This thesis is about the relationship between liberalism and democracy. It argues that so-called public reason liberalism, a view of legitimacy that says that citizens must have sufficient reason to accept the laws that bind them, does not pay enough attention to democratic values. It then shows what public reason must look like to uphold the values of both liberalism and democracy.

The first part of the thesis is devoted to the critical argument. It argues that the value of civic equality, the idea that citizens are and should be fundamentally equal before the state, can explain why we should care about both liberalism and democracy. The idea is formalised as a principle of liberal collective self-legislation that says that citizens must be able to democratically choose to enact laws and policies that do not violate civic equality. Prominent versions of public reason liberalism fail to satisfy the principle – either because they do not leave enough room for democratic decision-making, or because they have not provided answers to known problems from social choice theory.

The second part of the thesis develops and defends a democratic form of public reason, built on the ideal of civic equality. To respect the civic equality of all, laws must be justified with reasons that are accessible to each citizen in light of evaluative standards that they themselves hold. This view leaves sufficient room for democratic decision-making and it can provide a previously unexplored escape route to the social choice problems. For this argument to work, individual citizens must offer one another public reasons in their political advocacy. The thesis ends by showing that such public-reason-giving requirements should be assigned asymmetrically in debates over invasive laws.

ACKNOWLEDGEMENTS

I could not possibly list all the things that I am grateful to David Miller and Zosia Stemplowska for. Suffice it so say that I cannot imagine better supervisors.

Many people have read and commented on parts of the thesis, others have generously spent much time discussing ideas from it with me. In particular, I am grateful to Jesper Ahlin Marceta, David Axelsen, Mitsy Barriga Ramos, Ludvig Beckman, Love Bonnier, Markus Boström, Léa Bourguignon, Ian Carroll, Naima Chahboun, Niklas Dahlquist, Uvin Dissanayake, Katrina Forrester, Gerald Gaus, Gina Gustavsson, Petter Klockhoff, Brian Kogelmann, Sune Lægaard, Maxime Lepoutre, CM Lim, Christian List, Lars Moen, Anne Phillips, Enzo Rossi, Kai Spiekermann, Paul Strand, Collis Tahzib, Tony Taylor, Johan Tralau, David Tranberg, and Joel Zettergren. Paul Billingham's and Cécile Laborde's precise and encouraging questions and comments at my Transfer of Status interview helped shape the project, and Cécile and Stuart White gave me invaluable guidance at the Confirmation of Status interview. Paul provided vital comments on several of the main arguments at a late stage in the process. I have also received much support from David Leopold, Sophie Smith, and Jo Wolff.

A special thanks goes out to the supportive community of people working towards DPhils alongside me. Shai Agmon, Geertje Bol, Rebecca Buxton, Jan Eijking, Vafa Ghazavi, Rufaida Al Hashmi, Sarah Stein Lubrano, Jay Ruckelshaus, and Ho Yin Yuen have all read and commented on many chapters. Hallvard Sandven has read everything that I have written. His remarkable analytical skills have helped me out of many binds, and his wonderful friendship made my time in Oxford easy.

Articles based on thesis chapters have been published in *Critical Review of International Social and Political Philosophy*, *Economics & Philosophy*, *Journal of Social Philosophy*, and *Philosophia*. I am grateful for comments from anonymous reviewers for these journals. Material from the thesis was presented at four Oxford workshops and conferences: a panel discussion on Katrina

Forrester's *In the Shadow of Justice* at the Oxford Political Thought Seminar, the Themes from the Political Philosophy of Gerald Gaus Conference, The Nuffield Political Theory Workshop, and the Oxford Work in Progress Seminar in Political Theory. I also presented work at the Legal and Political Theory Working Group at the European University Institute, the Nordic network in Political Theory, The University of Amsterdam's Graduate Conference in Political Theory, and The Uppsala University Political Theory Seminar. Questions and comments from audiences at these venues were very valuable.

It would not have been possible to complete the project if not for the generous financial support I received from Gålostiftelsen, Karl Staaffs Fond, and the University of Oxford's Department of Government and International Relations.

To close this long list of gratitude, I want to give my deepest thanks to my family, Marcus, Niklas, Robert and Ulla 'Farmor' Dahlquist, Amelie and Ivar Kleman, Adèle Askelöf and Emma Callerström. Most of all, I am grateful to my wife, and fellow DPhil student, Elsa Kugelberg. Elsa has read and commented attentively, meticulously, and superbly on everything I have written. I am very lucky to live with such an extraordinary political theorist and, above all, such an extraordinary person. This thesis is for her.

CONTENTS

INTRODUCTION	I
PUBLIC REASON AND DEMOCRACY	III
A BRIEF OVERVIEW OF THE CENTRAL ARGUMENT	V
AIMS AND SCOPE	VIII
CHAPTER OUTLINE	IX
CONCLUSION	XII

PART ONE

CHAPTER 1:

LIBERALISM, DEMOCRACY, AND LIBERAL DEMOCRACY	1
1.1 THE BASICS OF PUBLIC REASON LIBERALISM	2
1.2 PRELIMINARY DEFINITIONS	5
1.3 THREE QUESTIONS.....	9
1.4 JUSTIFYING LIBERALISM AND DEMOCRACY	15
1.5 TWO CHALLENGES ANSWERED	23
1.6 CONCLUSION	29

CHAPTER 2:

POLITICAL LIBERALISM AND COLLECTIVE SELF-LEGISLATION	30
2.1 THE PRINCIPLE OF LIBERAL COLLECTIVE SELF-LEGISLATION	33
2.2 REASONABLENESS IN THE WELL-ORDERED SOCIETY	36
2.3 ENVIRONMENTAL PROTECTION AND NATURAL BEAUTY	40
2.4 THE MODERATE PERFECTIONISM TRILEMMA	43
2.5 RESTRICTING THE SCOPE OF PUBLIC REASON	48
2.6 TWO FORMS OF ARBITRARINESS	51
2.7 THE SPRINT RACE	59
2.8 CONCLUSION	63

CHAPTER 3:

JUSTIFICATORY LIBERALISM AND POLITICAL AUTONOMY	65
3.1 FOUR WAYS OF MAKING COLLECTIVE DECISIONS.....	67
3.2 THE PROBLEMS	76
3.3 OVERCOMING THE PROBLEMS.....	83
3.4. EPISTEMIC JUSTIFICATIONS FOR DEMOCRACY	88
3.5 CONCLUSION	91

PART TWO

CHAPTER 4:

THE CONVERGENCE ACCESSIBILITY STANDARD 94

4.1 REASONS IN PUBLIC JUSTIFICATION	97
4.2 ACCESIBLE TO ALL	100
4.3 MODERATE IDEALISATION	105
4.4 TOO MUCH OR NOT ENOUGH?	112
4.5 CONCLUSION	117

CHAPTER 5:

HOW MUCH PERFECTIONISM IS TOO MUCH PERFECTIONISM? 119

5.1 CIVIC EQUALITY AND CIVIC FRIENDSHIP	122
5.2 COMPETING DEMOCRATIC THEORIES	125
5.3 WHY NOT SHARED REASONS?	134
5.4 OF DRUG USERS AND FAMILY MEN	142
5.5 CAN LOCAL COMPARATIVE JUDGEMENTS JUSTIFY PERFECTIONISM?	151
5.6 CONCLUSION	156

CHAPTER 6:

THE SCOPE OF PUBLIC REASON REVISITED 157

6.1 COLLECTIVE SELF-LEGISLATION WITH THE BROAD VIEW	159
6.2 SINGLE-PEAKEDNESS IN THE BASIC STRUCTURE	164
6.3 WHAT ABOUT JUDGEMENT AGGREGATION?	167
6.4 ANSWERING THE LIBERTY AND DIVERSITY ARGUMENTS	170
6.5 CONCLUSION	178

CHAPTER 7:

ASYMMETRY AND RELIGIOUS CITIZENS 179

7.1 SYMMETRIC VIEWS OF PUBLIC REASON	181
7.2 THE ASYMMETRIC VIEW	184
7.3 BURQA BANS AS INVASIVE LAWS	192
7.4 COSTS OF SYMMETRIC VIEWS OF PUBLIC REASON	194
7.5 SOME FURTHER CONSIDERATIONS	199
7.6 CONCLUSION	207

CONCLUDING REMARKS 208

INTRODUCTION

Liberal democracies are polarised. People have different, and often mutually incompatible, conceptions of the good, conceptions of what is ‘valuable in human life’.¹ Disagreements are deep and extend to the political domain. This is confirmed throughout the social sciences. Moral psychologists suggest that conservatives and liberals have different ‘moral intuitions,’² political scientists explain the rise of populism with cultural change and divisions,³ and economists argue that globalisation divides societies culturally.⁴ Even though in many countries the number of religious people is decreasing, those who are religious ‘generally have stronger beliefs and more favourable views towards religious leaders influencing politics’ than twenty years ago.⁵ At the same time, non-religious people are developing ‘less favourable views towards public religion’.⁶

Even if every time has its own cleavages, the pervasiveness of disagreement itself seems to be an unchangeable empirical fact. Still, we expect citizens to live together, to share the same polity. We expect them to govern themselves. How should they do so? On which terms should politics be conducted, given that citizens do not share the same worldview? And, fundamentally, how ‘is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines?’⁷

¹ John Rawls. 1985. ‘Justice as fairness: Political not metaphysical,’ *Philosophy & public affairs* 14(3): 223–251, pp. 233–4.

² Jesse Graham, Jonathan Haidt, and Brian A. Nosek. 2009. ‘Liberals and conservatives rely on different sets of moral foundations,’ *Journal of personality and social psychology* 96(5): pp. 1029–1046.

³ E.g., Pippa Norris and Ronald Inglehart. 2019. *Cultural backlash: Trump, Brexit, and Authoritarian Populism*. Cambridge: Cambridge University Press.

⁴ Dani Rodrik. 2018. ‘Populism and the economics of globalization,’ *Journal of International Business Policy* 1(1–2): pp. 12–33.

⁵ Sarah Wilkins-Laflamme. 2016. ‘The remaining core: a fresh look at religiosity trends in Great Britain,’ *The British Journal of Sociology*, 67(4): 632–654, p. 632; for a discussion of similar trends in North America, see Thomas Robbins and Dick Anthony. 2016. *In Gods We Trust: New Patterns of Religious Pluralism in America*. 2nd ed. New York: Routledge.

⁶ Ibid.

⁷ John Rawls. 1993/2005. *Political Liberalism* (expanded edition). New York: Columbia University Press, p. xviii; see also Leni Franken. 2016. *Liberal Neutrality and State Support for Religion*. Zürich: Springer, pp. 11–19.

Answering these questions has been the central ambition of liberal political theory.⁸ In doing so, one of the key issues is this: how can it be permissible to use state power to force citizens to act (or not to act) in ways that they otherwise would have preferred not to? How can the employment of state power be permissible when there is vehement disagreement about the rightness of the state's decisions?

Liberals argue that the employment of state power triggers a demand for legitimation.⁹ Political decisions must be justifiable to those who are subject to them. Publicly justified decisions are legitimate, that is, permissible to enforce. The central question of this thesis concerns what the conditions are that make political decisions publicly justified.

One suggestion would be to say that a publicly justified decision is one that promotes what morality demands of us.¹⁰ The problem with this view is that the starting point that led us to asking these questions in the first place was that people have very different views of morality, about what 'the good' consists in. And this disagreement is not necessarily because of obvious epistemic errors, self-interest, or bias. Given that disagreement is reasonable, how do we know which conception of morality that could legitimise forcing citizens to act in ways that they otherwise would not have?¹¹

Instead of appealing to a substantive conception of morality, many contemporary liberals therefore take a step back. Their aim is to try to determine what we should do given that we

⁸ Jonathan Quong. 2011. *Liberalism Without Perfection*. Oxford: Oxford University Press, p 37; John Rawls. 1987. 'The idea of an overlapping consensus,' *Oxford Journal of Legal Studies* 7(1): 1–25, pp. 4, 13; *Political Liberalism*, pp. 53–8; William Galston. 1982. 'Moral personality and liberal theory: John Rawls's Dewey Lectures,' *Political Theory* 10(4): 492–519.

⁹ A similar idea can be found in Bernard Williams so-called 'realist' political theory, 'A coerces B and claims that B would be wrong to fight back: resents it, forbids it, rallies others to oppose it as wrong... A claims that his actions transcend the conditions of warfare, and this gives rise to a demand of justification of what A does'. Bernard Williams. 2005. *In the Beginning Was the Deed: Realism and Moralism in Political Argument*, Geoffrey Hawthorn (ed.). Oxford: Princeton University Press, p. 6; see also Hans-Jörg Sigwart. 2013. 'The logic of legitimacy: Ethics in political realism,' *The Review of Politics* 75(3): 407–432; Cristina Voinea. 2015. 'A realist critique of moralism in politics: The autonomy of Bernard Williams's basic legitimation demand,' *Public Reason* 7 (1–2): 81–92. Even if I will try to issue 'realistic' recommendations, I will not engage with realist political theory in what follows.

¹⁰ See e.g., Richard J. Arneson. 2004. 'Democracy is not intrinsically just', in Keith Dowding, Robert E Goodin, and Carole Pateman (eds.), *Justice and Democracy: Essays for Brian Barry*. Cambridge: Cambridge University Press.

¹¹ Gina Schouten. 2019. *Liberalism, Neutrality, and the Gendered Division of Labor*. Oxford: Oxford University Press, pp. 8–9.

inescapably disagree about what should be done. In this way, the question of public justification is second order, it is about establishing what the appropriate framework for politics is, given first-order disagreement about what the right course of action is.¹²

PUBLIC REASON AND DEMOCRACY

One answer to the question of resolving disagreements that naturally comes to mind is that we should vote about which course of action to take. The idea has consequently received much philosophical attention. Democratic theorists have tried to outline the procedural conditions that need to be met for the outcome of such a vote to be binding on all.

So-called public reason liberals¹³ argue that democratic procedures by themselves do not make for legitimate decisions. To be permissibly enforceable, a decision also needs to have the right sort of procedure-independent justification.

In a sense, public reason liberalism is a continuation of the social contract theories of centuries past.¹⁴ Just as their ancestors, public reason liberals try to find terms that all citizens have reason to endorse, by providing contractualist reasons for why they should accept the legitimate authority of the state and the particular exercises of the state's power. However, contemporary liberals have developed distinct answers to what these reasons are that departs from the earlier social contract tradition.

Public reason liberals can be grouped in two main camps based on their answer to what makes political decisions justified. One form, with its roots in John Rawls's *political liberalism*,

¹² Chad Van Schoelandt and Gerald Gaus. 2019. 'John Rawls's Political Liberalism,' in Kelly Becker and Iain Thomson (eds.), *The Cambridge History of Philosophy, 1945–2015*. Cambridge: Cambridge University Press.

¹³ This tradition is filled with terminological disagreement. I take public reason liberalism to refer to a broad family of views with the public justification principle as their basis. Others refer to the broad family as political liberalism. On my account, political liberalism is a subset of views that belong to the broad family. I say more about this in chapter 1. Gerald Gaus. 2015. 'Public reason liberalism,' in Steven Wall (ed.), *The Cambridge Companion to Liberalism*, Cambridge: Cambridge University Press.

¹⁴ Enzo Rossi. 2019. 'The twilight of the liberal social contract? On the reception of Rawlsian Political Liberalism,' in Kelly Becker and Iain Thomson (eds.), *The Cambridge History of Philosophy, 1945–2015*. Cambridge: Cambridge University Press.

demands that political decisions be justified with reasons that all citizens can, in some sense, understand or accept. These reasons are public reasons. On this view, citizens can disagree about the rightness of a law but still accept that it is *publicly justified* if the reasons given for the law are of the right kind.¹⁵ The main alternative to political liberalism is what I will call justificatory liberalism, associated with people such as Gerald Gaus and Kevin Vallier.¹⁶ Here, the central idea is that all citizens need to have reason to accept each piece of coercive legislation. Laws can be justified with reasons that are not shared or accessible to all. Determining whether a law is publicly justified or not does not turn on the reasons given for it. Instead, a publicly justified law is one that all citizens can, in some sense, agree to the rightness of.¹⁷

In this thesis, I argue that public reason liberals of both strands have failed to pay appropriate attention to democratic ideals. This is regrettable since the theories centrally concern the justification of state power in liberal democracies. I argue, moreover, that democratic theorists have failed to recognise that requirements that laws be procedure-independently justified in the right way follows from commitments that they typically already share.

In short, the thesis brings together and synthesises democratic and public reason liberal thought. It argues that the democratic ideal of treating all citizens as civic equals entails that laws must be given a sound procedure-independent justification to those who are subject to it.

¹⁵ Some recent examples include Blain Neufeld. 2019. 'Shared intentions, public reason, and political autonomy,' *Canadian Journal of Philosophy* 49(6): 776–804; Schouten, *Liberalism, Neutrality, and the Gendered Division of Labor*; Quong, *Liberalism Without Perfection*; Lori Watson and Christie Hartley. 2018. *Equal Citizenship and Public Reason: A Feminist Political Liberalism*. Oxford: Oxford University Press; Paul Weithman. 2017. 'Autonomy and disagreement about justice in political liberalism,' *Ethics* 128(1): 95–122.

¹⁶ Gerald Gaus and Kevin Vallier. 2009. 'The roles of religious conviction in a publicly justified polity: The implications of convergence, asymmetry and political institutions,' *Philosophy & Social Criticism* 35 (1–2): 51–76. Some other recent accounts are Paul Billingham. 2016. 'Convergence justifications within political liberalism: A defence,' *Res Publica* 22(2): 135–153; Brian Kogelmann and Stephen G. W. Stich. 2016. 'When public reason fails us: Convergence discourse as blood oath,' *American Political Science Review*, 110(4), 717–730.

¹⁷ There are many different labels for these two views. In this thesis, I take political liberalism and *consensus* public reason to refer to the same, broadly Rawlsian, view, and justificatory liberalism and *convergence* public reason liberalism to refer to the broadly Gaussian model of public reason. For consistency, I try to avoid the language of consensus and convergence as much as possible. I say more about this in chapter 1 and chapter 3.

Contra public reason liberals, however, I argue that the threshold for what counts as a sound justification cannot drastically limit the citizenry's power to make collective decisions. The procedure-independent justification cannot threaten democratic values.

Throughout the thesis, I make several important contributions. I map out different ways of understanding the relationship between liberalism and democracy and provide a principled basis for how to balance the values of both frameworks (chapter 1). I demonstrate how the main theories of political liberalism fail to ensure that citizens can democratically decide what to do, even when what they want to decide to do does not violate liberal rights and commitments (chapter 2). I then argue that justificatory liberals fail to respect other important democratic ideals such as political autonomy (chapter 3). I develop and defend a new standard for what satisfies the procedure-independent public justification requirements (chapter 4) and outline how the standard accommodates agreement and disagreement over 'the good' in politics (chapter 5). I show how my proposed standard ensures justifiability while doing a better job than its competitors of respecting democratic ideals. This argument turns on a novel, instrumental, defence of why individual citizens should offer one another public reasons in their political advocacy (chapter 6). Since such requirements are costly for individual citizens, I end by considering a previously unexplored way of alleviating some of these costs (chapter 7).

A BRIEF OVERVIEW OF THE CENTRAL ARGUMENT

It is important to emphasise that my argument is not that public reason liberalism has failed to give any attention to democratic thought. On the contrary, the ideal of public reason is often closely tied to the ideal of deliberative democracy.¹⁸ Even among the public reason liberals who do not share a commitment to deliberative democracy, it is commonly accepted that political

¹⁸ James Boettcher. 2019. 'Deliberative democracy, diversity, and restraint,' *Res Publica* 26: 215–235.

decisions need to be democratically made. Public reason liberals are typically committed to combining public justification with realising a valuable form of democracy.

The argument of this thesis is, rather, that public reason liberals have failed to do so successfully. The critical argument is therefore an internal critique of public reason liberalism, especially Rawlsian political liberalism. Rawls explicitly wants his theory to be able to realise the values of both liberalism and democracy. I argue that it cannot do so. Rawlsian versions of public reason liberalism fail to ensure that citizens can democratically decide what to do. Political systems with this failing do not assign the appropriate weight to democracy. This is a significant weakness because it makes public reason liberalism less appealing to democrats, and many standard features of a democracy less appealing to public reason liberals.

There are further upshots. A good theory of legitimacy can explain when the use of state power in the real world is legitimate. My analysis shows that public reason liberalism will diagnose many of the core features of how liberal societies are organised as illegitimate, despite the aspiration to be a theory for liberal democracies. However, this diagnosis is undermotivated. The task of bringing public reason liberalism and democracy together is therefore essential if we want theories of public reason that can be readily applied in our own liberal democracies.

In responding to these challenges, I develop a version of public reason liberalism with the democratic ideal of civic equality as its foundation. I argue that civic equality grounds a requirement for public officials to justify their political decisions with public reasons. The implication of this is that those who are committed to the promotion of the democratic ideal should also be in favour of public reason requirements of the sort that I defend.

Drawing on Cécile Laborde's work, I develop and defend a novel standard for what counts as a public reason: the *convergence accessibility* standard. Public reasons are those that are convergence accessible to all moderately idealised real-world citizens. Moderate idealisation refers to the way the individuals to whom the reasons need to be accessible to are modelled. I

argue that we should take citizens more or less as they are, but we should imagine that they do not make faulty inferences or hold moral views that deny the equal moral status of other human beings. Convergence accessibility concerns what it takes for these moderately idealised citizens to see the reason as normatively relevant in the right kind of way. The convergence accessibility standard develops and expands the traditional accessibility standard. On the traditional accessibility standard, a reason is public if it can be evaluated with evaluative standards (the frameworks we use for engaging with and assessing a reason) that all citizens share. Convergence accessibility allows that a reason might be accessible either in light of shared evaluative standards or in light of each citizen's private standards.

The consequence of this is that the set of public reasons is context dependent. In most societies, the standard would exclude reasons that presuppose the truth of religions and other comprehensive worldviews. However, it allows judgements about what a good life consists in if and when such judgements are convergence accessible to all. This has important implications for the debate over perfectionism, over which judgements based on 'the good' rather than justice or 'the right' that are permissible in politics. I argue that when laws are justified with convergence accessible reasons, the justification treats citizens as civic equals, regardless of whether the reasons are best characterised as being about 'the right' or the 'the good'.

The public reason standard applies primarily to public officials. However, I argue that there are instrumental reasons for why individual citizens, too, should give public reasons in their political advocacy. Public reason giving among individual citizens can ensure that both democratic and liberal ideals are more readily met. Nevertheless, the duty is defeasible – when citizens oppose laws that would impose certain kinds of burdens on them, they are under no obligation to give public reasons. In these cases, the costs of public reason outweigh the benefits.

The public reason theory developed in this thesis has significant advantages over its main competitors. It ensures that citizens can democratically decide what to do while making sure

that political decisions respect citizens' status as civic equals. It accommodates the views of religious citizens while ensuring that legislation grounded entirely on controversial views remains impermissible. And it outlines how public reason requirements should be institutionalised in liberal democracies. Traditional views of public reason have neglected this. I argue that this has left them unable to ensure that citizens can exercise important democratic powers.

AIMS AND SCOPE

Let me say a few things about what I do not aim to do in the thesis. Most importantly, I do not offer a comprehensive survey or overview of all the different versions and varieties of public reason liberalism. The literature is vast, and by no means can I do justice to all the different aspects and arguments.

I say even less about views about legitimacy that are not typically described as public reason liberal. And I do not provide a full theory of legitimacy, even if it in principle should be possible to construct one based on what I say in this thesis. Finally, I do not survey empirical evidence about which reasons that are convergence accessible in actual liberal democracies. These are important avenues for further research.

The thesis, instead, aims to fill three lacunas in the literature on public justification and democracy. First, in showing how standard views of public reason liberalism have failed to give appropriate attention to fundamentals of democratic decision-making, I uncover weaknesses that until now have remained unknown. These are important since public reason liberalisms are meant to be theories of legitimacy for democratic societies.

The second problem follows from the first. We need a public reason liberalism that is sensitive to these concerns. I show that it is possible to give the values embodied in both liberalism and democracy their due. The public reason standard I develop and defend can

operate in real-world societies and it can meet several challenges previously levelled against public reason liberalism. In doing this, I also show that many democratic theorists have been wrong to not demand public justification requirements.

Finally, I begin addressing the question of how public reason requirements should be institutionalised. Even if I cannot provide a full institutional theory, I establish that any form of institutionalised public reason view must be sensitive to the democratic values in the context of which it operates.

As should be evident, there are many different arguments in this thesis. Consequently, it might be helpful with a more detailed outline of the different chapters, arguments, and parts, and how they relate to each other. I will provide this next.

CHAPTER OUTLINE

In chapter 1, I give an overview of the main features of public reason liberalism. I outline different ways of conceptualising the relationship between liberalism and democracy based on answers to three questions: the source, dependence, and priority questions. The source question asks why we value either or both of liberalism and democracy, the dependence question asks about whether the systems are independently valuable or instrumentally valuable for realising each other, and the priority question asks about whether we should prioritise liberalism over democracy or vice versa when the ideals of the two conflict. I then suggest that the widely accepted democratic ideal of civic equality can be a plausible answer to the source question. On this picture, the values of liberalism and democracy are co-original, they are instrumentally necessary for realising each other, and when they conflict, we should prioritise the lesser violation of civic equality – the master value that justifies both. The chapter ends by demonstrating how this gives us the resources to answer two challenges commonly put to public reason liberalism: that the framework unduly prioritises liberalism over democracy and,

the other way around, that it unduly prioritises democracy over liberal justice. I conclude that a fair balance between liberalism and democracy must give due weight to the democratic ideal of collective self-legislation but that the limits of collective self-legislation are set by civic equality, the ideal that justifies democracy in the first place. Consequently, I endorse a principle of *liberal* collective self-legislation that demands that citizens must be able to enact laws and policies that do not violate civic equality.

In chapter 2, I examine whether the principle of liberal collective self-legislation would regularly be satisfied in societies governed by the two most prominent versions of political liberalism – John Rawls’s and Jonathan Quong’s. I argue that Quong’s account fails to ensure the principle’s satisfaction because his strict reading of what counts as a public reason, paired with his broad understanding of public reason’s scope, makes it the case that citizens often will be unable to choose to enact laws and policies, even when they do not violate civic equality. Seemingly uncontroversial exercises of democratic power, such as democratically deciding to protect a forest to preserve its natural beauty is on Quong’s view impermissible. Drawing on canonical results from social choice theory, I then argue that Rawls’s version of political liberalism also fails to guarantee that the principle of liberal collective self-legislation is met. Rawls’s public reason proceduralism, where laws are publicly justified if the decision procedure that selects them is justified, cannot guarantee that laws are not arbitrarily chosen.¹⁹ This precludes them being chosen by the citizenry.

I argue in chapter 3 that Gerald Gaus’s justificatory liberalism has unexplored democratic and liberal deficits: it prevents citizens from exercising their ‘political autonomy,’ it erodes the expressive quality of law, and it fails to ensure justification *to* citizens. I then show that many versions of political liberalism are susceptible to the same problems. However, political liberalism can be modified to be salvaged, while justificatory liberalism cannot without inevitably opening

¹⁹ I make a version of this latter argument in Henrik D. Kugelberg. In press. ‘Social choice problems with public reason proceduralism,’ *Economics & Philosophy*. The article also draws on chapter 6.

the door to an objectionable form of perfectionism. I conclude that we should institutionalise the requirements of public reason in a way that guarantees majority agreement on the justificatory reasons for political decisions, and that this, in turn, implies that we must give up on justificatory liberalism. A democratic public reason liberalism should be a version of political liberalism.

In response to the problems of chapter 2 and 3, I begin developing a positive account of political liberalism in chapter 4. Inspired by Cécile Laborde's recent argument about public reason as a thin epistemic filter, I outline a standard for delineating the set of public reasons. I argue that reasons are public if and when they are convergence accessible, that is, justified in light of all moderately idealised citizens shared or private evaluative standards.

In chapter 5, I defend the convergence accessibility standard and the choice of idealisation against a series of possible objections based on perfectionism. I argue that both weaker and stronger standards, standards that allow more or less perfectionism, fail to guarantee that all citizens are treated as civic equals.²⁰ I then suggest that the convergence accessibility standard can avoid the challenges put to Quong's theory in chapter 2, because it allows sufficiently diverse reasoning among public officials. The chapter ends by considering whether the common strategy of appealing to 'local comparative judgements', judgements about how some lives are comparatively better than others, can justify perfectionism.²¹

In chapter 6, I show how my account can answer the objections I raised against Rawls's public reason proceduralism in chapter 2. I argue that the account of public reason developed in this thesis, paired with a broad view of public reason's scope, can guarantee that laws are not arbitrarily chosen. My account would succeed in satisfying the principle of liberal collective self-legislation where Rawls's view fails. Public reasoning beyond the basic structure of society

²⁰ I draw on chapters 1, 4, and 5 in Henrik D. Kugelberg. In press. 'Civic equality as a democratic basis for public reason,' *Critical Review of International Social and Political Philosophy*.

²¹ I develop this argument in Henrik D. Kugelberg. In press. 'Can local comparative judgements justify moderate perfectionism?' *Philosophia*.

among the whole citizenry can order people's preferences in a way that dissolves the social choice problems outlined in chapter 2. I argue that this is a sound instrumental reason for imposing public-reason-giving requirements on individual citizens. The chapter concludes by responding to worries that have previously been raised against such duties.

In chapter 7,²² I argue that the duty to give public reasons is defeasible. Specifically, there is a class of cases where the requirement to give public reasons should not apply to participants in public debates even if they are in the circumstances that normally would trigger such duties. A person opposing what I will call an 'invasive law' is under no obligation to give public reasons. A proponent of the law is. To explicate the benefits of this asymmetric view of public reason, I apply it to the European public debates on banning Muslim face-veils in public. On the traditional views of public reason, niqab wearers who are only prepared to give religious reasons to defend their practice would be excluded from the public political forum. Their views would not be taken seriously by others. I conclude that this asymmetry does not extend to public officials – in these cases the value of protecting civic equality overrides these other considerations.

CONCLUSION

The insights of public reason liberalism are important. We need a theory of legitimacy that recognises the deep disagreement that exists between citizens in contemporary societies. This thesis takes this starting point seriously and combines it with fundamental ideals of democratic thought.

In the first chapter, this work begins. I give a brief overview of the central ideas of public reason liberalism and democratic theory and outline different ways of conceptualising the

²² See also Henrik D. Kugelberg. 2021. 'Opposing Laws with Religious Reasons,' *Journal of Social Philosophy* 52(1): 131–151.

relationship between these two systems of thought. I conclude that the appropriate balance lies in a principle of liberal collective self-legislation, that states that citizens should be able to democratically enact laws that do not violate civic equality.

Part one

CHAPTER 1:

LIBERALISM, DEMOCRACY, AND LIBERAL DEMOCRACY

The state exercises considerable power over its citizens. It has been a primary concern for liberal and democratic theorists alike to work out the conditions that make it the case that the employment of this power is legitimate. Liberals typically hold that there are substantive constraints – ‘liberal rights’ – that the state can never permissibly violate. And the power of the state must, in some sense, be justifiable to those subject to it. Democratic theorists emphasise that when a decision is collectively made in the right kind of way – in accordance with the right procedure – it is permissible to enforce it.

Many views of legitimacy aim to uphold the values of both liberalism and democracy. Any theory that attempts to do so must answer what I in this chapter will call the source, dependence, and priority questions. If not, it is impossible to understand the relationship between the values, and to determine the legitimate scope of state action.

The source question concerns which values that justify liberalism or democracy, the dependence question asks whether one is instrumentally necessary for realising the other, and the answer to the priority question specifies how we should balance considerations when values from the two systems conflict.

In this chapter, I survey prominent answers to the three questions. I then propose that ‘civic equality’ can successfully justify both liberalism and democracy, that both are instrumentally necessary for realising each other, and that the answer to the priority question supervenes on these answers to the source and dependence questions. Equipped with this view about the relationship between liberalism and democracy, I respond to powerful challenges that have previously been levelled against public reason liberalism. I formalise my findings as a principle of liberal collective self-legislation. The principle is fulfilled when citizens can democratically choose to enact laws and policies that do not violate civic equality.

The chapter will be structured as follows. I begin by giving a brief overview of the central ideas of public reason liberalism (section 1.1). Then, I explain how I define liberalism and democracy (section 1.2) and draw a conceptual map of the possible ways of understanding the relationship between the two systems of thought (section 1.3). After this, I argue that civic equality can justify both liberalism and democracy (section 1.4). I show how this provides resources to respond to important objections that have previously been raised against the place of democracy in public reason liberal thought. I conclude by summarising my findings as a principle of liberal collective self-legislation (section 1.5).

1.1 THE BASICS OF PUBLIC REASON LIBERALISM

The subject matter of this thesis largely concerns a family of contemporary political theories built around the importance of political power being justifiable to those subject to it. I will refer to this family as public reason liberalism. A staggering number of theories arguably belong to it, and I cannot do justice to all of them here.¹ For presentational purposes, I will in this section focus on two main versions of the view, the political liberalism of John Rawls, specifically as developed by Jonathan Quong, and the justificatory liberalism of Gerald Gaus. My aims, however, are not exegetical; I wish to reconstruct two ideal-type versions of public reason liberalism, not work out the precise details of each view.

A first premise of public reason liberalism is that people who reason freely about moral matters will reach different and incompatible conclusions.² The only way of avoiding this result, of establishing a shared religious or moral framework, is through coercively enforcing it via the state.³ This is because the fact that people reach different conclusions about moral matters is

¹ Regrettably, I am not even in a position to fully do justice to the views that I do discuss.

² Paul Billingham. 2016. 'Does political community require public reason? On Lister's defence of political liberalism,' *Politics, Philosophy & Economics* 15(1): 20–41, p. 22.

³ John Rawls. 1993/2005. *Political Liberalism* (expanded edition). New York: Columbia University Press, pp. 36–7; See also Jonathan Quong. 2011. *Liberalism Without Perfection*. Oxford: Oxford University Press, pp. 36–7.

not necessarily due to mistaken reasoning stemming from misguided self-interest or bias. According to Rawls, for instance, the free exercise of reason leads to disagreement because of the ‘burdens of judgement’, six different obstacles that stand in the way of human judgement when it is exercised freely. Specifically, they are things such as the conflicting and complex nature of scientific evidence, the vagueness of concepts, that our reasoning is being shaped by our life experiences, normative considerations that weigh heavily on different sides of an argument, the limits of social institutions, and disagreement about weightings.⁴

Public reason liberals try to establish how this reasonable pluralism should be accommodated. Their answer centrally involves citizens having sufficient reason to accept being bound by the laws that govern them.⁵ Kevin Vallier has formalised this as the public justification principle, according to which a ‘coercive law L is justified only if each member of the public has some sufficient reasons(s) R, to endorse L.’⁶

For Rawlsian political liberals, having sufficient reason is conditional on the law being justified with public reasons. Public reasons, in this theory, are reasons based on the political values of fairness, freedom, and equality. The thought is that when political institutions and principles are justified with reasons based on these values, they are justified with ideas ‘that each person who is bound by them could reasonably endorse.’⁷ The values are given special importance in the Rawlsian framework because they are ‘very great values and hence not easily overridden,’⁸ and because citizens with different views of the good have their own reasons for caring about them. There is an *overlapping consensus* on their normative force.⁹

⁴ John Rawls, *Political Liberalism*, pp. 55–7; Quong, *Liberalism Without Perfection*, p. 37.

⁵ Quong, *Liberalism Without Perfection*, p. 37.

⁶ Kevin Vallier. 2014. *Liberal Politics and Public Faith: Beyond Separation*. New York: Routledge, p. 24.

⁷ Quong, *Liberalism Without Perfection*, p. 36.

⁸ Rawls, *Political Liberalism*, p. 139; see also James Gordon Finlayson. 2019. *The Habermas-Rawls Debate*. Columbia University Press, p. 120.

⁹ There is an ongoing discussion about how this overlapping consensus operates. According to Quong, there is a problematic ‘common view’ that holds that the overlapping consensus is only around a political conception of justice (such as Rawls’s ‘justice as fairness.’). With Quong, I take it that on the Rawlsian picture, the consensus is meant to be achieved at two levels, both on the political values and on the political conception of justice. On this, see *Liberalism Without Perfection*, p. 160; see also Finlayson, *The Habermas-Rawls Debate*, p. 128. This will have important implications when we consider the content of public reason in chapter 4 and chapter 5.

There is a consensus on the normative force of the reasons, not on the all-things-considered justifiability of the law. Consequently, what I call political liberalism is sometimes called consensus public reason liberalism.

An alternative to this view is that laws can be publicly justified to different citizens for different reasons. As Paul Billingham summarises this idea:

The law is justified to different (groups of) citizens by different considerations, and there is no one justifying reason that all accept. Utilitarians believe that the law increases utility, Christians believe it is in accord with the Bible, and Scanlonians believe it satisfies the constraints of contractualism. In this way, the law is justified to every citizen, and yet the overall justification is based upon several comprehensive doctrines.¹⁰

On this picture of what public justification requires, there is no consensus that some reasons have normative force. Rather, there is a *convergence* on the all-things-considered justifiability of the law. Theories adhering to this view of public justification are consequently grouped under an umbrella called convergence public reason liberalism.¹¹ Gerald Gaus's justificatory liberalism is the paradigmatic example of this kind of view.¹²

Political liberalism and justificatory liberalism can be understood as theories about what we should do when people disagree about what to do, and the conditions that make enforcing whatever we decided to do permissible. Democratic decision-making plays an important role.

For political liberals, some constitutional essentials such as liberal rights are beyond the scope of democratic voting. Beyond these cases, Rawls and Quong hold that citizens who disagree about what liberal justice requires should vote to decide what to do.¹³ Laws that are

¹⁰ Paul Billingham. 2016. 'Convergence justifications within political liberalism: A defence.' *Res Publica* 22: pp. 135–153.

¹¹ Gerald Gaus. 2011. *The Order of Public Reason*. Cambridge: Cambridge University Press; Jeffrey Stout. 2004. *Democracy and Tradition*. Princeton, NJ: Princeton University Press, pp. 72–3; Vallier, *Liberal Politics and Public Faith*; Brian Kogelmann and Stephen G. W. Stich. 2016. 'When public reason fails us: Convergence discourse as blood oath,' *American Political Science Review* 110(4): 717–730.

¹² Gerald Gaus. 1996. *Justificatory Liberalism: An Essay on Epistemology and Political Theory*. Oxford: Oxford University Press.

¹³ Quong, *Liberalism Without Perfection*, p. 137.

the result of a vote are ‘binding on citizens by the majority principle.’¹⁴ Similarly, Gaus’s justificatory liberalism leaves room for democratic decision-making. Democratic bodies should make decisions on majoritarian (or supermajoritarian) grounds when citizens disagree about what should be done.¹⁵ When several different laws are publicly justified, when there is a ‘reasonable dispute’ about which law to enact, some version of majority rule should be used to decide what to do.¹⁶ Public reason liberals, of both strands, are thus committed to democratic decision-making processes. Or, put differently, public reason liberals are both liberals and democrats.

To make sense of how liberalism can exist alongside democracy – such as in the familiar idea of ‘liberal democracy’ – we need to understand the different ways of conceptualising the relationship between the two systems of thought. This is important for the overarching aim of this thesis. I will argue that public reason liberals have not paid sufficient attention to democratic ideals. Indeed, as I shall argue, central components of democratic legitimacy are incompatible with public reason liberalism. This is devastating because public reason liberalism is supposed to be a view about legitimacy for liberal democracies. If it turns out that there is no way of rescuing public reason liberalism from this challenge, it will entail that we need to choose between respecting democratic ideals and the ideals of public justification.

1.2 PRELIMINARY DEFINITIONS

In this section, I will define democracy and liberalism and show in what way the two main versions of public reason liberalism are committed to ideals from both systems of thought.

Starting with democracy, the precise meaning is, of course, contested. I take it that the central idea is that it is a system for making decisions where people collectively decide what to

¹⁴ John Rawls. 1997. ‘The idea of public reason revisited,’ *The University of Chicago Law Review* 64 (3):765–807, p. 798

¹⁵ Gaus, *The Order of Public Reason*, pp. 458–9.

¹⁶ *Ibid.*, p. 494–5. However, as I shall argue in chapter 3, democracy plays an even greater role than this in Gaus’s framework.

do. Typically, it is thought to require equality in the decision-making process. All of those who are affected by, or subjected to, the decision should have an equal say in it.¹⁷ A democratic state is one where its citizens are civic equals.¹⁸

One way of understanding the values embedded in democracy is that it follows from a commitment to civic equality that citizens should rule themselves by giving laws to themselves.¹⁹ Ensuring this demands equal input into the decision-making process, and a range of possible outputs. The democratic public should be able to collectively decide what to do. This can be summarised in a principle:

The principle of collective self-legislation: Citizens can democratically choose to enact laws and policies.

Often, of course, this happens through democratically selected representatives. What I call collective self-legislation is a central component of the democratic ideal. It has been called different things such as public autonomy²⁰ and popular sovereignty.²¹ As Amy Gutmann puts it:

Equal political liberty is one expression and manifestation of the value of being a free and equal member of a society whose adult members together are self-governing. If the term self-government seems misleading, the same idea can be conveyed by saying that equal political liberty entails the right of adult members of a society to share as free and equal individuals in making mutually binding decisions about their collective life.²²

¹⁷ While it is undoubtedly of fundamental importance, I will not engage in the debate around the constituency of democratic decision-making. On this, see Sofia Näsström. 2011. 'The challenge of the all-affected principle,' *Political Studies*, 59(1): 116–134.

¹⁸ Thomas Christiano. 2008. *The Constitution of Equality: Democratic Authority and Its Limits*. Oxford: Oxford University Press.

¹⁹ Jürgen Habermas. 2001. 'The postnational constellation and the future of democracy,' in Max Pensky (ed.), *The Postnational Constellation: Political Essays*. Cambridge, MA: MIT Press, p. 77; Christian F. Rostbøll. 2017. 'Democratic respect and compromise,' *Critical Review of International Social and Political Philosophy* 20(5): 619–635. I say much more about this in chapter 2.

²⁰ Stefan Rummens. 2006. 'Debate: The co-originality of private and public autonomy in deliberative democracy,' *Journal of Political Philosophy* 14(4): 469–481.

²¹ Jürgen Habermas. 1994. 'Human rights and popular sovereignty: The liberal and republican versions,' *Ratio Juris* 7(1): 1–13; Andreas Kalyvas. 2005. 'Popular sovereignty, democracy, and the constituent power,' *Constellations* 12: 223–244.

²² Amy Gutmann. 2002. 'Rawls on the relationship between liberalism and democracy,' in Samuel Freeman (ed.), *The Cambridge Companion to Rawls*. Cambridge: Cambridge University Press, p. 170.

So much for democracy. What about liberalism? Since my aim is not to once and for all settle the question of the true nature of liberalism it suffices to give conditions such that the provided definition covers most views that are commonly seen as liberal.²³

I propose that liberal views include a *substantive* and a *justificatory* component. The substantive component concerns the liberal credentials of the outcome of political decisions. Liberal views specify ‘certain rights, liberties, and opportunities,’ and attributes a special priority to them.²⁴ Views that allow political decisions that systematically violate basic rights and liberties are not liberal.²⁵ For my purposes, the substantive component of liberalism is precisely this priority, and I will use ‘liberal rights’ as shorthand for it.

The justificatory component sets out the conditions that make political power legitimate given that citizens have different ideas about what justice requires. As Rawls puts it, it is a ‘central element’ of liberalism that it holds that a legitimate regime ‘is such that its political and social institutions are justifiable to all citizens – to each and every one – by addressing their reason, theoretical and practical.’²⁶ With this, Rawls means that the justification for the political order must be available to all subject to it. This makes the order justifiable and the ‘legitimacy of a liberal regime depends on such a justification.’²⁷ According to Jeremy Waldron,

liberals are committed to a conception of freedom and of respect for the capacities and the agency of individual men and women, and... these commitments generate a requirement that all aspects of the social should either

²³ Or, even more weakly, it is enough that they cover the public reason views I will discuss in the following. I deliberately do not engage in an interpretative historical exercise of what liberalism is. While important, such questions are beyond the scope of this thesis. For an example of recent work that does this, see Helena Rosenblatt. 2018. *The Lost History of Liberalism: From Ancient Rome to the Twenty-first Century*. Princeton: Princeton University Press.

²⁴ According to Rawls, it also includes ‘adequate all-purpose means to make intelligent and effective use of... liberties and opportunities.’ Rawls, *Political Liberalism*, p. xlv. My purposes here are ecumenical, and – specifically – I want my definition to include Gaus’s (and Vallier’s) justificatory liberalism. It is an open question whether their views guarantee all-purpose means to make effective use of basic liberties and opportunities.

²⁵ John Rawls. 2008. *Lectures on the History of Political Philosophy*, Samuel Freeman (ed.). Cambridge, MA: Harvard University Press, p. 13

²⁶ Rawls, *Lectures on the History of Political Philosophy*, p. 13.

²⁷ Ibid.

be made acceptable or be capable of being made acceptable to every last individual.²⁸

Define liberal views, then, as political theories that prioritise liberal rights and hold that political power needs to be justified to citizens to be legitimate.

Rawls's theory clearly is both liberal and democratic. It is liberal because it includes both the substantive and the justificatory component of liberalism.²⁹ And it is democratic – Rawls argues that liberal rights are not prior restrictions of 'the people's constituent will', and he describes how his theory is compatible with 'popular sovereignty', the 'will of the people', and so on.³⁰ I take it that these are expressions of the value of collective self-legislation. The same is true for Quong's theory, which includes both the democratic and liberal elements.³¹

Gaus's theory is also a liberal theory as per the definition above.³² And it is democratic: according to Gaus democracy is the only publicly justified form of government.³³

However, Rawls and Gaus conceptualise the relationship between liberalism and democracy differently. This should be plain to see when we consider the source, dependence, and priority questions.

This will be important for the broader project. Critics of public reason liberalism have argued that the framework's proponents fail to correctly balance the values of democracy and

²⁸ Jeremy Waldron. 1987. 'Theoretical foundations of liberalism,' *The Philosophical Quarterly* 37(147): 127–150, p. 128.

²⁹ Rawls's theory of justice, 'justice as fairness' and its first principle of justice is the substantive component, the special protection for rights and freedoms. The all-purpose means to make effective use of the basic liberties are covered by Rawls's second principle. His principle of liberal legitimacy is the justificatory component. As Van Schoelandt and Gaus explain the justificatory component in Rawls, his political liberalism is a theory for a 'democratic society in which there will not be agreement on which conception of justice is best.' Chad Van Schoelandt and Gerald Gaus. 2019. 'John Rawls's Political Liberalism,' in Kelly Becker and Iain Thomson (eds.), *The Cambridge History of Philosophy, 1945–2015*. Cambridge: Cambridge University Press. The principle states that '[o]ur exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.' Rawls, *Political Liberalism*, p. 137.

³⁰ John Rawls. 1995. 'Political liberalism: Reply to Habermas,' *The Journal of Philosophy* 92(3): 132–80, pp. 158–9. On Rawls's theory as a theory of liberal democracy, see Jonathan Wolff. 2001. 'John Rawls: Liberal democracy restated,' *Croatian Journal of Philosophy* 1(3): 347–361.

³¹ See for instance Quong, *Liberalism Without Perfection*, p. 14–15.

³² It includes the justificatory component; political power needs to satisfy the public justification principle by being acceptable to all. It also includes a system of basic rights against coercion, satisfying the substantive component. Vallier, *Liberal Politics and Public Faith*, p. 24; Gerald Gaus, *The Order of Public Reason*, p. 263.

³³ Gerald Gaus, *The Order of Public Reason*, pp. 448–55.

liberalism. I shall argue that specifying the right answers to the three questions gives us the resources for countering this charge.

1.3 THREE QUESTIONS

1.3.1 THE SOURCE AND DEPENDENCE QUESTIONS

As we have seen, public reason liberals believe that it is important to realise the values of both democracy and liberalism. They have this in common with many other theories of legitimacy. Any theory of legitimacy that attempts to give both the values of liberalism and democracy their due must answer three basic questions: the *source*, *dependence*, and *priority* questions. The source question asks where the value of democracy and liberalism respectively is derived from. The dependence question asks about whether the justification for one of the systems can be derived from the other. The priority question asks about what weight the ideals of liberalism and democracy respectively should be given when they conflict.

The three questions concerning the relationship between liberalism and democracy are important because the scope of permissible state action is set by how they are answered.

Let me begin by turning to the source question. It asks what the ultimate source of value is for liberalism and for democracy. There have been many different suggestions. Democracy, for instance, has been thought to be valuable for its epistemic – truth-tracking – benefits,³⁴ for its bettering the character of democratic reasoners,³⁵ for making bad governance and famines

³⁴ Elizabeth Anderson. 2006. 'The epistemology of democracy,' *Episteme: A Journal of Social Epistemology* 3(1): 8–22; Robert Goodin and Kai Spiekermann. 2018. *An Epistemic Theory of Democracy*. Oxford University Press; Hélène Landemore. 2013. *Democratic Reason*. Princeton: Princeton University Press; Hayley Stevenson. 2016. 'The wisdom of the many in global governance: An epistemic-democratic defense of diversity and inclusion,' *International Studies Quarterly* 60(3): 400–412; Josiah Ober. 2013. 'Democracy's wisdom: An Aristotelian middle way for collective judgment,' *American Political Science Review* 107(1): 104–122.

³⁵ John Stuart Mill. 1861/2010. *Considerations on Representative Government*. Cambridge: Cambridge University Press; Jon Elster. 2002. 'The market and the forum: Three varieties of political theory,' in Thomas Christiano (ed.), *Philosophy and Democracy*. Oxford: Oxford University Press.

less likely,³⁶ for its egalitarian nature,³⁷ for its advancement of liberty,³⁸ and so on. Liberalism – and public reason liberalism in particular – has been said to be valuable because it is necessary for securing equal respect,³⁹ civic friendship,⁴⁰ justice,⁴¹ and autonomy.⁴² It is also common to appeal to a combination of the above.

For Rawls, the values of liberalism and democracy have the same source, the political ideal of viewing persons as free and equal citizens engaged in a fair system of social cooperation.⁴³ Gaus similarly traces liberalism's source of value to the commitment to treating others as free and equal.⁴⁴ Democracy, for Gaus, is valuable because democratic regimes are 'reliable protectors of basic individual rights.'⁴⁵

This brings us to the dependence question. Whereas the source question looks to values outside of democracy and liberalism, the dependence question concerns the value relationship *between* liberalism and democracy. The source question considers some extrinsic standard that we judge liberalism and democracy after. The dependence question considers whether the concepts are instrumentally valuable for realising each other. Consequently, the answers to the

³⁶ Amartya Sen. 1999. *Development as Freedom*. New York: Knopf, p. 152.

³⁷ Niko Kolodny. 2014. 'Rule over none II: Social equality and the justification of democracy,' *Philosophy & Public Affairs* 42 (4): 287–336; Daniel Viehoff. 2014. 'Democratic equality and political authority,' *Philosophy & Public Affairs* 42 (4): 337–75.

³⁸ Carol Gould. 1988. *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economics and Society*. New York: Cambridge University Press.

³⁹ James W. Boettcher. 2012. 'The moral status of public reason,' *The Journal of Political Philosophy* 20: 156–177; Charles Larmore. 1999. 'The moral basis of political liberalism,' *The Journal of Philosophy* 96: 599–625; Martha Nussbaum. 2011. 'Perfectionist liberalism and political liberalism,' *Philosophy & Public Affairs* 39 (1): 3–45.

⁴⁰ Mihaela Georgieva. 2015. 'Stability and congruence in political liberalism: The promise of an ideal of civic friendship,' *Political Studies* 63(2): 481–494. R. J. Leland. 2019. 'Civic friendship, public reason,' *Philosophy & Public Affairs*, 47(1): 72–103; Andrew Lister. 2013. *Public Reason and Political Community*. London: Bloomsbury.

⁴¹ Quong, *Liberalism Without Perfection*.

⁴² Blain Neufeld. 2019. 'Shared intentions, public reason, and political autonomy,' *Canadian Journal of Philosophy* 49(6): 776–804; Lori Watson and Christie Hartley. 2018. *Equal Citizenship and Public Reason: A Feminist Political Liberalism*. Oxford University Press; Paul Weithman. 2017. 'Autonomy and Disagreement about Justice in Political Liberalism,' *Ethics* 128(1): 95–122.

⁴³ Gutmann, 'Rawls on the relationship between liberalism and democracy,' pp. 170; 174. Liberal rights are also derived from Rawls's view of persons as carriers of the two moral powers. On this, see Finlayson, *The Habermas-Rawls Debate*, p. 192; see also Rawls, *Political Liberalism*, pp. 292–3.

⁴⁴ Gaus, *The Order of Public Reason*, pp. 386; 381–6; 479–90. There is also a further answer based on the so-called reactive attitudes. For critical assessments of this, see Collis Tahzib. In press. 'Do the reactive attitudes justify public reason?' *European Journal of Political Theory*; Anthony Taylor. 2018. 'Public justification and the reactive attitudes,' *Politics, Philosophy & Economics* 17(1): 97–113.

⁴⁵ Gaus, *The Order of Public Reason*, pp. 451–2.

source and dependence questions can be grouped after whether they see democracy (or liberalism) as independently (intrinsically or instrumentally) valuable, and whether they see liberalism (or democracy) as valuable merely as a means for realising democracy (or liberalism). With independent I thus mean valuable independently of liberalism (in the case of democracy) and democracy (in the case of liberalism). The question in this way considers only whether the value of liberalism is independent of the value of democracy, or vice versa. Hence, the independent value can be both intrinsic and instrumental.

If, say, liberalism is independently valuable, this is explained by the answer to the source question. The dependence question then asks whether democracy also is independently valuable, or whether its value is derived solely from its capacity to realise liberal ideals.

Given a commitment to both liberalism and democracy, the dependence question can be answered in four ways. Firstly, liberalism could be independently valuable, whereas democracy is narrowly instrumentally valuable, that is, valuable only for realising liberal ideals. Secondly, the other way around, democracy could be independently valuable while liberalism (often liberal rights, specifically) is narrowly instrumentally valuable for realising democracy. Thirdly, both could be independently valuable and instrumentally valuable for realising each other. And, finally, both could be independently valuable but not instrumentally valuable for realising each other. I do not consider this last view, because I do not know of anyone who advocates it.⁴⁶

Judith Shklar can be thought to defend something like the first view. Shklar argues that ‘without enough equality of power to protect and assert one’s rights, freedom is but a hope.’⁴⁷ On this sort of view, the justification of democracy is contingent on its function to serve the values of liberalism. The consequence of this is that if it could be shown that non-democratic forms of government outperformed democracy when it came to the protection of liberal rights

⁴⁶ This does not mean that it is not a conceptually coherent view.

⁴⁷ Judith N. Shklar. 1989. ‘The liberalism of fear,’ in Nancy L. Rosenblum (ed.), *Liberalism and the Moral Life*. Cambridge, MA: Harvard University Press, p. 37.

and freedoms, they would be preferable.⁴⁸ As mentioned, Gaus subscribes to a similar view – for him democracy is justified because democratic regimes reliably protect individual rights.

On the inverse picture of the relationship between democracy and liberal rights, democracy has independent value while liberal rights only are instrumentally valuable for realising the value of democracy. Equal personal liberal freedom is only valuable insofar as – and to the extent that – it promotes the democratic ideal.⁴⁹

The third alternative is that both liberalism and democracy are instrumentally valuable for realising each other. Jürgen Habermas is a proponent of this view. Habermas argues that it does not make sense to value only one or the other, because ‘private and public autonomy [roughly, liberal rights and democracy] mutually presuppose each other in such a way that neither human rights nor popular sovereignty can claim primacy over its counterpart.’⁵⁰ Hence, each form of autonomy,

makes the other form possible. This reciprocal relation is expressed by the idea that legal persons can be autonomous only insofar as they can understand themselves, in the exercise of their civic rights, as authors of just those rights which they are supposed to obey as addressees.⁵¹

According to Habermas, democracy and liberal rights are thus mutually reinforcing. For most liberals who hold this view, the support for democracy is unqualified, albeit not unrestricted, because liberal and democratic institutions are both independently valuable and instrumentally valuable for realising each other. The values are co-original – citizens cannot ‘criticize their government or... stand up to a majority in the name of justice’ unless they have liberal rights,

⁴⁸ However, liberals who hold this view could still believe this to be very unlikely, perhaps impossible. In Shklar’s words, ‘[w]ithout the institutions of representative democracy and an accessible, fair, and independent judiciary open to appeals, and in the absence of a multiplicity of politically active groups, liberalism is in jeopardy. It is the entire purpose of the liberalism of fear to prevent that outcome. It is therefore fair to say that liberalism is monogamously, faithfully, and permanently married to democracy – but it is a marriage of convenience.’ Shklar, ‘The liberalism of fear,’ p. 37.

⁴⁹ On this, see Gutmann ‘Rawls on the Relationship between Liberalism and Democracy,’ p. 175.

⁵⁰ Jürgen Habermas. 1995. ‘On the internal relation between the rule of law and democracy,’ *European Journal of Philosophy* 3(1): 12–20, p. 17.

⁵¹ Ibid., p. 15.

and without democracy, they cannot ‘shape the laws, institutions, and practices within which they can make personal choices about how best to live their own life.’⁵²

Rawls also holds this view. Liberalism and democracy are instrumentally valuable for realising each other; for Rawls political and civil liberties are co-original.⁵³

To summarise. The source and dependence questions pick out different aspects of why we value liberalism and democracy. With answers to these questions in place, it is possible to consider the priority question. This question asks what we should do when the values of liberalism and democracy conflict.

1.3.2 THE PRIORITY QUESTION

The priority question can be understood as being about striking the correct balance between collective self-legislation and some substantive liberal outcome standard. In Habermas’s rendering, it is about the correct balance between popular sovereignty and basic (human) rights, between the ‘freedom of the ancients’ and the ‘freedom of the moderns’.⁵⁴

The priority question arises if citizens use their ‘public’ autonomy to infringe on their ‘private’ autonomy or the other way around. For the first sort of case, we might think of democratic majorities implementing decisions that go against basic rights. Democratically enacting a law that permits slavery is an obvious example. The other sort of case is about citizens using their private autonomy to circumvent the democratic decision-making process. It could be things such as wealthy citizens using their money to buy the allegiance of politicians.

When there is a conflict, should the values of liberalism override the value of protecting democratic decision-making? Or should democracy be prioritised over liberalism?

⁵² Gutmann, ‘Rawls on the relationship between liberalism and democracy,’ p. 176.

⁵³ Finlayson, *The Habermas-Rawls Debate*, p. 194; Rawls, ‘Reply to Habermas,’ p. 164. For a discussion about the relationship between basic freedoms and political liberalism, see also Cynthia A. Stark. 2020. ‘Political liberalism and male supremacy,’ *Journal of Applied Philosophy* 37(5): 873–880.

⁵⁴ Habermas, ‘On the internal relation between the rule of law and democracy,’ p. 15.

Answers to the priority question are ordered on a spectrum. On each extreme end either liberalism or democracy has absolute priority.

On the most far-reaching version of the view that prioritises collective self-legislation over liberalism, there is nothing that democratic majorities cannot legitimately decide to do.⁵⁵ Rawls call this view procedural democracy.⁵⁶

On the opposite end is the absolute priority of liberalism. John Skorupski calls a version of this view ‘old liberalism.’⁵⁷ Old liberals do not offer ‘unqualified support’ to democracy, rather their view oscillates between support and vigilance.⁵⁸ Gaus’s view should be ordered on this end of the spectrum. After reviewing the relationship between liberal rights and collective self-legislation, he concludes that he has ‘upheld the liberty of the moderns – understood as a system of individual rights – over the liberty of the ancients, which stressed collective decision making as the primary mode of public commensuration.’⁵⁹

An in-between position is what Rawls calls constitutional democracy, a democracy with special protections in place for fundamental rights but that otherwise prioritises democracy.⁶⁰ This is where Rawls’s own theory should be placed. According to Rawls, a democratic procedure ‘gives rise to legitimate laws and policies made in accordance with it... [the] outcomes of a legitimate procedure are legitimate whatever they are,’ unless the democratically chosen laws are ‘too gravely unjust.’⁶¹

⁵⁵ While this is not necessarily so, the answer to the priority question will often supervene on a prior answer to the dependence question. It is, for instance, perfectly understandable that liberals who view democracy only as instrumentally valuable for realising liberalism will prioritise the latter when the two views conflict.

⁵⁶ John Rawls. 2001. *Justice as Fairness: A Restatement*, Erin Kelly (ed.). Cambridge, MA: Harvard University Press, pp. 145–8

⁵⁷ Skorupski mentions Sieyès, Constant, Guizot, and Tocqueville (in France); John Stuart Mill, Raymond Aron and Isaiah Berlin (in Britain) as examples of liberals holding this view. John Skorupski. 2017. ‘Rawls, liberalism, and democracy,’ *Ethics* 128(1): 173–198, p. 175.

⁵⁸ Ibid., p. 173.

⁵⁹ Gerald Gaus, *The Order of Public Reason*, p. 386.

⁶⁰ Rawls, *Justice as Fairness*, p. 145–8

⁶¹ Rawls, *Political Liberalism*, p. 428; see also Zofia Stemplowska and Adam Swift. 2018. ‘Dethroning democratic legitimacy.’ In David Sobel, Peter Vallentyne, and Steven Wall (eds.), *Oxford Studies in Political Philosophy*, Volume 4. Oxford: Oxford University Press, p. 6.

1.3.3 IN SEARCH OF NEW ANSWERS TO THE THREE QUESTIONS

I have already stressed how important the answers to the questions are in setting out the terms for permissible state action. In the next section, I will propose novel answers to them. With this, I wish to achieve two things.

Firstly, I want to use these novel answers to begin constructing a particularly democratic form of public reason liberalism.⁶² Specifically, I will give an answer to the source question that is shared by most theorists of democratic legitimacy and show how the answers to the last two questions can supervene on this democratic source.

Equipped with these answers, I will argue – secondly – that this can help us rebut powerful objections previously levelled against public reason liberalism.

1.4 JUSTIFYING LIBERALISM AND DEMOCRACY

1.4.1 THE VALUE OF CIVIC EQUALITY

It is a cornerstone of democratic thought that citizens should be viewed as fundamentally equal before the state. Citizens in a democracy are, and should be treated as, civic equals.⁶³ There are different ways of understanding the ideal. I take civic equality to be the relationship of equal standing among a pluralist community of citizens *vis-à-vis* the state.

Every citizen has a weighty interest in being treated as a civic equal. This interest is substantial enough to make it is morally impermissible to enforce legislation that treats citizens unequally, as citizens. Citizens who are denied their status as civic equals by an exercise of state

⁶² Arguably, Rawls has something similar in mind when he suggests that liberalism becomes a political conception of justice when ‘viewed from within the tradition of democratic constitutionalism.’ John Rawls. 2008. *Lectures on the History of Political Philosophy*, ed. Samuel Freeman. Cambridge, MA: Harvard University Press, p. xvii; see also Skorupski, ‘Rawls, liberalism, and democracy,’ p. 175.

⁶³ Joshua Cohen. 2007. ‘Deliberative democracy,’ in Shawn W. Rosenberg (ed.), *Deliberation, Participation and Democracy: Can the People Govern?* London: Palgrave Macmillan, p. 219. There might be exceptions of course (an obvious example is children). Nevertheless, equality is the baseline.

power do not have sufficient reason to accept that exercise of power. To put it slightly differently: all citizens have a basic interest in being treated as equals, regardless of their comprehensive worldviews. In this sense, all of us have a universal interest in having our civic equality respected if we are to live together as citizens in a political society. This interest is weighty enough to give citizens a substantive complaint when they are not treated as civic equals. A grave violation threatens the legitimacy of the exercise of state power that gave rise to it.

Civic equality is well suited to provide the foundation of a theory of legitimacy that recognises reasonable pluralism.⁶⁴ It is an answer to the source question that could be accepted by people who otherwise hold very different views. There is an overlapping consensus on the value of civic equality among a diverse set of views of the good life and society. To give just a few examples, the ideal has been associated with Machiavellian republicanism,⁶⁵ liberalism,⁶⁶ and Axel Honneth's theory of recognition.⁶⁷ Most importantly for my purposes, it is a cornerstone of democratic thought.⁶⁸

I do not wish to claim that this rather minimal, vertical, understanding of civic equality is the only way of conceptualising this ideal in democratic theory. On the contrary, there are many other available definitions. Some will take civic equality to go beyond a requirement for

⁶⁴ Let me note that I am not in a position to provide a positive theory of what makes one state rather than another the legitimate authority over a given territory. I assume that liberal democracies generally have the legitimate authority to rule, but I do not outline the conditions that need to be met for this. Consequently, I assume that exercises of state power are legitimate if and when they respect the civic equality of all citizens, given that the state has previously obtained the legitimate authority to rule over a certain territory. On this, see Fabienne Peter. 2008. *Democratic Legitimacy*. New York: Routledge; Niko Kolodny. 2014. 'Rule over none I: What justifies democracy,' *Philosophy & public affairs* 42(3): 195–229; Niko Kolodny. 2014. Rule Over None II: Social equality and the justification of democracy, *Philosophy & public affairs* 42 (4): 287–336; Scott Hershovitz. 2003. 'Legitimacy, democracy, and Razian authority,' *Legal Theory* 9: 201–220. Jonathan Quong. 2019. 'In defense of functionalism,' in Jack Knight and Melissa Schwartzberg (eds.), *Political Legitimacy: NOMOS LXI*. New York: New York University Press.

⁶⁵ Alfredo Bonadeo. 1969. 'Machiavelli on civic equality and republican government,' *Romance Notes* 11(1): 160–66.

⁶⁶ Sune Lægaard. 2019. 'Inclusion or exclusion of religion: What does secularism require?' in Jonathan Seglow and Andrew Shorten (eds.), *Religion and Political Theory: Secularism, Accommodation and The New Challenges of Religious Diversity*. London: Rowman & Littlefield Publishers.

⁶⁷ Simon Laumann Jørgensen. 2015. 'Recognition, education, and civic equality: Uncovering the normative ideals of the welfare state,' in Jonas Jakobsen and Odin Lysaker (eds.), *Recognition and Freedom: Axel Honneth's Political Thought*. Leiden: Brill.

⁶⁸ Debra Satz. 2007. 'Equality, adequacy and education for citizenship,' *Ethics* 117(4): 623–648; Philip Green. 1985. *Retrieving Democracy: In Search of Civic Equality*. New Jersey: Rowman & Littlefield.

the state to treat its citizens as equals. For instance, it is sometimes said that civic equality requires that citizens both are treated as equals by the state and that citizens view one another as co-equal members of the polity.⁶⁹

For my ecumenical purposes, the important thing to note is that all, or most, democratic theorists would at least want to ensure that civic equality understood in the vertical sense is realised. It is difficult to imagine a form of civic equality that does not include the equality of citizens *vis-à-vis* the state as a constitutive element.⁷⁰

Civic equality, as I understand it, is a distinctively political ideal.⁷¹ In that sense, the ideal of civic equality leaves room for some social inequalities. To have equal standing, in a political sense, citizens need to be treated as equal sources of political authority by the state, and they cannot be infantilised or humiliated by the laws and institutions that govern them. In other words, it is not enough that citizens have equal status, all citizens need to have an appropriately high status.

The ideal also includes an expressive condition in that it includes a judgement about the attitudes that the state can express to its citizens. In this, I follow Cécile Laborde who, similarly, defends ‘equal civic status’ as a condition for legitimacy, something that requires ‘appropriate expressive treatment as civic equals by state institutions’.⁷² On this view, ‘political institutions have a crucial role to play in securing the equal status of citizens’.⁷³ Hence,

⁶⁹ See for instance Amy Gutmann. 1987. *Democratic Education*. Princeton: Princeton University Press.

⁷⁰ Cohen ‘Deliberative democracy,’ p. 219. There might be exceptions of course (an obvious example is children). Nevertheless, equality is the baseline.

⁷¹ To see this, it is helpful to contrast civic equality with the ideal of full social equality. Niko Kolodny and Daniel Viehoff have both suggested that social equality is a necessary condition for legitimacy. The concept itself is elusive, but the basic idea is intuitive. According to Viehoff, for a relationship to be equal, it requires that no one has ‘more of a say’ than another, and that there is ‘rough equality of power over the [relevant] interactions’. This ideal is threatened when ‘the parties to the relationship have significantly different power over how they interact with and relate to one another’. Daniel Viehoff. 2014. ‘Democratic equality and political authority,’ *Philosophy & public affairs* 42 (4): 337–75. Having equal power equals non-subjection. Correspondingly, Kolodny holds that a state of social inequality is where some people have greater relative power or de facto authority than others. The latter means that ‘their commands or requests are generally, if not exceptionlessly, complied with’. These conditions are coupled with a disposition to use the greater relative power or authority. Kolodny, ‘Rule over none II,’ p. 295; see also Elizabeth Andersson’s pioneering discussion in Elizabeth Anderson. 1999. What is the point of equality? *Ethics* 109 (2): 287–337.

⁷² Cécile Laborde. 2017. *Liberalism’s Religion*. Cambridge: Harvard University Press, p. 135.

⁷³ Ibid.

when the state associates itself too closely with the symbols of the majority, nonadherents are rejected outside the imagined community of citizens. Symbolic establishment is wrong, on this account, when it constitutes and perpetuates social relations of hierarchy, subordination, and domination. What matters here is a form of social equality...⁷⁴

It is, as Laborde puts it, a *form* of social equality, but it is not a defence of social equality simpliciter.

I will draw extensively on Laborde's work, so a brief note on the different groundings of our views is in order. I take it that we have different answers to the source and priority questions but reach similar conclusions on the dependence question (even if there is some divergence there, too). Laborde's account is explicitly anti-unitary, it disaggregates different aspects of legitimacy and traces them to different sources.⁷⁵ Civic inclusion or equality, on Laborde's picture, is tied specifically to questions of symbolic establishment. I believe, on the other hand, that we should see civic equality as a master value that virtually everything that the state does can serve or undermine. Laborde separates civic equality or inclusion from justificatory public reason demands, and also from the procedural democratic demands that are also necessary for a decision to be legitimate.⁷⁶ The account I develop here holds that civic equality plays a foundational role in evaluating all state power and every state institution. That includes systems for making democratic decisions, the bureaucracy, and the justification for – and consequences of – individual political decisions.

Some of these disagreements may be terminological. However, more substantively, an upshot of my view is that it can provide us with the resources to trade different values against each other. It can give us a fuller answer to the priority question. I return to this issue in section 1.5.

⁷⁴ Ibid., p. 136.

⁷⁵ Cécile Laborde. In press. 'Reply to Quong, Patten, Miller and Waldron,' *Criminal Law and Philosophy*.

⁷⁶ Laborde views the wrong of providing inaccessible reasons as a different kind of wrong than the wrong of symbolic establishment and sees the 'limited state' as realising yet another value. Laborde, *Liberalism's Religion*, p. 118.

1.4.2 CIVIC EQUALITY AND DEMOCRACY

Most democratic theorists hold that it follows from a commitment to civic equality that in standard cases only democratic decision-making processes are legitimate. I believe that they are right about this. Often, this view builds on an understanding of political disagreements as reasonable, and the response to reasonable disagreement is to treat ‘each citizen as equally a source of authority.’⁷⁷

Among democratic theorists, the civic-equality answer to the source question has often been thought to generate a distinct answer to the priority question. The thought is that because democracy is necessary for securing civic equality, it is almost always impermissible to overturn the majority’s decisions. I will give just two examples, even if there are numerous others.

First, consider Laura Valentini’s democratic theory. Valentini argues that under circumstances of pervasive reasonable disagreement about justice, equal respect demands ‘that the institutional mechanisms which “force” a certain distribution of rights on people be as consistent as possible with people’s own views.’⁷⁸ Democratic processes can achieve this. To Valentini, the demand for equal respect requires that laws be democratically made.⁷⁹

Thomas Christiano makes a similar argument, separating procedural and substantive considerations in democratic decision making. Christiano argues that the procedural – the value of upholding the democratically made decision – ‘typically has authority when there is conflict with the substantive.’⁸⁰ There are two reasons for this. The first one has to do with reasonable disagreement about the moral status of legislation. The second reason is about civic equality. Christiano holds that if we choose to promote justice over implementing the democratic

⁷⁷ Stemplowska and Swift, ‘Dethroning democratic legitimacy,’ p. 16.

⁷⁸ Laura Valentini. 2012. ‘Assessing the global order: justice, legitimacy, or political justice?’ *Critical Review of International Social and Political Philosophy* 15(5): 593–612, p. 597.

⁷⁹ Ibid.

⁸⁰ Christiano, *The Constitution of Equality*, p. 252.

decision, we treat people as inferiors.⁸¹ Each citizen has a substantive interest in being treated as an equal in society, in ‘having one’s moral standing among one’s fellows clearly recognized and affirmed’.⁸² Civic equality, thus, is the source for the value of democracy, and this, in turn, provides Christiano with an answer to the priority question: democracy is prioritised over liberalism and liberal justice.

There is an awkwardness to these positions, and positions like them, for they include what might appear to be ad hoc qualification: just like on Rawls’s view, the democratic majority cannot permissibly implement laws that are too gravely unjust.⁸³ I consider this problem in section 1.5.2 and argue that equipped with the right answers to the three questions we can permissibly limit the scope of democratic decision-making in a non-arbitrary way.

As suggested above, civic equality is by no means the only answer to the source question, it is not the only available justification for democracy. Nevertheless, the prominence of the value suggests that we have good reason for thinking that democracy is independently valuable among other reasons because it is necessary for expressing and guaranteeing civic equality.

Thus, if it could be shown that civic equality also grounds the two components of liberalism, we have a particularly solid basis for constructing a democratic public reason liberalism. The fact that both have a common source will also make it not unreasonable to hope that the view can provide answers to difficult judgements about priorities. I turn to these issues next.

⁸¹ Ibid., p. 268; see also Esben Øverland and Christian Barry. 2011. ‘Do democratic societies have a right to do wrong?’ *Journal of Social Philosophy* 42 (2): 111–31, p. 122.

⁸² Christiano, *The Constitution of Equality*, pp. 271–3.

⁸³ Stemplowska and Swift, ‘Dethroning democratic legitimacy,’ p. 6.

1.4.3 CIVIC EQUALITY AND LIBERALISM

I think it should be reasonably clear that civic equality can ground the substantive component of liberalism. A rights-violation is also a grave violation of someone's civic equality.⁸⁴ It violates the idea of the equally high standing of all citizens and hinders their equal participation in society. To participate as equals, our basic rights must be protected. I take this to be a rather uncontroversial view, and in this I follow Debra Satz, T. H. Marshall, and many others.⁸⁵ Overturning a democratic decision that violates some citizens' basic rights would in standard cases be a lesser violation of civic equality than enforcing it. Something that on the face of it looks like a problematic conflict between liberalism and democracy is, in this way, revealed to be a harmonious ordering dictated by the value of civic equality.

It takes more work to establish that civic equality grounds the justificatory component of liberalism, and, specifically, that it grounds a public reason requirement. Indeed, showing this will be a main task of chapter 4 and chapter 5. In this chapter, I will only suggest that we have good reason for thinking that it could ground such a requirement without specifying why a view of democratic legitimacy without a public reason requirement fails to respect civic equality.

Many views of democratic legitimacy entail that public reason requirements are superfluous. Christiano,⁸⁶ Kolodny,⁸⁷ Valentini,⁸⁸ and Viehoff⁸⁹ in different ways all argue that giving each person an 'equal say' in political decisions and guaranteeing that the outcomes do not violate basic rights is enough for legitimacy. In other words, their views of legitimacy are in an important sense less demanding than what the one that I will be defending throughout

⁸⁴ See for instance, Christiano, *The Constitution of Equality*, p. 265.

⁸⁵ Debra Satz. 2008. 'Equality, adequacy, and educational policy,' *Education Finance and Policy*, 3(4): 424–443, p. 433; T. H. Marshall. 1977. *Class, Citizenship, and Social Development*. Chicago: University of Chicago Press, p. 11.

⁸⁶ Thomas Christiano. 1996. *The Rule of the Many: Fundamental Issues in Democratic Theory*. Boulder, CO: Westview Press, p. 35.

⁸⁷ Niko Kolodny, 'Rule over none II.'

⁸⁸ Laura Valentini. 2013. 'Justice, disagreement, and democracy,' *British Journal of Political Science* 43 (1): 177–99.

⁸⁹ Viehoff, 'Democratic equality and political authority.'

the thesis. Valentini, for instance, argues that legitimacy only requires deliberation and an aggregative decision procedure for selecting the winning option.⁹⁰

I believe that they are wrong to think that civic equality does not entail a requirement for political decisions to be justified with public reasons. As mentioned, I will not defend this idea fully in the present chapter. Rather, I will provide just a few reasons for why the idea should have some intuitive appeal before defending it in chapter 4 and chapter 5.

What the ideal of civic equality – as least as understood here – embodies is an appropriate relationship between the state and the citizens living under its rule. Even if Cécile Laborde conceptualises the wrong differently, it is in line with her view of the state's expressive treatment of its citizens. Laborde, rightly I believe, hold that there is a distinctive wrong committed when citizens are offered reasons for legislation that a subsection of them cannot properly engage with.⁹¹

I believe that this wrong is best described as a violation of their status as civic equals. It is not that citizens disrespect *each other* when they sincerely offer non-public reasons, or that they cannot have a valuable form of community.⁹² These issues, I put aside for now. The disrespect I am concerned with is top-down, it is about having coercive political power imposed on you justified on terms that you cannot accept. If public reasons are instead offered, the citizens whose preferences are not aligned with the resulting legislation after a democratic debate 'can see that the reason motivating the law is a reason they can engage with and continue

⁹⁰ Valentini, 'Justice, disagreement, and democracy,' pp. 193–4. However, in a later paper she does suggest that public reasons may, in fact, be necessary. I leave this aside. Laura Valentini and Christian List. 2020. 'What normative facts should political theory be about? Philosophy of science meets political liberalism,' in David Sobel, Steven Wall and Peter Vallentyne (eds.), *Oxford Studies in Political Philosophy*, Volume 6. Oxford: Oxford University Press.

⁹¹ Martha Nussbaum puts a version of this argument strongly, arguing that when 'the institutions that pervasively govern your life are built on a view that in all conscience you cannot endorse, that means that you are, in effect, in a position of second-class citizenship'. Nussbaum, 'Perfectionist liberalism and political liberalism,' p. 35.

⁹² As suggested by public reason liberals such as Andrew Lister in *Public Reason and Political Community*. Nevertheless, I shall argue that there are strong *instrumental* reasons for why citizens still should try to offer each other public reasons in chapter 6.

to criticize. This way, even though they are outvoted, they are respected as democratic reasoners.⁹³

This is, of course, only a sketch of an argument. By no means do I wish to suggest that I have conclusively shown that public reason requirements follow from a commitment to civic equality. For the present purposes, I simply assume that we have good reason for thinking that civic equality grounds a commitment to both democratic ideals and the substantive and justificatory components of liberalism. This is the answer to the source question.

With this, it will be possible to answer the dependence question. The values of liberalism and democracy are co-original: a proper democratic engagement with the reasons justifying legislation is impossible if it is justified with inaccessible reasons. The value of public reasons being offered only makes sense within a democratic framework. And a democracy cannot be effective without basic liberal rights, such as freedom of expression and conscience.

The next section will detail how, if I am right about this, this view of the relationship between liberalism and democracy lets us respond to two challenges previously raised against public reason liberalism.

1.5 TWO CHALLENGES ANSWERED

1.5.1 HABERMAS'S CHALLENGE

I have suggested that the source of value for liberalism and democracy is civic equality. The dependence relationship between the two values is one of co-originality – they are both instrumentally necessary for realising each other. With this in hand, it is possible to provide a novel answer to Habermas's influential challenge to public reason liberalism

⁹³ Laborde, *Liberalism's Religion*, p. 122.

In his exchange with John Rawls, Habermas argues that Rawls wrongly prioritises liberalism over democracy. The reason is that on Rawls's account of public reason, basic liberties are 'withdrawn from the reach of democratic self-legislation'.⁹⁴ Thus, Habermas argues, the writing and re-writing of the constitution cannot be open, transparent, and – ultimately – democratic, because public reason 'generates a priority of liberal rights which demotes the democratic process to an inferior status'.⁹⁵ As James Gordon Finlayson puts it, 'Habermas is suggesting that Rawls offers a theory of liberalism that fails to give due weight to democracy: it is a justification of liberalism at the expense of democracy.'⁹⁶

This is an important challenge, because public reason liberalism is meant to give the values of both democracy and liberalism their due. And it is persistent; versions of it are still brought forward.⁹⁷

A common response to Habermas's challenge is that there is nothing objectionable about prioritising liberalism over democracy when basic rights are at stake. Quong, for instance, argues that Habermas's 'objection is misguided' since 'certain fundamental liberal rights and principles – for example, free speech and freedom of religion – are beyond reasonable dispute'.⁹⁸ It would, therefore, not be acceptable to let democratic publics remove these freedoms. Doing so would be a serious violation of some of liberalism's central values. Similarly, Gaus argues that his account just presupposes precisely what Habermas denies, in claiming that 'prior to deliberation some moral conclusions (say, on the status of coercion and

⁹⁴ Jürgen Habermas. 'Reconciliation through the public use of reason: remarks on John Rawls's political liberalism,' *The journal of philosophy* 92(3): 109–131, pp. 128–9.

⁹⁵ Ibid.

⁹⁶ Finlayson, *The Habermas-Rawls Debate*, p. 170.

⁹⁷ See for instance Katrina Forrester. 2019. *In the Shadow of Justice: Postwar Liberalism and the Remaking of Political Philosophy*. Princeton University Press, pp. 5; 272–3; for my response that draws partly on this chapter, see Henrik D. Kugelberg. 2020. 'In the shadow of justice: postwar liberalism and the remaking of political philosophy,' *Jurisprudence* 11(2): 325–34.

⁹⁸ Jonathan Quong. 2013. 'On the idea of public reason,' in Jon Mandle and David Reidy (eds.), *The Blackwell Companion to Rawls*. Oxford: Wiley-Blackwell, p. 267.

individual rights) have been settled'.⁹⁹ On this interpretation, liberal rights are constraints on collective self-legislation, but they are necessary constraints.¹⁰⁰

There is a stalemate. Those who favour democracy in the priority question say it must be given priority. Those who favour liberalism give the opposite answer. To resolve this tension, I propose that we should look to the answers of the source and dependence questions. As per the picture outlined above, liberal rights and democracy derive their value from the same source: civic equality. And the answer to the dependence question is that these systems are co-original, that is, instrumentally necessary for realising each other. A conception of democracy that does not include rights will by necessity violate the very value it is meant to promote.

This gives us the resources to effectively refute Habermas's challenge, without simply stipulating what he denies. The 'gain' in civic equality we get from allowing collective self-legislation that violates rights will always be dwarfed by the massive loss of civic equality that a rights-violation consists in. Hence, this response does not presuppose the supremacy of liberalism over democracy. It maintains that we should prioritise the lesser violation of the value that both systems are meant to protect.¹⁰¹

There is, however, still an inverse version of the argument available: that public reason liberalism unduly prioritises democracy over liberal justice. Luckily, the proposed view can answer this challenge too.

⁹⁹ Gerald Gaus. 2008. 'The (severe) limits of deliberative democracy as the basis for political choice.' *Theoria* 55(117): 26–53, p. 46.

¹⁰⁰ It is also possible to question the view that sees them as constraint on the democratic will. On this alternative understanding, the choice to enshrine liberal rights in the constitution flows from 'the will of the people expressed through procedures of ratifying and amending constitutions.' Finlayson, *The Habermas-Rawls Debate*, p. 192; Rawls, 'Reply to Habermas,' p. 157.

¹⁰¹ The idea has similarities with Ronald Dworkin's point about judicial review, where a 'constitution of principle, enforced by independent judges, is not undemocratic.' Ronald Dworkin. 1996. *Freedom's Law: The Moral Reading of the American Constitution*. Oxford: Oxford University Press. It should potentially also be in line with Habermas's own views.

1.5.2 STEMPOWSKA AND SWIFT'S CHALLENGE

Stemplowska and Swift have recently argued that many theorists of legitimacy, including Rawls, unjustifiably give priority to procedural considerations over the substantive rightness of a decision. The main point is that since theorists like Rawls grant that adverse consequences sometimes will be enough to undermine citizens' civic equality, their views allow that there are countervailing reasons against the value of proceduralism. These countervailing reasons, however, only become weighty enough to overturn a decision when that decision is gravely unjust.¹⁰² As Rawls puts it, to be legitimate, laws need not be 'just by a strict standard of justice, even if, what is also true, they cannot be too gravely unjust.'¹⁰³

Stemplowska and Swift argue that liberals in Rawls's wake have not provided a theoretically stable distinction between injustices and grave injustices that mandates us to prioritise considerations of proceduralism over considerations of (non-grave) injustice in every instance. It cannot, for instance, be that we are more confident about our judgements on grave injustices over ordinary injustices, 'unless grave injustice stood for "obvious injustice"'.¹⁰⁴ To illustrate, we know that it obviously would be unjust to arbitrarily buy cake for only one of our children. But this would (arguably) not amount to a violation of basic human rights.

As should be clear, this objection is the precise opposite to Habermas's challenge: public reason liberalism gives too much weight to democracy. It can be summarised in the question: is it really worse to be denied the procedure that treats you as an equal than to be denied the social arrangement that equal treatment entails?

On Stemplowska and Swift's view, the value of justice must always be balanced against the value of upholding respect for procedures.¹⁰⁵ While the conclusion is plausible, their

¹⁰² Stemplowska and Swift, 'Dethroning democratic legitimacy,' p. 16.

¹⁰³ Rawls, 'Reply to Habermas,' pp. 175–6.

¹⁰⁴ Stemplowska and Swift, 'Dethroning democratic legitimacy,' p. 15.

¹⁰⁵ *Ibid.*, p. 18.

‘balancing view’ creates a problem. For how can we know what ‘justice’ and ‘procedures’ weigh? Unless we spell out some further details, the values seem to be of a very different kind.

I suggest that public reason liberals would do well to accept much of Stemplowska and Swift’s critique. Equipped with civic equality as their answer to the source question, their views would have the explanatory power to resolve the tension, to find the appropriate balance, without resorting to impressionistic intuitionism. Just as for the inverse version of the priority challenge, the fact that civic equality is a master value that justifies proceduralism in the first place makes it the case that a substantive decision that violates this value can be illegitimate. This is decisively not ad hoc, there is a clear and plausible basis for determining which injustices that are impermissible.

In this way, the answer to the priority question supervenes on our answer to the source and dependence questions. Since all citizens have an interest in being treated as civic equals, allowing legislation that treats them unequally generates a substantive complaint that could override the value of proceduralism. Insofar as injustices are also violations of civic equality, justice can sometimes take precedence over procedures.¹⁰⁶ Both procedures and outcomes can serve or undermine civic equality. Thus, there is no principled reason for why procedures should act as trumps, since consequences, too, can challenge the master value that grounds the need for democratic procedures in the first place.

Gravely unjust laws such as basic rights violations always violate civic equality, but not all violations of civic equality are gravely unjust. Policies with consequences that violate civic equality are those that do not ensure equal standing (perhaps allocating a disproportionate amount of tax funds to state schools in affluent neighbourhoods, some forms of religious establishment),¹⁰⁷ those that do not treat citizens as equal sources of authority (perhaps voting

¹⁰⁶ I bracket the possibility that values not based on civic equality could also override the equality-related value of democratic procedures.

¹⁰⁷ For a similar point, see Cécile Laborde and Sune Lægaard. 2019. ‘Liberal nationalism and symbolic religious establishment,’ in Gina Gustavsson and David Miller (eds.), *Liberal Nationalism and Its Critics: Normative and Empirical Questions*. Oxford: Oxford University Press, p. 175.

rules that disproportionately disfavour minorities, discriminatory employment practices in public institutions), and those that infantilise or humiliate citizens (perhaps extreme paternalism, welfare payments that demand humiliating behaviour of the recipients).¹⁰⁸ Few, if any, of these policies would count as violations of basic human rights. On Rawls's view it would thus be permissible for the state to implement them: we may be enraged or protest, but we cannot question the state's *right*¹⁰⁹ to implement the policies.¹¹⁰

1.5.3 IN SEARCH OF MIDDLE GROUND

The benefits of a unitary account of legitimacy are apparent. In contrast to Laborde's view, it traces possible violations of legitimacy to the same source. And against the democratic theories of Christiano and Valentini, the scope restriction of democratic decision-making is not ad hoc. These things taken together entail that when a democratic majority implements decisions, we can evaluate their permissible enforceability by investigating their compatibility with civic equality, the same standard that grounds the need for democratic procedures. It therefore leaves us with a principled answer to the priority question.

This answer can be summarised in a modified version of the principle of collective self-legislation, what I call the principle of liberal collective self-legislation:

The principle of liberal collective self-legislation: Citizens can democratically choose to enact laws and policies that do not violate civic equality.

¹⁰⁸ For classic statements of similar thoughts, see Anderson, 'What is the point of equality?'; Jonathan Wolff. 1998. 'Fairness, respect, and the egalitarian ethos,' *Philosophy & public affairs* 27(2): 97–122; Iris Marion Young. 1990/2011. *Justice and the Politics of Difference*. Oxford: Princeton University Press, p. 54.

¹⁰⁹ 'Legitimacy allows an undetermined range of injustice that justice might not permit.' Rawls, *Political Liberalism*, p. 428. As I shall suggest, I agree with the general message that justice and legitimacy can come apart. However, I believe that Rawls makes the wrong cut.

¹¹⁰ Determining how to best ensure that substantive democratic decisions protect civic equality in a manner that itself respects civic equality is an essential question for further inquiry. It seems clear that protecting the civic equality of all citizens will require setting up complex institutional structures with as good epistemic input as possible. Perhaps the structure could draw on insights from Condorcet's jury theorem. In other words, it might, in some sense, be democratic. Not only could this increase the likelihood that the correct ruling is made, it would also reduce the civic-equality cost of overturning a democratic decision. Goodin and Spiekermann, *An Epistemic Theory of Democracy*. Another alternative is standard judicial review structures.

The principle expresses a synthesis of liberalism and democracy. It enshrines the value of collective self-legislation, but it constrains it so that laws that violate civic equality are impermissible. This includes outcomes that violate liberal rights and outcomes that are too great violations of liberal justice.

Both sides have civic equality as their source of value. If citizens cannot employ their equal power, it does not make sense to talk of any collective self-legislation at all. At the same time, if they use that power to violate civic equality, the benefits of democratic proceduralism are overridden. In that sense, the principle is constrained in accordance with the substantive component of liberalism.

1.6 CONCLUSION

In this chapter, I have argued that the value of civic equality can explain why we should care about both liberalism and democracy, and I arrived at a principle of liberal collective self-legislation that I take to be fundamental for evaluating the permissible scope of state power.

Basing public reason on the democratic value of civic equality has the capacity to generate a theory that outperforms traditional views of public reason liberalism when it comes to conceptualising the wider relationship between liberalism and democracy. Developing this theory is the main aim of this thesis.

In the next chapter, my focus is critical. I show how the most influential versions of political liberalism cannot guarantee collective self-legislation of a kind that is generally thought to be constitutive of a democratic state. They fail to satisfy the principle of liberal collective self-legislation.

CHAPTER 2: POLITICAL LIBERALISM AND COLLECTIVE SELF-LEGISLATION

In the previous chapter, I conceptualised the relationship between liberalism and democracy. I argued that a commitment to liberalism and democracy implies striving towards fulfilling the principle of liberal collective self-legislation.¹ On this picture, civic equality, the source of value for both liberalism and democracy, is what sets the limits of permissible exercises of collective self-legislation. Only exercises of state power with outcomes that do not violate civic equality are legitimate.

In this chapter, I consider whether there is a tension between political liberalism and the principle of liberal collective self-legislation. To do so, I will focus on legislation that does not violate civic equality. The principle is not respected if democratic majorities cannot permissibly enact civic-equality-respecting legislation. Blocking or preventing them from doing so disrespects the democratic public's civic equality as democratic decision-makers.

My focus will be on ordinary legislation and policy. Things such as legislation to protect forests and wildlife and spending public money to build a sports centre or an art gallery. I stipulate that whatever the outcomes are in votes over such matters, they do not violate civic equality. I note already at this point that there is a further question about whether the *justification* for these state actions could violate civic equality. I discuss this in chapter 4 and chapter 5.

Among political liberals, there are two main ideas about how ordinary legislation and policy should be selected. Theories are split between a so-called *narrow* and a *broad* view of the scope of public reason. I will show that they both fail to respect civic equality by not realising collective self-legislation in their prominent versions.²

¹ Outlined in section 1.5.3.

² For a critique of the narrow view based on this chapter, see Henrik D. Kugelberg. Forthcoming. 'Social choice problems with public reason proceduralism,' *Economics & Philosophy*.

According to the narrow view, not all laws need to be justified directly with public reasons. Instead, the requirement only applies to laws, policies, and institutions that are a part of the basic structure of society, things such as the constitution, and the legal and economic system. This includes the rules and laws that govern the procedures for how to enact other laws. Even if their wider theories have significant differences, philosophers such as Brian Barry,³ John Rawls,⁴ T M Scanlon,⁵ and Paul Weithman⁶ all share the view that laws enacted outside the basic structure in liberal societies are legitimate when public reason justifies the decision procedure with which they are selected. This way of using public reasons to justify a decision procedure is contractualist: the procedure is legitimate if and only if it is one which sufficiently idealised citizens could agree to regardless of their comprehensive worldviews. From this, the argument goes, it follows that the law that the decision procedure ‘generates’ is also one which citizens could have given themselves. Legitimacy, therefore, is procedural – since there are public reasons in favour of the procedure, public reason also justifies the substantive laws. Hence, call this view *public reason proceduralism*.

According to the *broad view*, on the other hand, everything (or most things) that the state does should be justified directly with public reasons. Jonathan Quong and Charles Larmore are notable proponent of this view.⁷

In this chapter, I will primarily focus on the political liberalisms of Rawls and Quong. However, the arguments apply more generally to many other theories as well.

I argue that Quong’s version of political liberalism fails to achieve collective self-legislation because of his strict understanding of what counts as a public reason and because

³ Brian Barry. 1995. *Justice as Impartiality*. Oxford: Oxford University Press.

⁴ John Rawls. 1993/2005. *Political Liberalism* (expanded edition). New York: Columbia University Press.

⁵ T M Scanlon. 2003. ‘Rawls on justification,’ in Samuel Freeman (ed.), *The Cambridge Companion to Rawls*. Cambridge: Cambridge University Press.

⁶ Paul Weithman. 2017. ‘Autonomy and disagreement about justice in political liberalism,’ *Ethics* 128(1): 95–122.

⁷ Jonathan Quong. 2004. ‘The scope of public reason,’ *Political Studies* 52(2): 233–250; Jonathan Quong. 2011. *Liberalism Without Perfection*. Oxford: Oxford University Press, pp. 273–89; Charles Larmore. 1996. *The Morals of Modernity*. New York: Cambridge University Press, p. 137; Charles Larmore. 1999. ‘The moral basis of political liberalism,’ *Journal of Philosophy* 96(12): 599–625, pp. 607–8.

of his broad understanding of public reason's scope. I argue that since Quong's theory prioritises liberalism over democracy even in cases where the cost of prioritising democracy is very low, it denies citizens the opportunity to govern themselves. In making this argument, I will discuss what I take to be the least controversial policy that Quong's theory would diagnose as not publicly justified. Compared to other policies, it is not controversial because it does not violate civic equality and there is virtually no disagreement among the envisaged demos about the rightness of it. I focus on such a case, because if Quong would not favour democracy over public justification in an 'easier' case, the same holds for harder cases as well. I find that the problem with Quong's political liberalism from a democratic point of view is that it diagnoses seemingly innocuous majority decisions as impermissible to enforce.

Rawls's public reason proceduralism fails for other reasons: the view has not taken canonical results from social choice theory seriously. I argue that even if there are public reasons in favour of a chosen decision procedure, there will always be some reason for preferring another. Hence, public reason is *inconclusive*. This inconclusiveness carries over to the 'higher' level, to the decision procedure employed for deciding what decision procedure to use. This inconclusiveness is worrying since the aggregation of votes changes the laws that are generated, and different procedures will aggregate votes differently. This creates different forms of arbitrariness, something that entails that public reason proceduralism fails to satisfy basic desiderata for collective self-legislation.⁸ In chapter 6, I argue that a different version of the broad view is correct, because it solves the problems with the narrow view presented in this chapter.

I begin by outlining the conditions that need to be met in order for collective self-legislation to be achieved (section 2.1). I then give an overview of the main features of Quong's

⁸ Some arguments have been made about the relationship between public reason and social choice theory. For instance, see Hun Chung and Brian Kogelmann. In press. 'Diversity and rights: A social choice-theoretic analysis of the possibility of public reason,' *Synthese*; Brian Kogelmann. 2019. 'Public reason's chaos theorem,' *Episteme* 16: 200–219; Christian List. 2006. 'The discursive dilemma and public reason,' *Ethics* 116(2): 362–402.

political liberalism and his broad view of public reason's scope (section 2.2). I argue that it follows from it that his legitimacy standard always prioritises the justificatory component of liberalism over democracy (section 2.3). After this, I consider ways that Quong might want to respond, and argue that all avenues fail on his own terms (section 2.4). I then describe Rawls's narrow view that avoids the arguments raised against Quong (section 2.5). However, it fails for other reasons. It can neither guarantee that decision procedures are collectively self-legislated (section 2.6), nor that substantive laws are (section 2.7). I conclude that in order to craft a public reason liberalism that satisfies the principle of liberal collective self-legislation, we need to look elsewhere.

2.1 THE PRINCIPLE OF LIBERAL COLLECTIVE SELF-LEGISLATION

Rawlsian political liberalism is meant to satisfy the principle of liberal collective self-legislation. As Weithman argues, Rawls is committed to an ideal where laws and policies are given to the citizenry by itself.⁹ Even if the idea is not well-defined in Rawls's own writings, we can be certain that the Rawlsian view of democracy is not minimal. As discussed in the previous chapter, Rawls speaks of how the liberties of the moderns are not prior restrictions of 'the people's constituent will', he describes how his theory is compatible with 'popular sovereignty', the 'will of the people', and so on.¹⁰ I will not take a position on the deeper issue of how precisely these statements should be understood. For my purposes, it suffices to rely on only a thin understanding of democracy as collective self-legislation, because if political liberalism fails to achieve it, then it fails to achieve thicker ones as well. Consequently, I will not give a full picture of what it would take for a law or policy to be collectively self-legislated in the thick sense. Rather, I offer a principle of liberal collective self-legislation with two conditions such

⁹ Weithman, 'Autonomy and disagreement about justice in political liberalism.'

¹⁰ John Rawls. 1995. 'Political Liberalism: Reply to Habermas,' *Journal of Philosophy* 92: 132–80, pp. 158–9.

that if they are *not* met, even minimal collective self-legislation is not achieved. Recall the general formulation of the principle:

The principle of liberal collective self-legislation: Citizens can democratically choose to enact laws and policies that do not violate civic equality.

The principle is liberal in the sense that it excludes instances of collective self-legislation that violate basic rights and other forms of unequal treatment by the state.

As discussed, there are views about permissible state action that have a smaller set of illegitimate laws and policies. On these views, only laws that violate basic rights are illegitimate. For the purposes of this chapter, it does not matter which specification we pick. This is so because I will argue that Rawls and Quong fail to ensure that citizens can choose and enact laws and policies that violate neither civic equality nor fundamental rights. Consequently, these laws would be permissible on both specifications.

For an exercise of state power to be collectively self-legislated, I take it that two desiderata need to be met.

Fairness (F): The procedure that selects law and policy treats citizens as civic equals.

This desideratum seems to me to be in line with standard Rawlsian commitments. For Rawlsians, a fair procedure is one that is soundly justified with public reasons and treats citizens as free and equal. An unfair procedure cannot lead to collectively self-legislated law and policy because it treats citizens as not equally worthy of concern. Dictatorial or aristocratic decision rules are paradigmatic examples of unfair procedures. Even if a dictator or an aristocracy only enacted publicly justified laws, those laws would not be collectively self-legislated. Those laws were not given to the citizenry by itself. The citizens who are treated unfairly by being excluded

from the decision-making are also part of the body of citizens who should be included for collective self-legislation to be achieved.

For Rawls, examples of fair procedures are voting procedures. As discussed in section 1.1, laws that are the result of a vote are ‘binding on citizens by the majority principle’.¹¹ More concretely, Rawls has a representative system in mind where citizens vote for legislators and legislators pass laws.¹²

The second desideratum is meant to ensure that the chosen course of action tracks what the citizens want to do. If this does not happen, there is no clear link between the collective choice and the citizens’ preferences. I take it that this, too, is in line with Rawlsian ideas. On a strong interpretation, this entails that the chosen law or policy needs to reflect the ‘will of the people.’ There is some evidence suggesting that something like this is what Rawls has in mind.¹³ Statements such as these are dubious, however, and they are difficult to operationalise.¹⁴ For my purposes it suffices to rely on a much weaker interpretation of what it takes for a decision to track what the citizens want to do.

Positive preference-tracking (P): The preferences of the citizenry over whether a law or policy should be enacted determine whether the law or policy is enacted or not.

There is of course a link between the two desiderata. Fair procedures are designed in order that the choices they generate track the preferences of those whose preferences are aggregated. One reason that dictatorial rules are unfair is that the preferences of the citizenry are not the

¹¹ John Rawls. 1997. ‘The idea of public reason revisited,’ *The University of Chicago Law Review* 64 (3):765–807, p. 798. Let me note that it is far from certain that lotteries can be ruled out as unfair procedures. There is an argument to be made that lottocratic decision procedures are fair in the sense that they treat citizens as free and equal. However, lotteries violate the positive preference-tracking conditions for collective self-determination, so I will not discuss them further.

¹² Jonathan Wolff. 2001. ‘John Rawls: Liberal democracy restated,’ *Croatian Journal of Philosophy* 1(3): 347–361, pp. 352–9

¹³ As noted in chapter 1, John Skorupski ties Rawls’s theory to radical democracy. John Skorupski. 2017. ‘Rawls, liberalism, and democracy,’ *Ethics* 128(1): 173–198.

¹⁴ See for instance Christian List. 2007. ‘Deliberation and agreement,’ in Shawn W. Rosenberg (ed.), *Deliberation, Participation and Democracy: Can the People Govern?* London: Palgrave Macmillan.

difference-makers. The preferences of the dictator are. However, even with a fair procedure in place it will sometimes be the case that the outcome does not track the preferences of the citizens in the right kind of way. These are the circumstances that I will focus on in sections 2.6 and 2.7 – those that make it the case that (P) is not met, even when (F) is met.

Next, however, I will argue that Quong's version of the broad view straightforwardly violates (P), and – consequently – collective self-legislation in matters of everyday legislation. To establish this, I must first give an overview of the central features of his theory.

2.2 REASONABLENESS IN THE WELL-ORDERED SOCIETY

2.2.1 BASIC FEATURES OF QUONG'S POLITICAL LIBERALISM

Just as with other versions of public reason liberalism, the main claim of Jonathan Quong's political liberalism is that political power needs to be justifiable. For Quong, this means that it must be justified to reasonable citizens, a hypothetical constituency of persons populating the well-ordered society that all adhere to broadly liberal conceptions of justice but disagree about matters of the good.¹⁵ When justifying political decisions, public officials need to appeal to public reasons, reasons that all these reasonable citizens share. Since reasonable citizens have different views about the good, the set of public reasons does not include such considerations. Public reasons are based on things such as fairness, equality, and freedom – values that are shared by the reasonable citizens. Examples of non-public reasons are things such as the value of preserving natural beauty, the importance of leading excellent lives, the value of art, the truth of a certain religion, and so on.¹⁶

¹⁵ Quong, *Liberalism Without Perfection*, pp. 176–7; Paul Billingham. 2017. 'Liberal perfectionism and Quong's internal conception of political liberalism,' *Social Theory and Practice* 43(1): 79–106, p. 97.

¹⁶ Quong, *Liberalism Without Perfection*, pp. 105; 192–220; Jonathan Quong. 2021. 'On Laborde's liberalism,' *Criminal Law and Philosophy* 15: 47–59.

Quong holds that reasonable citizens only share things that are necessary to sustain just social co-operation over time.¹⁷ Hence, to determine what counts as a public reason we should not conduct a survey of the things that reasonable citizens in the real world share.¹⁸ As Quong puts it, the asymmetry ‘between disputes about justice and the good life... [is] a philosophical claim, and not an empirical fact.’¹⁹ Because of this, Quong’s justificatory constituency is not responsive to the views held by actual citizens. Even if, in a given society, there is widespread agreement about certain judgements about the good, this does not make reasons based on this agreement permissible in public justification.

The reason for this idealisation is, according to Quong, that many people are immoral, ignorant, or ‘otherwise troublesome’ in ‘the world as we know it’ and demanding that laws be acceptable to them would therefore ‘cause serious problems’.²⁰ We do not want ‘our political principles to be held hostage to their unreasonable demands.’²¹

However, as noted, the idealisation does not only exclude immoral and ignorant people. Reasonableness is a technical term, in many ways disconnected from how the word is ordinarily used.²²

This, Quong argues, means that his theory rules out even moderately perfectionist state action – laws and policies that are justified with widely endorsed ‘modest or thin claims about the good life’.²³ The reason is that he denies ‘that there really can be the relevant kind of agreement, even over modest claims about the good life.’²⁴ In this sense, Quong’s theory is

¹⁷ Andrew Lister. 2014. ‘Public reason and perfectionism: Comments on Quong’s Liberalism Without Perfection,’ *Philosophy and Society* 25(1): 12–34, p. 32.

¹⁸ Billingham, ‘Liberal perfectionism and Quong’s internal conception of political liberalism,’ p. 97.

¹⁹ Quong, *Liberalism Without Perfection*, p. 157.

²⁰ Ibid., p. 37.

²¹ Ibid.

²² Ibid., p. 38.

²³ Quong, ‘On Laborde’s liberalism,’ p. 7.

²⁴ Ibid. However, see Aurélia Bardon. 2018. ‘Two misunderstandings about public justification and religious reasons,’ *Law and Philosophy* 37: 639–669, pp. 657–67.

strictly antiperfectionist. The idea is to allow only justice-based considerations to guide political action.

Quong's version of political liberalism is therefore in an important sense disconnected from real-world disagreement. It does not aim to show how normative stability could be achieved among people with different views in our own liberal democracies. The goal is, according to Quong, to try to show that citizens who are raised in the well-ordered society would continue endorsing liberal principles and institutions if they are justified with public reasons.²⁵

2.2.2 POLITICAL LIBERALISM IN THE REAL WORLD

Quong's view has received criticism for being overly excluding when it comes to the reasons that could permissibly be used in public justification. So-called moderate perfectionists have argued that modest claims about the good life should be permissible in public justification.²⁶ In other words, that such claims, appropriately understood, should have the same status as public reasons based on fairness, freedom, and equality. I discuss this argument in more detail in chapter 5.

In this chapter, this is not the line that I am pursuing. On the contrary, I will argue that even if we grant that there would be no reasonable agreement on moderate perfectionism in the well-ordered society, problems still arise when we shift our focus to real-world liberal democracies, where such widespread agreement might, in fact, exist. Or, at least, when

²⁵ Ibid., p. 158. Similarly, Rawls describes the 'main aim' of Political Liberalism as being able to say 'how the well-ordered society of justice as fairness... is to be understood once it is adjusted to the fact of reasonable pluralism.' Rawls, *Political Liberalism*, pp. xxxv–xxxvi. At the same time, Rawls is trying to delineate a 'realistic utopia'. It is therefore important that the solution to disagreement is not too idealised. John Rawls. *The Law of Peoples*. Cambridge, MA: Harvard University Press, p. 126.

²⁶ For critiques along these lines, see Cécile Laborde. 2017. *Liberalism's Religion*. Cambridge: Harvard University Press, p. 99; Franz Mang. 2013. 'Liberal neutrality and moderate perfectionism,' *Res Publica* 19(4): 297–315; Collis Tahzib. 2019. 'Perfectionism: Political not metaphysical,' *Philosophy & Public Affairs* 47(2): 144–178; see also Timothy Fowler and Zofia Stemplowska. 2015. 'The asymmetry objection rides again: On the nature and significance of justificatory disagreement,' *Journal of Applied Philosophy* 32: 133–146, pp. 140–1.

disagreement over such reasons need not necessarily be deep and divisive. Thus, the problems of guaranteeing collective self-legislation arises if Quong's theory is meant to be action-guiding in non-ideal circumstances, in part because the reasons that the state could permissibly appeal to remain the same regardless of who that state's power is exercised over.

Quong could say two things in response to this. Either he might hold that the theory is not meant to explain whether the use of state power 'here and now' is legitimate. Or he could argue that the concept of legitimacy is not responsive to the views of actual citizens, and that this is unproblematic. Evidence suggests that the second response is what Quong has in mind. In a discussion of what democratic decision-making should be used for, Quong argues that citizens could, by voting, permissibly decide between allowing a peaceful Nazi march in a Jewish neighbourhood to take place and not allowing it. In this case, there are public reasons on both sides of the dispute, and it is not clear what liberal justice requires.²⁷ The example, of course, turns on the presence of Nazis in the society in question. By definition, this makes it the case that the society is not well-ordered since Nazism is the very opposite of a conception of justice with a reasonable balance of liberal values.²⁸ Furthermore, Quong discusses how other 'unreasonable' people should be treated by the state, which arguably also moves his theory from the ideal to the non-ideal, because most, if not all, people are reasonable in the well-ordered society.²⁹

Thus, we have good reason for thinking that Quong's theory should be understood as intended to provide answers in less-than-ideal conditions. However, or so I will argue, applying

²⁷ Quong, *Liberalism Without Perfection*, pp. 131–2.

²⁸ I realise that a critic might push back against this description and suggest that in the well-ordered society there could possibly live very few Nazis. Maybe only two Nazis want to hold a march. I leave this possibility aside, because, if so, it does not seem to be that much of a pressing problem.

²⁹ Ibid., pp. 290–314. David Enoch argues that Quong does not justify this move properly. David Enoch. 2015. 'Against public reason,' in David Sobel, Steven Wall and Peter Vallentyne (eds.), *Oxford Studies in Political Philosophy*, Volume 1. Oxford: Oxford University Press, p. 125. See also Elizabeth Edenberg. 2018. 'Growing up sexist: Challenges to Rawlsian stability,' *Law and Philosophy*, 37(6): 577–612, esp. pp. 609–11, for a related argument about problems with real-world (unreasonable) comprehensive doctrines.

his legitimacy criteria beyond the well-ordered society violates the principle of liberal collective self-legislation.

2.3 ENVIRONMENTAL PROTECTION AND NATURAL BEAUTY

Recall that on Quong's view, it is impermissible for all reasons drawn from the good to figure as the sole justification for a political decision. This includes reasons that are 'detachable' from their wider philosophical doctrine.³⁰ Decisions based on things such as the beauty of the natural world and the protection of endangered species are not in the pool of permissible public reasons, because not all reasonable citizens need to accept them to be members of the well-ordered society. Nevertheless, these kinds of reasons are arguably both widely shared in many real-world liberal democracies, and their validity is not tied to the truth of a full comprehensive view of the good. Hence, this is a good place to start when imagining a policy that seems uncontroversial from a democratic point of view, but that Quong despite this would deem impermissible to enforce:

Chemical Plant: A private company starts preparing to build a chemical plant in a forest that it owns. A significant majority of the people who live in the area are environmentally conscious, and an environmental party has most seats in the local legislature. There is widespread protest, and after reviewing the case, the elected officials find two problems. The building project both threatens the habitats of some of the animals in the forest and ruins the natural beauty of the place. For these reasons they take a vote that orders the company to stop building the plant.

Since, according to Quong, not all reasonable citizens would agree that there is value in preserving the natural beauty of the forest, or the habitat of animals, the reasoning of the state officials is impermissible. And, consequently, the decision that they made would be illegitimate.

³⁰ Detachable reasons are the concern of chapter 4.

A straightforward interpretation of what this entails is that the state does not have a moral right to stop the private company from building the chemical plant. On Quong's view, it seems to be impermissible for the state to, for instance, send the police to stop the company from continuing its plans.

I take it that for Quong, legitimacy is about permissible enforceability – not about determining what an ideally just outcome is. In other words, it is not merely that it is wrong to stop the building of a chemical plant if the sole justification is that it ruins the natural beauty of the surrounding forest. Rather, it is not even within the state's purview to make that decision, and the state does not have the right to coercively enforce it.³¹ I want to emphasise, however, that this does not imply that it follows from Quong's theory that he must be committed to non-democratic processes over democratic ones. The only inference that I want to draw from his view of legitimacy is that democratic decisions that are unsupported by public reasons are impermissible to enforce, and that it follows from this that the democratic process must be supplemented by some mechanism for determining when policies are not publicly justified. If that happens, we might imagine that the policies are ruled void and replaced with publicly justified decisions.³² Otherwise, it is hard to see what discussions of legitimacy are meant to achieve – something stronger surely must follow if an exercise of state power is illegitimate than if it is 'merely' unjust.

In *Chemical Plant*, this means that the decision to stop the building of the plant must be ruled void and be replaced by a decision that allows the building of the plant. If this is correct, it clearly violates the principle of liberal collective self-legislation, because the democratic majority is denied the opportunity to make the choice that it wants to make. The decision does not positively track the preferences of the overwhelming majority of the citizenry.

³¹ For Quong's definition of legitimacy, see *Liberalism Without Perfection*, p. 108.

³² It is also possible to imagine other mechanisms for ensuring that political decisions are publicly justified.

This conclusion follows from Quong's broad view, that is, the fact that Quong argues that public reasons need to be given in favour of everything that the state does, not just in matters concerning constitutional essentials and basic justice.³³ Quong's theory, in this way, clearly prioritises (his view of) public justification over collective self-legislation.

It is at this point important to distinguish my view from Brian Barry's prominent argument against the broad view. Barry asks us to imagine a case similar to *Chemical Plant* where we are deciding between building a dam and saving an endangered fish, the snail darter. In this case, the right course of action is, according to Barry, that we take a vote because the case cannot be decided on the basis of public reason. According to Barry, issues beyond the basic structure would always require prioritising one view of the good over another.³⁴

In response to this, Quong rightly asks if 'all issues of environmental preservation or wildlife protection only [could] be decided by taking a comprehensive position on the value or beauty of the environment'.³⁵ Perhaps,

our snail darter has important scientific value or is essential to the preservation of several other species whom we have good reason to value for scientific or health-related reasons. These are all public reasons that stand apart from any particular conception of the good, and might be significant enough to prove decisive in our deliberations about whether or not to build the dam.³⁶

In what follows, I am not going to defend the strong claim that public reason beyond the basic structure is impossible, because I agree with Quong that it most likely is false. My claim is much weaker – in this *particular* case, and in cases like it, the considerations that the public officials appeal to against building the chemical plant are non-public. The animals in *Chemical Plant* are not important for scientific, health-related, or other public reasons. This is what makes it

³³ Quong, *Liberalism Without Perfection*, pp. 273–89.

³⁴ Barry, *Justice as Impartiality*, pp. 144–5.

³⁵ Quong, *Liberalism Without Perfection*, p. 284.

³⁶ Ibid.

impermissible for the local legislature to make the decision, and this is what violates the principle of liberal collective self-legislation.

2.4 THE MODERATE PERFECTIONISM TRILEMMA

2.4.1 MAJORITY RULE VERSUS PUBLIC JUSTIFICATION

If Quong wants to be able to say that the state should be allowed to stop the building of the chemical plant, there might be routes available. For instance, he could suggest that the public officials should provide a public reason to supplement the non-public ones. If so, he might argue, stopping the building project would be permissible.³⁷

The problem with this strategy is that there seems to be something manipulative or insincere about relying on reasons that one does not truly believe are the ones that justify the decision in public justification. This consideration is probably in line with Quong's own view about the importance of sincerity.³⁸ It seems to me that it would be a significant weakening of Quong's view if he allowed that the decisive reason, the reason that made the difference, could be a non-public one while the public reason does not do any real normative work.

Even if that were not the case, it is also far from certain that there are any public reasons in this case, or every case like it. Maybe it is just a very beautiful forest that is always admired from afar – the only role it plays in people's lives is as an object of natural beauty. And, at the same time, there may be sound public reasons for allowing the building of the chemical plant (it creates employment opportunities, an important service, and so on). If so, this would be an instance of when public reason conclusively points to permitting the building project, or at least where any reasonable balance of public reasons conclusively counts against stopping it.

³⁷ As per the so-called wide view of public reason, endorsed by both Quong and Rawls. Quong, *Liberalism Without Perfection*, p. 288; Rawls, 'The idea of public reason revisited.'

³⁸ Quong, *Liberalism Without Perfection*, pp. 265–73.

We can be certain that when public reason is conclusive in this way, democratic majorities do not on Quong's view have the right to make decisions that go against it. Indeed, we should try to 'see if the issue is resolvable on... [public reason] alone.'³⁹ By hypothesis, it is in this case.

To this, Quong might want to give a two-pronged response. First, he could suggest that it rarely will be the case that public reason is conclusive. Often, there will be public reasons on both sides of a dispute.⁴⁰ Then, the fact that principle of liberal collective self-legislation is violated when public reason is conclusive should not be too worrying, because it does not happen very often. Further, he could suggest that in cases where there are public reasons available, this would be enough to achieve legitimacy even if these are not used by – or held by – public officials. In *Chemical Plant* this would entail that if it could reasonably be argued that the forest is a place of general recreation,⁴¹ insofar as this is a public reason, this is sufficient for guaranteeing the legitimacy of the decision, even if that consideration is not what drove the legislature's reasoning.

This, however, forces Quong into a trilemma. He cannot employ this strategy, satisfy the principle of liberal collective self-legislation, and consistently rule out moderate perfectionist state action. It is true that Quong would satisfy the principle of liberal collective self-legislation by arguing that public reason is inconclusive for virtually all democratic decisions, and that the mere existence of public reasons justifies state action, even when these are not brought forward. The downside, from Quong's point of view, is that this would leave his theory unable to diagnose any moderate perfectionist state action as illegitimate, because there would – in line with the above – exist unused public reasons in virtually all cases of concern. Moderate perfectionists could always enact moderately perfectionist policies justified solely with non-

³⁹ Ibid., p. 283.

⁴⁰ Quong, *Liberalism Without Perfection*, pp. 284. Showing that many reasons could be public is an ongoing project. See for instance Christie Hartley. 2018. 'Political liberalism and children,' *Philosophical Studies* 175: 1095–1112; Derek Bell. 2002. 'How can political liberals be environmentalists?' *Political Studies*, 50(4): 703–724.

⁴¹ John Rawls. 2001. *Justice as Fairness: A Restatement*, Erin Kelly (ed.). Cambridge, MA: Harvard University Press, p. 152, n. 26.

public reasons, because there would always be unused public reasons in favour of doing so. Nothing is stopping them from only appealing to how art contributes to a flourishing life when they fund museums or from saying that a life of using drugs is not worthwhile when they ban recreational drug use. And so on. Considering that antiperfectionism is a cornerstone of Quong's theory – it is in the title of his book after all – this would be a high price for him to pay.

To avoid this conclusion and rule out moderate perfectionism, Quong needs to either say that public reason often is conclusive (and that in such cases it is impermissible to decide against what public reason mandates – *this* is when perfectionism is objectionable), or that political decisions made with perfectionist reasons, even where public reasons exist, are illegitimate. Doing either of these things entails that the principle of liberal collective self-legislation is not met, because there would then be many particular decisions – such as the stopping of the building of the chemical plant – that democratic majorities could not legitimately make.

Of course, Quong might not be too worried about giving up on the collective self-legislation-horn of the trilemma. He could say that just as when it comes to violating basic rights and liberties, making democratic decisions based on non-public reasons (even when there are unused public reasons present) is not a thing that the state should be doing, because it violates peoples' status as free and equal. Recall from section 1.5.1 that Quong argues in response to Habermas's version of the antidemocratic objection that 'certain fundamental liberal rights and principles – for example, free speech and freedom of religion – are beyond reasonable dispute'.⁴² Could the same not hold for making laws based on reasons that not all reasonable citizens share? By analogy, we might think that an otherwise just law could be enacted undemocratically. If the same law were enacted through the right procedures, it would

⁴² Jonathan Quong. 2013. 'On the idea of public reason,' in Jon Mandle and David Reidy (eds.), *The Blackwell Companion to Rawls*. Oxford: Wiley-Blackwell, p. 267.

have been legitimate, but now it is not. Thus, Quong might press, why is the same not true when it comes to the justificatory aspect of legitimacy?

I grant that this response is plausible if we think of cases where the majority imposes excessively perfectionist policies on a disapproving minority. Such decisions would violate the minority's status as free and equal (or, as I have put the relevant standard, their civic equality) in much the same way as a violation of basic rights would. The present argument, therefore, does not imply a *carte blanche* for using any reason in public justification, or the right to democratically enforce all laws, including those with adverse consequences. This is guaranteed by the principle of liberal collective self-legislation's limitation to laws that are themselves morally permissible in the sense that they do not violate civic equality (or, on an alternative specification, basic rights). In chapter 4 and chapter 5, I argue that there is a justificatory component of legitimacy such that if it is not met it would be impermissible to enforce collectively self-legislated decisions even when the action itself does not violate civic equality.

A problem for Quong, however, is that his theory lacks the resources to distinguish excessive from moderate perfectionism. The view is binary, not scalar, so any and all perfectionism makes policies impermissible to enforce, if the perfectionism is not supplemented by public reasons. When thinking about policies in the real world, it seems strange to suggest that the wrongness of a majority enacting policies based on moderately perfectionist reasons, shared by most, if not all, citizens, is on par with policies based on, say, the truth of a religion. The wrongness of the former, it seems to me, is not beyond (pre-theoretical) reasonable dispute – even given a prior commitment to treating people as free and equal or as civic equals. Denying a democratic majority the right to decide collectively to preserve a forest because they admire its natural beauty would be at least as great a violation of their freedom and equality (or civic equality), *qua* democratic reasoners, as allowing a non-public moderate perfectionist reason into their democratic decision-making.

2.4.2 QUONG'S POLITICAL LIBERALISM AS MINORITY PROTECTION

In response to the argument in 2.4.1, Quong might want to say that his framework protects the interests of the minority, because those citizens who neither agree with the decision, nor with the reasons that justify the decision, are not treated as free and equal. However, if this is right, the potential disrespect to minorities would have to be balanced against the failure to treat their fellow citizens as free and equal (or as civic equals) when denying them the opportunity to protect their forest.⁴³ Whereas I grant that in some cases it will be right to overturn a decision that has the wrong sort of justification, the same is by no means necessarily true when it comes to all state action that is not justified with shared public reasons.

In sum, by denying democratic majorities the power to enact seemingly uncontroversial laws and policies, Quong's theory does – for reasons other than those provided by Habermas – ‘demote the democratic process to an inferior status.’⁴⁴ In a sense, this is acknowledged by Quong who notes that democratic decision-making, on his view, is only a tool for deciding between different ways of interpreting liberal justice. If a ‘given proposal cannot be endorsed by all reasonable people, the state lacks the legitimate authority to impose it, regardless of whether the proposal has been democratically selected.’⁴⁵

Were the boundaries for liberal justice set by the violation of basic rights, this would be uncontroversial. However, as shown, Quong's political liberalism entails that far more decisions than those that violate basic rights are beyond the reach of democratic decision-making. The consequence of this is that those who want to respect the values of both democracy and public justification should be worried about Quong's standard.

⁴³ It will also be the case that in most of these cases there would – as established – be unused public reasons available. While that fact alone cannot mitigate all problems, it should at least alleviate some concerns. Since my aim is not to consistently rule out all forms of perfectionism, appealing to this fact is not a problem for the present argument, only for Quong's theory that does have this antiperfectionist aim.

⁴⁴ Jürgen Habermas. ‘Reconciliation through the public use of reason: remarks on John Rawls's political liberalism,’ *The journal of philosophy* 92(3): 109–131, pp. 128–9. Discussed in more detail in section 1.5.1.

⁴⁵ Quong, *Liberalism Without Perfection*, p. 137.

This version of the failure to satisfy the principle of liberal collective self-legislation is a problem particularly for Quong's political liberalism. On John Rawls's account, it would be permissible to use arguments based on non-public reasons if and when the issue is not about constitutional essentials or matters of basic justice:

[A] bill may come before the legislature that allots public funds to preserve the beauty of nature in certain places (national parks and wilderness areas). While some arguments in favor may rest on political values, say the benefits of these areas as places of general recreation, political liberalism with its idea of public reason does not rule out as a reason the beauty of nature as such or the good of wildlife achieved by protecting its habitat. With the constitutional essentials all firmly in place, these matters may appropriately be put to a vote.⁴⁶

Rawls's account, therefore, avoids the problems outlined above. However, Rawls also fails to uphold the principle of liberal collective self-legislation, albeit for different reasons. To show this, I will first outline the main features of his narrow view of the scope of public reason.

2.5 RESTRICTING THE SCOPE OF PUBLIC REASON

According to Rawls, not all political decisions need to meet the justificatory demands of public reason. Only decisions that are a part of the basic structure of society, that is, constitutional essentials and matters of basic justice need to be justified directly with public reasons.⁴⁷ Constitutional essentials include fundamental principles for the set-up and structure of the political process and government, and the set of rights and liberties that have special constitutional protection. Importantly, this also includes rules for voting on or deciding questions outside the basic structure.

⁴⁶ Rawls, *Justice as Fairness: A Restatement*, p. 152, n. 26. See also Bell, 'How can political liberals be environmentalists?'

⁴⁷ Rawls, *Political Liberalism*, pp. 227–30. Even if there are apparent difficulties with successfully making a stable and theoretically sound separation of the two 'levels', between questions that have bearing on the basic structure and those that do not, I will assume that it is in principle possible to do so. For influential work on this, see G. A. Cohen. 1997. 'Where the action is: On the site of distributive justice,' *Philosophy & Public Affairs* 26: 3–30; Iris Marion Young. 2011. *Responsibility for Justice*. Oxford: Oxford University Press, pp. 43–75.

There are different ways of justifying this view. Crucially, one must find a morally salient feature that separates cases that are a part of the basic structure from those that are not. Rawls's justification for only demanding public reasons in basic structure questions is somewhat underdeveloped.⁴⁸ I agree with Quong who takes Rawls's position to mean that 'the idea of public reason must apply to constitutional essentials and matters of basic justice, but need not apply beyond this domain'.⁴⁹

At first glance, there is a contradiction here. If we accept, first, Rawls's view that public reasons need to justify the use of coercive political power, and second, that 'all legislation involves the exercise of state power in some way – at least through the collection of taxes',⁵⁰ then it is puzzling that non-basic structure laws do not require public reasons in favour of them in order to be legitimate. The political liberal solution to this puzzle is that if public reason can justify the decision procedure, the substantive decision, too, will be justified and legitimate. Scanlon, for instance, argues that if the political institutions 'have the right sort of justification, then this justification also supports legislation enacted through the procedures they define'.⁵¹ Weithman, in a recent restatement of Rawls's view, similarly argues that the settlement of a political dispute with a decision procedure is authoritative insofar as 'the decision procedure itself... is supportable by public reasons'.⁵²

The central claim of this public reason proceduralism is thus that a decision procedure is legitimate if and only if it is justified with public reasons. This, then, confers legitimacy to the substantive decisions. To see how this works, suppose that the government decides between building a sports centre, an art gallery, and saving the money for next year. Let us assume further that no basic structure questions are involved in making this decision. Hence, the government uses a decision procedure that has public reasons in favour of it to decide what to

⁴⁸ Quong, *Liberalism Without Perfection*, p. 273; Rawls, *Political Liberalism*, p. 215.

⁴⁹ Quong, *Liberalism Without Perfection*, p. 274.

⁵⁰ I agree with Scanlon, 'Rawls on justification,' p. 162 that Rawls seems to be committed to both these claims.

⁵¹ Scanlon, 'Rawls on justification,' p. 163.

⁵² Weithman, 'Autonomy and disagreement about justice in political liberalism,' p. 105.

do. The legitimate procedure is employed, and it is determined that the art gallery should be built. For public reason proceduralists, this entails that the decision is legitimate, regardless of what reasons are given in favour of it. As Rawls puts it, '[a] legitimate procedure gives rise to legitimate laws and policies made in accordance with it... [the] outcomes of a legitimate procedure are legitimate whatever they are.'⁵³

Quong rejects the narrow view on the grounds that the basic structure is not 'special', and that this view of legitimacy allows for 'limited forms of perfectionism'.⁵⁴ While I believe that Quong's arguments are both sound and convincing, there are two issues with them if they would be the sole reason we had for rejecting the narrow view. If it could be shown that the basic structure *is* special, the first argument fails. And the second argument is not sufficient on its own, because determining whether perfectionism is wrong outside the basic structure is precisely what is at stake.⁵⁵

In the rest of this chapter, I provide a broader, structural, critique. I show that states adhering to public reason proceduralism cannot meet the principle of liberal collective self-legislation. Institutions built around public reason proceduralism cannot guarantee, firstly, that the decision procedure is selected through a fair procedure and that the choice of the procedure reflects the preferences of the citizenry, and, consequently and secondly, that the choice made with the procedure is determined by the preferences of the citizens. Thus, the alleged connection between proceduralism and legitimacy is weak.

⁵³ Rawls, *Political Liberalism*, p. 428.

⁵⁴ Quong, *Liberalism Without Perfection*, p. 274.

⁵⁵ This is not meant as a critique of Quong, I take it that he does not see this as a free-standing argument either.

2.6 TWO FORMS OF ARBITRARINESS

2.6.1 ARBITRARINESS FROM CONDORCET CYCLES

Recall condition (P) for collective self-legislation, that stated that the preferences of the citizenry over whether a law or policy should be enacted determine whether the law or policy is enacted or not. In what follows, I will argue that this condition is not met when the choice of the law or policy is arbitrarily made. An arbitrary choice is incompatible with collective self-legislation, however it is defined, because the preferences of the citizens are not what makes the difference in determining what choice is made. I will focus on two states of affairs that lead to arbitrariness: (i) when there exist Condorcet cycles and, (ii) when there is no non-arbitrary way of selecting the decision procedure and different procedures generate different choices based on the same profile of individual preferences. Thus, I use arbitrariness in a rather technical way, but I note that decisions that are arbitrarily made in some other way might have the same sort of problems.

I discuss the second condition in section 2.6.2. To explain the first condition, I must first briefly outline what a Condorcet cycle is.

Marquis de Condorcet showed in the 18th century that in pairwise majority voting, where the winning option should have at least as many votes as every other option, there is a (perhaps significant)⁵⁶ risk for cycles with intransitive results – even if the preferences of the individuals are transitive and complete. Imagine that three individuals are deciding on three options x, y, and z:

⁵⁶ The likelihood of cycles increases as the number of individuals increase. Hence, the preferences of an entire electorate, given certain assumptions, are likely to be cyclical. For discussions of this see William W. Gehrlein. 1983. 'Condorcet's paradox,' *Theory and Decision* 15: 161–197; Christian List. 2001. 'Some remarks on the probability of cycles,' Appendix to Christian List and Robert Goodin, 'Epistemic democracy: Generalizing the condorcet jury theorem,' *Journal of Political Philosophy* 9(3): 277–306; William Riker. 2003. 'Social choice theory and constitutional democracy,' in Thomas Christiano (ed.), *Philosophy and Democracy*. Oxford: Oxford University Press, pp. 165–7. However, there are circumstances such that the likelihood of cycles decreases. I discuss these in chapter 6.

Anna: $x \succ y \succ z$
Betty: $y \succ z \succ x$
Caroline: $z \succ x \succ y$

Each individual's preferences are transitive. However, on the aggregated level there is a Condorcet cycle. The aggregated result is intransitive: two thirds of the group prefer x to y , two thirds prefer y to z , but two thirds also prefer z to x . Hence, 'no matter which [option] is proposed to head the list, there is always a majority for another one. So majority rule does not let the group arrive at a decision'.⁵⁷ When collective preferences are cyclical, it is – as William Riker points out – impossible to decide what to do in a way that is not arbitrary,

a social arrangement is indeterminate when a cycle exists. When the arrangement is indeterminate, the actual choice is arbitrarily made. The selection is not determined by the preference of the voters. Rather it is determined by the power of some chooser to dominate the choice or to manipulate the process to his or her advantage.⁵⁸

When there are cycles, arbitrariness can arise from chance or manipulation. If the difference-maker when a law is selected is chance or manipulation, as opposed to the preferences of the citizens, it is impossible to give a coherent explanation for in what way the chosen law is collectively self-legislated. A law that is the result of a 'fluke' is more accurately described as given to the citizenry by chance, than by the citizenry to itself. A law that is chosen because a group of citizens manipulated the outcome is better described as given by the manipulators to the citizenry. In these cases, the preferences of the citizenry will of course play a role in what course of action is taken. However, they do not *determine* it. The choice is arbitrary when chance or manipulation is the real difference-maker. Hence, (P) is not fulfilled and the principle of liberal collective self-legislation is not satisfied.

⁵⁷ Mathias Risse. 2001. 'Arrow's theorem, indeterminacy, and multiplicity reconsidered,' *Ethics* 111: 706–734, p. 709.

⁵⁸ Riker, 'Social choice theory and constitutional democracy,' p. 165.

2.6.2 ARBITRARINESS FROM ARBITRARILY CHOSEN DECISION PROCEDURES

The second way that arbitrariness can arise is a little bit less straightforward. The best way of explaining it is by way of example. So, let us begin by imagining that a constitutional assembly is deciding how to settle questions outside the basic structure of society. Three public reason proceduralists make up the assembly: Anna, Betty, and Caroline.

The first question they face is which decision procedures that are legitimate. After a period of deliberation, they realise that it is possible to disregard several decision procedures, such as those that are dictatorial. Ultimately, they all agree that three procedures have sound public reasons in favour of them: Pairwise majority rule, the Borda count, and Plurality rule.⁵⁹ Pairwise majority rule compares every option to every other option. The winner is the alternative that is at least weakly preferred to all others. In the Borda count, individuals assign a score for each option (k to the most preferred one, $k-1$ for the second-best option, $k-2$ for the third, and so on). The alternative that has the highest aggregated score wins. Plurality rule means that individuals vote for the option that they most prefer, and the option that gets the most votes wins.

All decision procedures are *prima facie* equally well-suited for choosing laws beyond the basic structure. It is impossible to conclusively determine that one of them uniquely meets (F) while the others violate it. This is so because the choice of decision procedure will inevitably involve trade-offs between different values. A good way of seeing why this is so, is by turning to Kenneth Arrow's impossibility theorem. Arrow generalised Condorcet's result beyond the scope of pairwise majority voting, showing that when holding a set of reasonable conditions fixed, no aggregation rule exists that satisfy all conditions. The conditions are:

⁵⁹ In reality, this number would most likely be higher, see Christian List. 2011. 'The logical space of democracy,' *Philosophy & public affairs* 39(3): 262–297.

Weak pareto principle (PP): if every individual (strictly) prefers x to y, then society should strictly prefer x to y.

Universal domain (U): all logically possible individual rankings of the options are permitted.

Non-dictatorship (D): there is no individual such that if she prefers x to y, then society always prefers x to y.

Independence of irrelevant alternatives (I): the social ranking of x and y should depend only on the set of individual rankings of x and y.

Ordering (O): the social preference relations are transitive and complete.

The theorem states that if a finite number of individuals choose between at least three options, then there is no way of aggregating their individual preferences that satisfies all conditions. Any conceivable decision procedure will violate at least one of the conditions.⁶⁰

Hence, this will also be true for the procedures that the constitutional assembly is deliberating over. The Borda count and Plurality rule violate I (the ranking of x and y can depend on how high z is scored), and Pairwise majority rule violates O (it sometimes fails to produce a transitive outcome).⁶¹

Public reason cannot conclusively point to one decision procedure for settling questions outside the basic structure of society. It is impossible to make the choice between the procedures based on their compatibility with (F), the fairness condition of collective self-legislation, discussed in section 2.1. As Gerald Gaus puts a similar point, there exists no choice procedure that ‘dominates the alternatives in the sense that it is best on all criteria for a good choice procedure: all possible procedures violate some reasonable condition’.⁶²

⁶⁰ These results are important. However, their implications are virtually unexplored for political liberalism. Gaus and Kogelmann do discuss them, but they are both justificatory liberals, a view that is discussed in more detail in chapter 3. Gerald Gaus. 2011. *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World*. Cambridge: Cambridge University Press; Brian Kogelmann. 2017. ‘Aggregating out of indeterminacy: Social choice theory to the rescue,’ *Politics Philosophy & Economics* 16(2): 210–232.

⁶¹ Of course, there would still be disagreement over decision procedures even if Arrow’s result did not hold. Indeed, it is not as if Arrow initiated these discussions. The theorem makes clear, however, that in choosing a decision procedure we are always trading off different values. A reader who is certain that one of Arrow’s conditions is dispensable might not be convinced by this argument. She might argue that the problem disappears if we just opt for her preferred desired procedure. Nevertheless, it is then up to her to convince *everyone else* that, say, Plurality rule is the best decision procedure. Assuming that citizens will have different views about this (which they do), the argument still holds.

⁶² Gaus, *The Order of Public Reason*, p. 328.

If public reason is inconclusive when it comes to choosing a decision procedure, how can we know which one to pick? A plausible suggestion is to, in line with the Rawlsian view of the legitimacy of substantive decisions, use a decision procedure that we – as citizens – give ourselves to choose a decision procedure. In other words, the decision-procedure should be collectively self-legislated. For this to obtain, the choice needs to, *mutatis mutandis*, satisfy (F) and (P). The decision to use a certain procedure must itself be taken by a fair procedure and it must positively track the citizenry's preferences.

To see if this approach works, let us return to the constitutional assembly. Suppose that they offer several public reasons for the different procedures. The members then weigh these differently, and end up ordering the procedures in the following way:

Anna:	Pairwise majority $\succ$ Borda $\succ$ Plurality.
Betty:	Borda $\succ$ Plurality $\succ$ Pairwise majority.
Caroline:	Plurality $\succ$ Pairwise majority $\succ$ Borda.

Now, they need some way of deciding between the different procedures. In a pairwise majority voting, no alternative would be preferable to all others. Two thirds of the assembly prefer Pairwise majority to Borda, two thirds prefer Borda to Plurality, but two thirds also prefer Plurality to Pairwise majority. There is a Condorcet cycle.

How should they decide between the alternatives? What decision procedure could they use for doing so? There are (at least) three methods for deciding what procedure to use, that are all equally well-suited *prima facie* (again, Pairwise majority, the Borda count, and Plurality rule). To choose between these, they would need a third decision procedure, and so on. Hence, if the decision procedure should be collectively self-legislated, there would, under these circumstances, be an infinite regress. Even if all procedures are fair, no choice of decision procedure could satisfy (P), because when the preferences are cyclical, that choice would be arbitrary.

Even without the existence of cyclical preferences over different procedures it will sometimes be impossible to non-arbitrarily settle on a decision procedure. To see this, note that what is required is a social choice function that selects one winner (one decision procedure) among the alternatives.⁶³ Different functions will often produce different winners. Depending on which decision procedure that is employed for selecting the decision procedure to use beyond the basic structure, different winners can emerge.⁶⁴ If there is no non-arbitrary way of choosing between them, the resulting procedure is chosen by chance or manipulation. Contingent circumstances, not the preferences of the citizenry, determined what decision-procedure was used. This entails that (P) is not satisfied, and so collective self-legislation is not achieved.⁶⁵

An obvious objection at this point is that the architects of the political systems of today managed to find a way of deciding between the alternatives. One way to look at it is that non-ideal contingencies determined how any given democratic society has chosen to handle political matters outside the basic structure of society. Gaus makes an argument along these lines, when

⁶³ The constitutional assembly does not need a full ranking of all options as the output of the decision procedure. They only need to settle on which procedure to use. In this sense, they need a social choice function, not a social welfare function. Similarly, legislative bodies typically do not need a full ranking of all options, only a conclusive top choice (should they decide to build the art gallery, the sports centre or save the money?). Hence, I will sometimes refer to ‘winners’, as shorthand for this. For my purposes, it does not matter whether this is understood as the top choice in a social welfare ranking or a social choice, because the problems of cyclical preferences and arbitrariness remain.

⁶⁴ See also Gaus, *The Order of Public Reason*, p. 329.

⁶⁵ An important objection is that political liberals need not limit themselves to Arrow’s framework – they could take the intensity of preferences into account. On this, see for instance Amartya Sen. 1982. *Choice, Welfare and Measurement*. Oxford: Blackwell. If so, the impossibility results can be avoided. I have two things to say in response. First, political liberals are typically not committed to such frameworks. Rawls, for instance, argues that a ‘democratic constitution must include procedures of majority or other plurality-voting to reach decisions.’ John Rawls. 1995. ‘Political Liberalism: Reply to Habermas,’ *Journal of Philosophy* 92: 132–80, p. 148. I grant, however, that public reason is *compatible* with richer informational frameworks. However, and secondly, if the constitutional assembly is to make the choice to take the intensity of preferences over different decision procedures into account (in order to make a decision about which decision procedure to use), they need to make a collective choice. Suppose that Anna believes that a richer informational set-up is a good way of escaping Arrowian impossibilities. Betty and Caroline disagree – they hold that equality demands that all votes are counted equally – even if some voters have stronger preferences. Anna cannot convince the others that they should rely on the richer framework. If so, the only way to decide to have the richer set-up is through voting. How should they aggregate their votes in *this* contest? Should they take the intensity of preferences into account or not? Maybe Anna believes very strongly that we should take the intensity of preferences into account. Should the strength of this preference matter in this context? Or, more generally, what decision procedure should they use to count their votes? The only way of settling these issues is, also, through voting, and so, the infinite regress re-emerges. Nevertheless, if these issues could be settled, that is, if it could be determined that a richer framework should be used to resolve questions outside of the basic structure, this could provide political liberals with an escape-route from the identified problems. This is an important avenue for further research.

he says that evolutionary selection mechanisms, where actual ‘persons in society, through making choices, can end up coordinating on one moral rule through bandwagon effects, increasing returns, and path-dependency’ can settle the issue.⁶⁶ Because, according to Gaus, the evolutionary selection makes the decision procedure justified (and, I take it, legitimate), since ‘consulting simply his or her own evaluative standards, each has decisive reason to freely endorse whichever moral requirement they have coordinated on’.⁶⁷ If the rule ends up in this equilibrium, where everyone has reason to endorse it, everyone’s independent choices deliver a rule that is uniquely justified.⁶⁸

There are several problems with Gaus’s solution, at least when viewed through the lens of Rawlsian political liberalism.⁶⁹ It is true that the evolutionary process could ultimately leave us with a single set of rules that all citizens have independent reasons to follow, but it does not say *anything* about the ‘process of the mechanism itself’ – the mechanism does not ensure that the equilibrium will have any moral status.⁷⁰ This need not be a problem for Gaus’s own theory, since he is careful not to moralise the idea, but when applied to the contractualist political liberalism that is the main focus of this chapter, an additional argument about why the procedure is justified is needed. This is so because the evolutionary process is not compatible with the perspective of seeing law and decision procedures as collectively self-legislated. It does not satisfy (F), or, at least, we would need to show that it does, and the choice of the procedure fails to satisfy (P), because contingencies made it the case that it was this particular option that we coordinated on. Political liberals cannot be satisfied with seeing a rule as justified merely in virtue of it being the rule that we have. Because even if we look at the rule *ex post* and determine

⁶⁶ Kogelmann, ‘Aggregating out of indeterminacy,’ p. 214.

⁶⁷ Gaus, *The Order of Public Reason*, p. 394.

⁶⁸ Ibid., p. 402.

⁶⁹ From conservative, communitarian and at least some competing liberal points of view, this is not as obvious.

⁷⁰ Fred D’Agostino. 2013. ‘The orders of public reason,’ *Analytic Philosophy* 54: 129–155, pp. 145–53; Kogelmann, ‘Aggregating out of indeterminacy,’ p. 214.

that it has public reasons in favour of it, neither (F) nor (P) was satisfied when the choice of the decision-procedure was made.

The choice could also have been arrived at by other means. We could suppose that the constitutional assembly, after weighing up pros and cons, unanimously agreed that one decision procedure is superior for the conditions of their society. In other words, given that the members of the constitutional assembly were elected in the right way, (F) and (P) are satisfied. Then, it could be argued, the rule that we end up with is collectively self-legislated, and there is a clear explanation for why the laws and policies it selects, too, are justified and legitimate.

However, this only partially solves the problem. While the procedure is collectively self-legislated by the citizens at T_1 , we need some further explanation for why it remains so for the citizens at T_2 , perhaps centuries later. Even if there were a consensus among the constitutional assembly that the chosen procedure was the preferred option for settling political questions, this alignment of preferences is not ‘carried over’ to the preference profiles of the citizens using the decision procedure at T_2 .

To mitigate this concern, we could imagine a system in which we continuously decide whether to revise the constitution at regular intervals. Citizens could regularly vote on replacing the procedure with another procedure. This, however, re-creates the very same problems that the original constitutional assembly was faced with. If the preferences of the citizenry of T_2 are not unanimous, they would need to decide what decision procedure to use for aggregating their preferences about whether they should change the decision procedure or not (and, if so, what alternative decision procedure they should use), since there are always several competing alternatives also at this level. Which procedure should they use to do so? There would be several, equally justified, alternatives, and we would need an additional decision procedure to choose between them. The infinite regress re-emerges.

The difficulties in establishing that our choice of decision-procedure is collectively self-legislated leads to substantial problems. Whatever procedure is chosen will often produce

different laws than the equally justified alternatives. This would not have been an issue if it were the case that we could be certain that the procedure was collectively self-legislated. If so, there is a strong case to be made that the chosen laws are not arbitrarily chosen, because they are the result of a non-arbitrarily chosen procedure. But when there are ambiguities at the constitutional level, the problem becomes pressing also at the substantive level. I discuss this next.

2.7 THE SPRINT RACE

Let us return to the government deciding on starting a building project or saving the money for next year. Suppose that the government consists of seven members, and that their preferences are distributed in the following way:

Rank	Donna	Emma	Farid	George	Hanna	Ingrid	Jafar
#1	Art Gallery	Sports Centre	Save Money	Art Gallery	Sports Centre	Save Money	Sports Centre
#2	Save Money	Save Money	Art Gallery	Save Money	Save Money	Art Gallery	Save Money
#3	Sports Centre	Art Gallery	Sports Centre	Sports Centre	Art Gallery	Sports Centre	Art Gallery

This illustrates a general point: different procedures – all of which are fair – can produce different outcomes. Pairwise majority rule leads to the building of the art gallery, the Borda count leads to saving money, and plurality rule picks Sports Centre. In Riker’s words, ‘different methods of election and committee decision-making have produced different results from identical distributions of preferences’.⁷¹

This is not a problem in and of itself. But since public reason proceduralism cannot conclusively establish that the choice of the procedure is collectively self-legislated, dissenters always have grounds for complaint. If the decision procedure used is not collectively self-

⁷¹ William Riker. 1982. *Liberalism Against Populism*. Long Grove: Waveland Press, p. 22.

legislated, the outcomes it generates are arbitrary – if we just as well could have used another decision-procedure, the laws and policies we chose were arbitrarily chosen. (P) is not satisfied, because the contingent fact of what decision procedure we used determined what the chosen law or policy was, not the preferences of the citizenry. The same distribution of preferences would have generated a completely different choice if the contingent circumstances would have been different.

It might be objected that if it could be shown that the system is not intentionally rigged to favour specific policies, the legitimacy of the outcome is intact. The fact that the decision procedure randomly favours some options over others is not a legitimacy problem. To see the force of the objection, consider an analogy:

The sprint race: A running event is to be held to determine who the best runner is. The runners are deciding between different distances and there are good reasons in favour of all of them: the longer test endurance, the shorter acceleration and top speed. Ultimately, it is decided that a 100-metre race should be held. The race is run, and a winner emerges. At this point, a long-distance runner complains that if they had held a longer race, a different winner would have emerged (here, he is thinking of himself of course). The organisers of the race could plausibly respond that this does not change the fact that the winner of the 100-meter race is the legitimate champion. If there are good reasons for the chosen procedure, the procedure determines who the best runner is even if there are equally good reasons for running a longer race. At least if the race was not deliberately set up to favour one runner over another.

In response, the analogy does not carry all the way. True, we have satisfied (F) if a good balance of reasons supports the choice of the distance. If all runners agreed that the short-distance race was the best way to test our running abilities, things would be uncontroversial. If there is unanimous support for the short distance and the runners take a vote to determine this, then (F) is also satisfied for the choice of the distance. Consequently, (P) is satisfied since the choice is a reflection of the preferences of the choosers. A winner emerges, and that winner is not arbitrarily chosen. She is the legitimate champion and should be celebrated as such.

Suppose, however, that a majority of the runners would have preferred a long-distance race, or, at least, that we do not know whether this is the case. Perhaps the decision to run a sprint was made by a committee centuries ago, and there are no clear routes for the runners to change the distance. Or, perhaps, the short-distance runners decided that they should settle which distance to run by holding a short-distance race. The winner of *that* race gets to decide the distance of the race that determines who the legitimate champion is. If so, things look very different. Now, the complaint is weightier because we cannot establish that (P) is satisfied.

The critic can press: why should we care about this? The decision procedures we employ for everyday legislation manage to find winning alternatives, even if it is difficult to say that they are collectively self-legislated. Similarly, the race does produce a winner. Perhaps this is just a basic fact of democratic decision making. Maybe all we need is stability, and as long as a political regime provides us with this (and somewhat just laws), we should be satisfied.

I concede that some readers may be convinced by this objection. But the answer is not available to proponents of Rawlsian political liberalism. Paradigmatically, they are concerned with a thicker conception of stability: stability for the right reasons.⁷² And they, typically, care about collective self-legislation, in the non-trivial sense specified above. So, the chosen laws need to be the result of the preferences of the citizens.

There is a further disanalogy between the race and decision procedures. Democratic procedures will sometimes fail to reliably and non-arbitrarily select a winner. In legislative questions, we often do not need a full ranking of the options. What we do need, however, is for a winning alternative to emerge. Otherwise, it is impossible to know what to do. In a race, typically, it is easy to see who comes first. But this is not the case for all democratic decisions.

Imagine that we are deciding where to go for dinner by using pairwise majority rule. If our aggregated preferences show that two thirds of us prefer Chinese to Thai, two thirds prefer

⁷² Christie Hartley and Lori Watson. 2020. 'On equal citizenship and public reason: Reply to critics,' *Journal of Applied Philosophy* 37(5): 881–894. p. 891.

Thai to Swedish, and two thirds prefer Swedish to Chinese, then regardless of where we eventually end up going, a majority of us would rather have gone somewhere else. If we, for instance, go to a Chinese restaurant two thirds of us would rather have Swedish food. There is a Condorcet cycle.

This kind of intransitivity is significant for reasons that should worry any democrat regardless of their commitment to public reason. Without it, it is impossible to ensure ‘the independence of the final choice from the path to it’.⁷³ In a pairwise majority vote, the agent in control of setting the agenda will have disproportionate power to change the outcome of a vote. The outcome can depend on which two alternatives that are voted on first, or of the introduction of a new alternative. Thus, a difference between the vote and the race is that there potentially is space for agenda manipulation. This would effectively be like setting up the race to favour a specific winner.

Suppose that the chosen decision procedure for settling on which restaurant to go to is to first vote on two options and then eliminate the alternative with fewer votes. After the first vote, we vote on the two remaining alternatives, and the winner is the option that gets the most votes of these two. If we vote on Chinese-Swedish first, the winner is Thai, if we begin with Thai-Swedish the winner is Chinese and if the first vote is Thai-Chinese the winner is Swedish. If I – a lover of Swedish food – is in control of setting the sequence, I can make sure that this is what we will eat for dinner. If there is agenda manipulation, the manipulator chooses the winner for the citizenry. A clear violation of (P).

Manipulability cannot be avoided by instead choosing a procedure that violates (I). As Iain McLean puts it, if you take out (I) ‘you have gross manipulability’.⁷⁴ Similar arguments

⁷³ Kenneth Arrow. 1963. *Social Choice and Individual Values*. New York: Wiley, p. 120.

⁷⁴ Iain McLean. 2003. ‘The reasonableness of independence: A conversation from Condorcet and Borda to Arrow and Saari,’ *Nuffield College Working Paper* 2003–W6, University of Oxford.

have been made by William Vickrey,⁷⁵ John Patty and Elizabeth Maggie Penn,⁷⁶ and Brian Kogelmann.⁷⁷ Thus, to push the sprinting analogy a bit further, violating I is allowing that the race could be rigged. And a rigged race does not produce a legitimate champion.

And so, there are three major problems with the implemented decision procedure, whatever it is. First, we cannot ensure that the procedure is collectively self-legislated – we neither know that it is itself chosen by a fair procedure (F) nor that it is non-arbitrarily chosen (P). Second, when we use this procedure over another one, the outcome is arbitrary because other procedures would have given us different results, and there is no non-arbitrary justification for why the chosen procedure is the one we should use ($\neg P$). Third, because of this, and because of the possibility of manipulation and cycles, we cannot ensure that the resulting laws are collectively self-legislated. Thus, public reason proceduralism fails to ensure that the principle of liberal collective self-legislation is met.

2.8 CONCLUSION

Rawls is, as noted, concerned with democracy as collective self-legislation. The fact that his theory fails to achieve it is, therefore, a severe weakness also from his own point of view. On the other hand, the arguments I raised against Quong's view are in some sense external to his theory because the place of democracy in it is different. Nevertheless, I hope to have shown that those who do want to be able to respect both democratic decisions and guarantee the value of public justification, have good reason for moving beyond Quong's framework. There are, I believe, three plausible routes open for doing so.

⁷⁵ William Vickrey. 1960. Utility, strategy, and social decision rules. *Quarterly Journal of Economics* 74: 507–535, p. 518.

⁷⁶ John W. Patty and Elizabeth Maggie Penn. 2014. *Social Choice and Legitimacy: The Possibility of Impossibilities*. Cambridge University Press, p. 48.

⁷⁷ Kogelmann, 'Public reason's chaos theorem,' lemma 1.

The first is to drop the requirement to give public reasons beyond the basic structure, and conclusively show that it is sufficient that the procedure which selects laws and policies is itself publicly justified. However, this is difficult to do, for reasons outlined in section 2.6 and section 2.7. The second is to demand that the justificatory dimension be balanced against the value of preserving majority decisions. And a final strategy is to weaken the requirement of what counts as a public reason. For instance, one could hold that public reasons are those that in some sense are accessible to real-world citizens. This requirement would rule out far fewer reasons at the justificatory stage. Consequently, it would vindicate the intuitive judgement that citizens should be allowed to save the forest but that they should not be allowed to enact excessively perfectionist policies.

Before considering these strategies that are available to political liberals, I turn to another solution – leaving political liberalism behind. Instead of demanding public reasons, we could turn to Gerald Gaus’s justificatory liberalism.

In the next chapter, I consider the extent to which Gaus’s justificatory liberalism succeeds in satisfying democratic ideals. I argue that his account of public reason liberalism cannot guarantee political autonomy, the expressive force of law, and justification to citizens without opening the door to excessive perfectionism. Thus, we have good reason – from a democratic point of view – for sticking to political liberalism.

CHAPTER 3: JUSTIFICATORY LIBERALISM AND POLITICAL AUTONOMY

In the previous chapter, I argued that prominent versions of political liberalism failed to meet the principle of liberal collective self-legislation. The main aim of the present chapter is to show that justificatory liberalism suffers from other democratic weaknesses. The problems are shared with prominent versions of political liberalism. However, political liberalism can be salvaged whereas justificatory liberalism cannot.

The idea of political autonomy – the thought that citizens should be able to come together as a collective body – is at the centre of this argument. In recent years, it has become increasingly common to argue that public reason liberalism is uniquely well suited for realising this ideal.¹ I argue in this chapter that public reason liberalism traditionally understood, whether it be in the justificatory or political version, is structured in a way that undermines political autonomy. This leads to an erosion of the expressive quality of laws and of justification to citizens.

Even if the idea of political autonomy – as understood here – is related to the principle of liberal collective self-legislation, it is distinct from it. Consequently, the issues that I raise are important regardless if we accept the principle of liberal collective self-legislation or not.

The differences between justificatory liberalism and political liberalism have been analysed at great length, with nuanced and thoughtful contributions on both sides.² However,

¹ Blain Neufeld. 2019. 'Shared intentions, public reason, and political autonomy,' *Canadian Journal of Philosophy* 49(6): 776–804; Lori Watson and Christie Hartley. 2018. *Equal Citizenship and Public Reason: A Feminist Political Liberalism*. Oxford University Press; Paul Weithman. 2017. 'Autonomy and disagreement about justice in political liberalism,' *Ethics* 128(1): 95–122.

² For instance, Paul Billingham. 2016, 'Convergence justifications within political liberalism: A defence,' *Res Publica* 22(2): 135–153; Gerald Gaus and Kevin Vallier. 2009. 'The roles of religious conviction in a publicly justified polity: The implications of convergence, asymmetry, and political institutions,' *Philosophy & Social Criticism* 35(1): 51–76; Brian Kogelman and Stephen Stich, 2016, 'When public reason fails us: Convergence discourse as blood oath,' *American Political Science Review* 110(3): 717–730; Andrew Lister. 2013. *Public Reason and Political Community*. London: Bloomsbury. Kevin Vallier. 2011, 'Against public reason liberalism's accessibility requirement,' *Journal of Moral Philosophy* 8(3): 366–389; R. J. Leland. 2019. 'Civic friendship, public reason,' *Philosophy & Public Affairs* 47(1): 72–103; Jonathan Quong. 2014. 'What is the point of public reason?' *Philosophical Studies* 170(3): 545–553. As mentioned in section 1.1, the

the fact that they share structural democratic deficits has until now remained unknown. Uncovering this requires that political and justificatory liberalism be re-described in a rather unfamiliar way – as modes of making collective decisions. In doing so, I find that proponents of both views allow that democratic bodies can reach incompletely theorised agreements. In other words, they do not require public officials such as legislators to agree on the reasons that justify a political decision, only that the political decision is justified. The result of this is that political decisions are unconvertible: citizens cannot demand and challenge the reasons underpinning state action. This is worrying in and of itself, because enabling the critical exchange of reasons is one of public reason liberalism's central ideas.³

Drawing on the discursive dilemma, a central finding from social choice theory, I show that collective decisions made like this will sometimes be inconsistent and irrational, which exacerbates the problem greatly.

In the chapter, I make several important contributions. I argue that there is an intimate relationship between the decision-procedure we adopt, political autonomy, the expressive power of law, and justification to citizens. I demonstrate how this entails that we must choose between committing to the standard interpretations of public reason liberalism and upholding these ideals. I argue that we should opt for the latter, while changing our understanding of public reason's role in collective decision-making. Instead of incompletely theorised agreements, we should demand agreement both on the public reasons themselves and on the other premises that justify a decision. In this way, it is always possible to point to a procedure-independent reason that justifies democratic decisions, and the reasoning of the state is public and contestable. And I explain how this, in turn, implies that only political liberalism can be

different views are sometimes called the consensus and convergence views or interpretations of public reason liberalism. This refers specifically to the parts of the theories that specify the conditions that make political decisions publicly justified. For consistency, I will refrain from this terminology as much as possible and use political and justificatory liberalism instead.

³ Some public reason liberals would dispute this, see for instance Kevin Vallier. 2015. 'Public justification versus public deliberation: the case for divorce,' *Canadian Journal of Philosophy* 45(2): 139–158.

salvaged – modifying justificatory liberalism in the necessary way will inevitably open the door to an objectionable form of perfectionism.

I will proceed as follows. I begin by analysing political and justificatory liberalism as modes of making democratic decisions (section 3.1). After this, I argue that the structure of the standard interpretations of both views undermines political autonomy, the expressive power of law and justification to citizens (section 3.2). I then demonstrate how political liberalism can mitigate these problems, whereas justificatory liberalism cannot without collapsing into perfectionism (section 3.3). Finally, I discuss whether an epistemic justification of democracy would lead to different conclusions and argue that even if there are some disadvantages for my proposed alternative for collective decision-making, these are outweighed by the benefits, at least for public reason liberals (section 3.4).

3.1 FOUR WAYS OF MAKING COLLECTIVE DECISIONS

3.1.1 JUSTIFICATORY LIBERALISM

In previous chapters, I emphasised the differences between political and justificatory liberalism. However, when the theories are examined as modes of making collective decisions, an important similarity emerges. The most notable proponents of both views are committed to what has been called the ‘conclusion-based procedure’⁴ for making collective decisions.⁵

⁴ This may come as a surprise to some readers. Fabienne Peter, for instance, writes in a footnote that only justificatory liberalism (‘the convergence view’) is wedded to the conclusion-based approach, whereas political liberalism (‘the consensus view’) is not. I will show that on at least one plausible interpretation of political liberalism, this is mistaken. Fabienne Peter. 2020. ‘Political legitimacy under epistemic constraints: Why public reasons matter,’ in Jack Knight and Melissa Schwartzberg (eds.), *NOMOS LXI: Political Legitimacy*. New York: NYU Press p. 154, n. 17.

⁵ Proponents of political liberalism have typically been committed to the procedure, but it is not an inherent feature of their theoretical commitments. Justificatory liberalism is by necessity committed to the procedure. I say more about this below. For a recent argument that there are other democratic issues with justificatory liberalism, see Benjamin R. Hertzberg. 2018. ‘Convergence’s democracy problem: A critique of Kogelmann and Stich.’ *American Political Science Review* 112(2): 423–427.

The conclusion-based procedure is perhaps the most intuitive way of making collective decisions. Suppose, for instance, that the state, through the relevant branch, decides whether to implement a new tax policy. With the conclusion-based procedure, only the substantive issue is on the agenda, that is, the policy itself. If a majority (or a supermajority, or the whole assembly) votes yes, the tax policy is implemented.⁶ This is an *incompletely theorised* agreement because it does not require that the agreement goes ‘all the way down.’ There need not be a deeper agreement on why the decision is implemented.⁷

It should be obvious that justificatory liberalism builds on incompletely theorised agreements. Here is an early formulation of the model from Fred D’Agostino:

If A has a reason R_a that makes the regime reasonable for him, and B has a reason R_b that makes the regime reasonable for her, then the justification of the regime is based on convergence on it from separate points of view.⁸

In other words, there is no agreement on the justification for the proposal, only an agreement on the proposal itself. We might wonder whether a consequence of this is that political decisions require unanimous consent in the sense that all citizens need to consider the regime reasonable. If so, the institutional implications would be that every citizen could veto any legislation that they do not approve of.⁹ For Gerald Gaus (and Kevin Vallier¹⁰), this is not the case. Gaus argues that not all citizens need to agree on a proposal. Nor do all

⁶ It could, of course, also be the case that they use some decision procedure to choose between several different policies. In that case, there are numerous ways of aggregating the individual votes. But it would still be a vote on the substantive issue in the relevant sense.

⁷ However, there is nothing precluding such an agreement.

⁸ Fred D’Agostino. 1996. *Free Public Reason: Making it Up as We Go*. Oxford: Oxford University Press, p. 30.

⁹ Andrew Lister. 2010. ‘Public justification and the limits of state action,’ *Politics, Philosophy & Economics* 9(2): 151–175, pp. 153–4.

¹⁰ According to justificatory liberal Kevin Vallier, legislators should stop advocating policies that they believe that a subset of citizens does not have reason to endorse. Importantly, however, legislators cannot know whether a law is acceptable by all citizens. It seems reasonable – indeed, unavoidable – that in a justificatory liberal society, real legislators would often need to take a vote on whether a law is acceptable or not, because they will reach different conclusions when evaluating it. This vote would be on the conclusion (‘should the proposal be enacted?’), not on the reasons for the proposal, since these may be different, private, reasons. Hence, Vallier proposes that legislative assemblies should take majoritarian decisions on the proposal itself, leaving the reasons for their decision aside. Vallier, ‘Public justification versus public deliberation: the case for divorce,’ p. 152–4.

parliamentarians need to agree. There need not be unanimous convergence on a proposal, so individual citizens or legislators cannot veto laws. It is enough that a law is supported by a majority or a supermajority of legislators. On Gaus's view it is permissible for democratic bodies to justifiably make decisions on majoritarian (or supermajoritarian) grounds.¹¹ The state can permissibly make decisions about trade-offs between the rights and interests of different citizens.¹² And it will often be the case that several different laws are publicly justified. In cases like this, when there is a 'reasonable dispute' about which law to enact, some version of majority rule should be used to decide what to do.¹³ In fact, even if a law is not publicly justified, in the convergence sense that all citizens have reason to endorse it, 'the use of coercion to enforce it may [still] be permissible'.¹⁴

Surprisingly little rationale is given for this. Because it is not entirely convincing: the motivating thought behind Gaus's view is that acceptability among members of the public is what makes coercion permissible. So what standard, other than Gaus's own public reason view, could we appeal to if we want to know when it is allowed to impose a law on someone that she has reason to reject?

This raises immediate concerns about civic equality being threatened. Because it seems to be permissible to allow coercion based on, say, the truth of a religious worldview even if some citizens see that coercion as unjustified. I discuss these types of cases further in chapter 5. For now, I leave this complication aside because I will argue that there are even stronger grounds for rejecting justificatory liberalism.

To summarise, it is clear that Gaus endorses a majoritarian version of the incompletely theorised agreement (conclusion-based) model for making collective decisions.

¹¹ Gerald Gaus. 2011. *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World*. Cambridge: Cambridge University Press, pp. 458–9.

¹² Ibid., p. 464; 488.

¹³ Ibid., p. 494–5.

¹⁴ Ibid., p. 495; see also 462–8.

3.1.2 POLITICAL LIBERALISM

Recall that political liberals hold that all laws need to be justified with public reasons, reasons that all citizens can, in some sense, accept. It is less obvious that this entails that democratic decisions should be made using incompletely theorised agreements, and it is not an inherent feature of the view. Indeed, a common argument against political liberalism has been that the theory dictates that we must agree on the same law for the same reasons, and that this makes it too demanding.¹⁵ But according to leading proponents, this is mistaken. Consider this passage from Jonathan Quong:

There seems nothing obviously problematic, for example, in a case where one citizen supports a law prohibiting prayer in public schools on the grounds that allowing it would be a violation of an individual's freedom of religious expression, while another citizen reaches the same conclusion by claiming such a law will effectively violate the state's commitment to establish fair equality of opportunity for all citizens, religious and non-religious alike.¹⁶

Citizens can agree to the proposal for different reasons. There is an incompletely theorised agreement, not agreement all the way down, since some citizens see the law as justified because it is a requirement of freedom of religious expression and others because of fair equality of opportunity. Other political liberals, such as John Rawls, use similar reasoning.¹⁷ Thus, political and justificatory liberalism are similar in this regard.

Quong calls this the 'weak consensus' view.¹⁸ The alternative is the 'strong consensus' view that 'insists that each person must accept a decision for the very same reasons.'¹⁹ Jürgen

¹⁵ James Bohman. 1997. *Public Deliberation: Pluralism, Complexity and Democracy*. Cambridge: MIT Press, p. 80. John Dryzek. 2000. *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. Oxford: Oxford University Press, p. 15.

¹⁶ Jonathan Quong. 2011. *Liberalism Without Perfection*. Oxford: Oxford University Press, p. 262.

¹⁷ John Rawls. 1993/2005. *Political Liberalism* (expanded edition). New York: Columbia University Press, p. 241. Jonathan Quong calls this the 'weak consensus view'. Quong. 2018. 'Public reason,' *The Stanford Encyclopedia of Philosophy* (Spring 2018 Edition), Edward N. Zalta (ed.), Available from: <https://plato.stanford.edu/archives/spr2018/entries/public-reason/>.

¹⁸ Quong, *Liberalism Without Perfection*, p. 264.

¹⁹ Ibid.

Habermas might be thought to endorse something like this view.²⁰ For consistency, I shall call the standard view endorsed by Rawls and Quong *weak* political liberalism, since it incorporates the idea of weak consensus.

I will in the following defend what could possibly be described as a ‘strong consensus’ view. I will call it *strong* political liberalism. I say ‘possibly’, for it is not necessarily precisely what Quong has in mind when he talks about strong (and weak) consensus. It is important to note that – to my knowledge at least – this question has previously only been approached in relation to private citizens, not public officials. I will grant that a requirement that each private citizen should agree to a proposal for the same reasons is too strong. But I shall argue that he same is not true for parliamentary majorities and other public decision-making bodies.

Since the debate has thus far focused on private citizens, it cannot conclusively be established what the traditional ‘weak consensus’ position among political liberals is when it comes to public officials. It is conceptually possible to hold a weak consensus view for citizens and a strong consensus view for public officials. Indeed, this is what I will be doing, and this is what I take strong political liberalism to entail.

At the same time, since there has not been a discussion about whether things should be different for public officials, a reasonable inference is that political liberals have thus far not thought it an important distinction to make. The gap gives us reason to think that political liberals like Rawls and Quong do not see a problem with public officials collectively reaching incompletely theorised agreements, as long as those agreements are made on the basis of public reasons. Hence, I assume, for the present purposes, that what these political liberals say about private citizens goes for legislators too.

Of course, the most analysed difference between political and justificatory liberalism remains. Justificatory liberals typically have a permissive understanding of the kinds of reasons

²⁰ Jürgen Habermas. 1996, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge, MA: MIT Press, p. 339.

that can permissibly form the basis of the incompletely theorised agreement. It is enough that a reason is *intelligible*, that it is logically consistent and compatible with the worldview of the person who uses the reason. Hence, for example, most religious reasons are permissible in public justification – people who are not practicing the religion themselves can still appreciate a religious reason as an intelligible consequence of the theological commitments of others.²¹

For political liberals, things are different. As discussed in section 2.2, on Quong's view, legislators individually must only endorse laws that they genuinely believe are supported by public reasons, reasons that are acceptable to all reasonable citizens. Andrew Lister describes the differences between the views in the following way:

In the first account [political liberalism], it is the reasons that lie behind our decisions that must pass the qualified acceptability test, otherwise we exclude the reasons in question from our decision-making. In the second [justificatory liberalism], it is that the laws themselves must pass the qualified acceptability test, otherwise we refuse to enact any law in the domain in question.²²

Consequently, in what I call weak political liberalism there is a prior agreement concerning the reasons that can permissibly figure in public justification, but there is no consensus on precisely which reasons that justify a particular law. To reiterate: '[e]ach citizen must appeal only to considerations they sincerely believe other reasonable citizens can endorse, but different citizens may still endorse the same decision (or different decisions) for different reasons.'²³ So, Anna can support a tax policy because it benefits the worst off and Beatrice can support it because it promotes equality.

Before moving on, let me again emphasise that even if this is how political liberalism has often been understood, it is not inherent to the view. I shall argue that political liberals can (and should) give up the conclusion-based procedure as the ideal for how public officials make collective

²¹ Kevin Vallier, 'In defence of intelligible reasons in public justification,' *The Philosophical Quarterly* 66(264): 596–616.

²² Andrew Lister, *Public Reason and Political Community*, p. 15.

²³ Quong, *Liberalism Without Perfection*, p. 263.

decisions. They should embrace strong political liberalism. The fact that this is possible makes the framework superior to justificatory liberalism.

3.1.3 COLLECTIVE DECISION MAKING

Political and justificatory liberalism can be understood as ways of thinking about what makes political decisions publicly justified. Interpreted this way, we should look at a law or a policy and determine whether it is justified. Depending on what framework we endorse, the law or policy is legitimate either when all citizens have reason to endorse it or when it is justified with public reasons.

It is, however, also possible to re-describe the views as two different ways of making legitimate democratic decisions, as rules that parliaments and other state agencies should follow, as conditions such that when they are met, the resulting decisions will be publicly justified. This approach asks the question of how public reason should be institutionalised. This is the approach that guided the reasoning of chapter 2, and it is the one I will be adopting also in this chapter.

Understood like this, we can see that justificatory liberalism allows incompletely theorised agreements with private reasons, and weak political liberalism demands incompletely theorised agreements with public reasons. Both follow the conclusion-based procedure.

This could be contrasted with a different way of making collective decisions – the *premise-based* procedure. On this method, the reasons for a decision, not the conclusion, are on the agenda. Individual public officials vote on the premises underpinning the decision. To exemplify, we could again think of a tax policy, where the reasons might look something like this:

P₁: the policy benefits the worst off in society.

P₂: the policy should be implemented if and only if it benefits the worst off in society.

C: the policy should be implemented

If a parliament follows the premise-based procedure, the members of parliament first determine whether a majority of them agrees with P₁ and P₂, after which they follow the ‘appropriate logical relation’ to determine their stance on the conclusion, C.²⁴ If they believe that the policy benefits the worst off in society and that it should be implemented if and only if it does so, the policy is implemented. If a majority believes that the policy does not benefit the worst off in society, and a majority believes that it should be implemented only if it does, the policy is not implemented. If a majority does not believe that the policy should be implemented only if it benefits the worst off, if they believe that there are other reasons that could support a tax policy, the agenda would have to be adjusted accordingly. Institutionalising the premise-based approach might require things such as setting up a system for sub-committees and sequential premise-based voting to ensure majority endorsement of the premises.

While the result of the conclusion-based procedure ideally depends on individuals making up their minds about the reasons behind a decision (rather than having them, say, toss a coin), the premises form the basis for the group’s decision in a rather direct way in the premise-based procedure. The individual members’ judgements on the premises function as inputs to let the group – the parliament in this case – perform logical reasoning of its own.²⁵ Just as for the conclusion-based procedure, we could hold either that only public reasons are permissible inputs to this process, or we could also allow private reasons to permissibly figure as premises:

²⁴ Christian List. 2006. ‘The discursive dilemma and public reason,’ *Ethics* 116(2): 362–402, p. 369.

²⁵ Ibid.

		Reasons	
		Public	Private
Procedure	Conclusion-based	Weak political liberalism	Justificatory liberalism
	Premise-based	Strong political liberalism	Perfectionism

Political decisions made on the basis of the premise-based procedure and private reasons violate the public justification principle. The model allows reasons that are not acceptable to all citizens while not everyone need to consider having the law or policy as superior to having no law or policy in its place. In other words, it allows perfectionism. In section 5.2, I argue that this form of perfectionism is objectionable.

This is not to say that all perfectionist theories would be committed to the procedure, or that perfectionism is the only possible outcome of it. I simply note that following the premise-based approach with private reasons allows it. Indeed, perfectionism should be understood here in broad terms, since if the set of permissible reasons is unrestricted, political decisions could be justified with all intelligible reasons.²⁶

²⁶ I do not consider other decision procedures, even if they exist, and I do not cover intermediary positions between perfectionism and public reason liberalism such as Japa Pallikkathayil. 2016. 'Neither perfectionism nor political liberalism,' *Philosophy & Public Affairs* 44(3): 171–196; Japa Pallikkathayil. 2017. 'Resisting Rawlsian political liberalism,' *Philosophy & Public Affairs* 45(4): 413–426. Nor do I discuss moderate or political perfectionism, such as Joseph Chan. 2000. 'Legitimacy, unanimity, and perfectionism,' *Philosophy & Public Affairs* 29(1): 5–42; Collis Tahzib. 2019. 'Perfectionism: Political not metaphysical,' *Philosophy & Public Affairs* 47(2): 144–178. Some of these views are considered in chapter 5.

I will defend strong political liberalism. That is, I will argue that the set of permissible reasons should be restricted to public reasons, and that decisions should be made with the premise-based procedure. This model allows the realisation of three democratic values that public reason liberals should care about: political autonomy, the expressive power of law, and justification to citizens. Next, I will show why weak political liberalism and justificatory liberalism fail to realise them.

3.2 THE PROBLEMS

3.2.1 POLITICAL AUTONOMY

Political liberals have drawn attention to how public reason can realise a valuable form of political autonomy. The idea has been traced to Rawls, who argues that ‘public reason is the form of reasoning appropriate to equal citizens who as a corporate body impose rules on one another by sanctions of state power’²⁷ and that citizens achieve political autonomy ‘by participating in society’s public affairs and sharing in its collective self-determination over time’.²⁸

In line with this, Blain Neufeld argues that it follows from a commitment to civic respect that citizens should be allowed to act as a corporate body, or civic people. The only way of achieving this is through demanding that public reasons are offered in collective decision-making.²⁹ In a similar spirit, Paul Weithman has recently argued that political liberalism, and specifically public reason-giving can realise political autonomy,³⁰ and Christie Hartley and Lori Watson point out that ‘the use of nonpublic reasons for matters concerning basic justice and constitutional essentials

²⁷ John Rawls. 2001. *Justice as Fairness: A Restatement*, Erin Kelly (ed.). Cambridge, MA: Harvard University Press, p. 92.

²⁸ Rawls, *Political Liberalism*, p. 78.

²⁹ Neufeld, ‘Shared intentions, public reason, and political autonomy,’ p. 784.

³⁰ Weithman, ‘Autonomy and disagreement about justice in political liberalism.’

undermines political autonomy, for such reasons may be reasonably rejected by citizens who do not regard such reasons as authoritative.³¹

While I do believe that there is something to be said for these arguments, I will not assess them in any detail. This is so because there is a further question to be answered if we are interested in political autonomy, that has thus far been avoided by public reason liberals. I will argue that for citizens to act as a corporate body it is not enough that they use reasons that are acceptable to all. Their representatives also need to agree on which reasons justify a given policy.

Let us begin by considering a courtroom, as an analogy. When a ruling is made, we do not only care about whether the defendant was guilty of a crime. We also want to reliably determine what crime she committed. To do so, it is important to find out what the court ‘thinks’, over and above what its individual members think. In one sense the judges act as individuals. In another, however, we need them to act together *as a court*. They need to be able to act together as a corporate body. This is what it means for them to have political autonomy.

The conclusion-based procedure makes this impossible.

To see this, suppose that the court has three judges, and that they make decisions with the conclusion-based procedure. If a majority of the judges agree with the conclusion that the defendant should go to prison, she goes to prison. Now, imagine that the defendant is accused of three different crimes. Each crime is severe enough that if the defendant would have committed it, she would be sentenced to prison. The judges all believe that the defendant has committed one crime, but that she has not committed the other two crimes. They disagree about which crime she committed.³² Hence, all of them conclude that she should go to prison, but they do so for different reasons. There is an incompletely theorised agreement.

When the court operates like this, it is impossible to point to a reason for why *the court* is handing out the prison sentence. The behaviour of the group is irrational, because the court – as

³¹ Watson and Hartley, *Equal Citizenship and Public Reason*, p. 82–3.

³² I take this case from List, ‘The discursive dilemma and public reason,’ p. 397. See also Lewis A. Kornhauser and Lawrence G. Sager. 1986. ‘Unpacking the court,’ *Yale Law Journal* 96: 82–117.

an entity – thinks that the defendant is not guilty of any crime. Still the court thinks that she should go to prison. The judges are unable to act as a court. They cannot exercise their political autonomy because they fail to make consistent rulings together.

In line with the recent turn to political autonomy among public reason liberals, there is a case to be made that being able to act together in this way is valuable in and of itself. However, there are also adverse consequences of not realising political autonomy that should worry also those who do not see the intrinsic value. Conversely, the positive effects of realising political autonomy make clear that we have good reason to value political autonomy, if not for intrinsic then at least for instrumental reasons. I begin by returning to the simplified court case before extending my analysis to legislative politics.

3.2.2 THE EXPRESSIVE FORCE OF LAW

In legal theory there is a widespread view that says that part of the reason for why punishment is important is that it communicates that this is something that a person who committed a crime deserves for the crime she committed.³³ In the case at hand, this is impossible. All the court can communicate with its punishment is that the defendant did something wrong, not what wrong she committed. I will not take a stand on whether ‘communicative punishment’ is an important reason for why we should have punishments, but something similar can be said about political decisions. They, too, have an important communicative function. Laws have ‘powerful expressive force’.³⁴

³³ For influential arguments about communicative punishment, see Joel Feinberg. 1970. ‘The expressive function of punishment,’ in his *Doing and Deserving*, Princeton, N. J.: Princeton University Press, pp. 95–118; Igor Primoratz. 1989. ‘Punishment as language,’ *Philosophy* 64: 187–205.

³⁴ Maxime Lepoutre. 2019. ‘Can more speech counter ignorant speech?’ *Journal of Ethics and Social Philosophy* 16: 155–191, p. 187. Maxime Lepoutre. In press. ‘Hate speech laws: expressive power is not the answer,’ *Legal Theory*. Richard H. McAdams. 2015. *The Expressive Powers of Law: Theories and Limits*. Harvard University Press. I grant that this is not true for all laws.

If we have unordered or inconsistent justifications for a law, we cannot know what the law is meant to express to us. The law sends a powerful message, ‘do not φ !’, but the message is not very clear. Why should we not φ ?

Being able to communicate effectively through law is made possible by political autonomy, through granting decision-makers the power to act together as a collective body. To give a concrete example, suppose that the state revokes the ministerial exception, the rule that says that anti-discrimination protections do not apply to the employment of religious leaders. In making up their minds, the parliamentarians consider two reasons that could count in favour of removing the exception:

- R_1 The ministerial exception communicates women’s inferiority.
- R_2 The exception violates robust freedom of occupational choice for prospective female priests.
- C The ministerial exception should be removed.

For reasons of simplicity, suppose that it is a parliamentary democracy where the legislature elects the executive – ‘the government’ – and that there are three equal-sized parties, led by Anna, Beatrice, and Charlotte. Together they control a majority of the seats in parliament and they have formed a coalition government. The parliamentarians always vote with their party leader.³⁵

Anna, Beatrice, and Charlotte all believe that if either R_1 or R_2 holds, the ministerial exception should be removed $((R_1 \vee R_2) \rightarrow C)$. They make the following judgements:

	R_1	R_2	$(R_1 \vee R_2) \rightarrow C$	C
Anna	True	False	True	True
Beatrice	False	True	True	True
Charlotte	False	False	True	False
Majority	False	False	True	True

³⁵ Nothing hinges on these simplifications; I only assume them for presentational purposes.

A two-thirds majority rejects each reason. Nevertheless, there is a two-thirds majority accepting the conclusion: the ministerial exception should be removed. The law forbidding churches from hiring only male priests is in one sense expressive: ‘it is wrong to hire only male priests’. But the expressive quality is low. It does not provide any information about *why* it is wrong. Is it because the exception communicates women’s inferiority? No, says the government. Is it because it violates robust freedom of occupational choice? The answer is, again, no. Even if the individual judgements are logically consistent, the collective judgement – the government’s judgement – is not.³⁶ Consequently, the government cannot communicate the reasoning behind the law. The citizens, through their parliamentary representatives, cannot act together to make laws have expressive force of the right kind.

There are strong instrumental reasons for why we should be worried about this. When chosen laws are to be implemented, interpreted, and applied to unanticipated contexts it will be difficult to do so. If public officials such as judges cannot go back to the reasons for why the law was chosen, it is difficult – or impossible – to administer the law in a coherent and non-arbitrary way. In many legal systems, when a judge is ruling on a law, she needs to know what the purpose of the law is. In a similar vein, citizens cannot internalise complex laws if they do not have coherent justifications. This is important because a legal system’s effectiveness depends on voluntary compliance with the laws. And to achieve that, citizens need at least a ‘general sense’ of the rationale behind the laws, if they are unsure about their exact requirements in a given situation.³⁷

³⁶ This finding is sometimes called the discursive dilemma. It is not only a hypothetical model. The discursive dilemma can arise whenever a group of three or more individuals have to decide on a series of logically related propositions. Gabriella Pigozzi. 2006. ‘Belief merging and the discursive dilemma: an argument-based account to paradoxes of judgment aggregation.’ *Synthese* 152: 285–298. The term was coined by Philip Pettit, and has been extensively analysed by List and Pettit, starting with List and Pettit. 2002. ‘Aggregating Sets of Judgments: An Impossibility Result,’ *Economics & Philosophy* 18(1): 89–110. Previous work has referred to it as the ‘doctrinal paradox,’ see for instance Kornhauser and Sager, ‘Unpacking the court.’

³⁷ As Stephen Macedo suggests. Unpublished manuscript. ‘Why public reason? Citizens’ reasons and the constitution of the public sphere.’ August 23, 2010). Available at SSRN: <https://ssrn.com/abstract=1664085>, p. 22. See also Gillian K. Hadfield and Barry R. Weingast. 2012. ‘What is law? A Coordination model of the characteristics of legal order,’ *Journal of Legal Analysis* 4(2): 471–514.

In cases where we follow the conclusion-based procedure and find that there are mutually incompatible reasons for a law, it becomes impossible to determine what the spirit of the law is. In such cases, when there are gaps in the legal text, it is impossible to sensibly act in accordance with the law and to sensibly administer it.

3.2.3 JUSTIFICATION TO CITIZENS

Let us return to the state deciding whether to enacting a new tax policy. Anna, Beatrice, and Charlotte are considering the propositions outlined earlier:³⁸

R₁: the policy benefits the worst off in society.

R₂: the policy should be enacted if and only if it benefits the worst off in society.

C: the policy should be enacted.

Anna thinks that the policy should be enacted if and only if it benefits the worst off. Evaluating the policy, she concludes that it would, and that it therefore should be enacted. Beatrice agrees that the policy only should be enacted if it is to the benefit of the worst off, but she does not think that it would benefit them, because of negative incentive effects. She therefore does not think that the policy should be enacted. Charlotte agrees with Beatrice on the incentive effects – the policy probably will not benefit the worst off – but disagrees that net benefit is the only valid reason for taxing wealthy people. She prioritises equality, so the state is justified in trying to limit the wealth gap even if this does not directly benefit the worst off. And so, Charlotte believes that the policy should be enacted.

³⁸ For a structurally similar problem, see Franz Dietrich and Christian List. 2007. 'Arrow's theorem in judgment aggregation,' *Social Choice and Welfare* 29(1): 19–33, p. 19. For other kinds of logical connections, see Franz Dietrich and Christian List. 2007. 'Strategy-proof judgment aggregation,' *Economics & Philosophy* 23(3): 269–300.

	R ₁	R ₂	C
Anna	True	True	True
Beatrice	False	True	False
Charlotte	False	False	True
Majority	False	True	True

When using the conclusion-based procedure, the collective judgements about the reasons are irrelevant. The parliament only votes on C – should the policy be enacted? A majority of the party leaders (Anna and Charlotte) vote yes, and the policy is enacted. Clearly, Anna, Beatrice, and Charlotte have all made their decisions based on public reasons, and they have used a majoritarian, presumably publicly justified, procedure for making the decision. Neither weak political liberals nor justificatory liberals could therefore say that anything has gone wrong. Justificatory liberals, because as long as an agreement is made based on intelligible reasons it is permissible. And political liberals, because the agreement needs to be made on the basis of public reasons, and this is what happened. Nevertheless, a problem still arises, because citizens cannot evaluate whether the reasons were sound in themselves, and whether the reasons really supported making the decisions.³⁹

Why? Suppose that the election is coming up and the ruling coalition is questioned in a news programme. Donna, a hard-hitting journalist, demands an explanation from the government for why the policy was enacted. The party leaders are unable to provide coherent procedure-independent reasoning for their decision. Donna insists: ‘do you agree with the judgement that it is only right to raise taxes if it benefits the worst off?’ The government believes this to be true. She asks if they think that the policy would generate such a surplus. The government says that they believe that it would not. Then why – Donna might rightfully ask – are you enacting the policy? The government would have no means by which they could justify the outcome other than

³⁹ For a similar thought, see Philip Pettit. 2001. ‘Deliberative democracy and the discursive dilemma,’ *Philosophical Issues* 11: 268–299, p. 281.

appealing to the procedure adopted. ‘There is no talking to a group that operates like this’, as Philip Pettit succinctly summarises the problem.⁴⁰

From the perspective of the system that they operate in, Anna, Beatrice, and Charlotte have not done anything wrong. They have honestly and sincerely voted on their views about the conclusion – a conclusion that they believe is supported by public reasons. But this leaves the government unable to give a procedure-independent explanation of why it exercises coercive power. This is a particularly pressing problem for public reason views. As we have seen, not only will incompletely theorised agreements deny citizens the opportunity to exercise political autonomy with a deprivation of the expressive content of laws as a result. It also removes the justificatory force of the offered public reasons. On weak political liberalism, citizens will know that the proposal was justified with public reasons. Still, there is no justification *to* them from the state. *The state* does not explain *to its citizens* why a particular policy is implemented. All it could provide is incoherence.

For justificatory liberalism, the problem is even greater. Because it would not only be permissible to justify legislation with incoherent reasoning. That reasoning could also be inaccessible to the citizenry.

3.3 OVERCOMING THE PROBLEMS

3.3.1 STRONG POLITICAL LIBERALISM

An objection to moving away from the conclusion-based procedure is to say that compromises, bargaining, and strange coalitions are just basic facts of political life. Perhaps they are necessary for making political decisions. Moreover, we can explain exactly what happened to the citizens who want a justification for why a law, or a policy, was enacted. This party thought it generated a surplus

⁴⁰ Ibid., p. 284.

of such-and-such size, this other party thought it increased equality, and this third party believed it benefitted the worst off. They took a vote, and it was determined that the law was a law that ‘they’ wanted. So, the objection might go, why is it not sufficient to appeal to proceduralism?

The first response is simple. Why should we appeal to this particular kind of proceduralism? As argued, it allows for severe flaws in the decision-making process, and it is inconsistent with the basic values of public reason liberalism, political autonomy, and it prevents the coherent application of law. Moreover, if it could be shown that there is an alternative that could provide both a sound procedural justification, and avoid the outlined problems, such a view would be superior in both regards.

The premise-based procedure is such an alternative. When it is employed, it is always possible to point both to a credible and fair democratic procedure, and to the procedure-independent reasons that underpin and justify the political decisions. The reasoning of democratic bodies is, in this way, public and contestable – disagreeing citizens can demand, and get, rational explanations for decisions.

To exemplify with the tax policy case, the premise-based procedure entails that the parliament votes on the premises. If a majority holds that the policy should be enacted only if it benefits the worst off, and a majority holds that it does not, in fact, benefit the worst off, the group’s judgement is that the tax policy should not be enacted. This ensures citizens’ political autonomy. They can act together to make laws with expressive force. The laws (or the reason not to enact them) also express something to the citizens. Citizens who believe that the policy should have been implemented are given an explanation. The state (however it is understood, either as the corporate body of citizens or, in less loaded terms, the government) – provides them with an explanation. It did not believe that a good balance of public reasons came down in favour of implementing the policy. Disagreeing citizens are told that the policy should only be enacted if it benefits those who are worst off but that it does not do so. The decision to not implement the policy is justified to the citizens.

There is also a procedural story available: the parliament voted on the premises and this is the result that emerged. In this way, the premise-based procedure retains the procedural benefits of the conclusion-based procedure, while avoiding the problems that incompletely theorised agreements are faced with.

Political liberalism is perfectly compatible with making collective decisions using the premise-based procedure. On this *strong* political liberalism, the relevant government agencies make collective judgements on the premises, and all normative premises are based on public reasons. This is a fair procedure and decisions are made based on the preferences of the citizenry.⁴¹ It is a further question whether it can avoid the problems raised against public reason proceduralism in section 2.6 and 2.7. I will argue in chapter 6 that it can.

3.3.2 LIBERATION THEOLOGY AND VETOES

Justificatory liberalism, on the other hand, cannot incorporate the premise-based procedure without collapsing into perfectionism.

Let me explain. Suppose that we allow incompletely theorised agreements based on all intelligible reasons. Legislators would then collectively try to determine which of their (potentially) private reasons could justify a given law. Now, imagine the Liberation Party, a party that advocates liberation theology, is voted into power through a fair democratic procedure. The party holds that ‘God has a preference for the poor,’ and this ‘obliges us to take quite drastic measures in narrowing the disparities in life opportunities between rich and poor’.⁴² These are clearly intelligible reasons given certain Christian premises, but on most political liberal views, they are not public reasons. The party controls a majority of the seats in parliament. They are considering a policy proposal that raises taxes and expands the welfare state for the following reasons:

⁴¹ As per section 2.1.

⁴² Christopher Eberle. 2002. *Religious Conviction in Liberal Politics*. New York: Cambridge University Press, p. 112.

- R₁: God demands that we show preference for the poor.
- R₂: Raising taxes and expanding the welfare state shows preference for the poor.
- R₃: If a policy is in line with what God demands it should be enacted.
- C: The policy should be enacted.

According to Gaus's view about what counts as permissible reasons, the normative premises are acceptable, because they are intelligible consequences of doctrines such as liberation theology. If a majority of the parliamentarians agree with each premise, and we follow the logical relation, we find that the law should be enacted. It would be permissible for the government to implement the policy even if all citizens neither agree that it is the right policy (or that it is better than not having a new policy at all), nor that it is chosen for reasons that they all accept. This is a Christian perfectionism that violates the public justification principle, and it circumvents the central tenets of public reason liberalism.

Justificatory liberalism demands that all citizens need to have reason to prefer having the policy to not having any policy. Reasonable libertarians may deny this since they oppose the welfare state. Consequently, the policy is, in line with the convergence understanding, not publicly justified. At the same time, it could be permissible to implement it, because even if a law is not publicly justified, in the convergence sense that all citizens do not have reason to prefer having no law to having the law, as I have said, 'the use of coercion to enforce it may [still] be permissible'.⁴³ There are many reasons for why we might think that this kind of perfectionism is objectionable, and I will return to them in chapter 5. For now, it should suffice to say that public reason liberals already share these concerns.⁴⁴

Justificatory liberals might want to suggest that there is a way to avoid the problems outlined above, without the theory collapsing into perfectionism. They could demand that political decisions

⁴³ Gaus, *The Order of Public Reason*, p. 495; see also 462–8.

⁴⁴ Gerald Gaus. 2015. 'On dissing public reason: A reply to Enoch,' *Ethics* 125(4): 1078–1095; Quong, *Liberalism Without Perfection*; Kevin Vallier and Ryan Muldoon. In press. 'In public reason, diversity trumps coherence,' *Journal of Political Philosophy*.

require unanimity. If no one disagrees to the proposed course of action, it may seem as if the problems disappear, because the law is justified for everyone. If the law is a failure, everyone is equally responsible, so there is no one who have the standing to question it.

There are a few reasons for why this response does not work. First, because unanimity is an incredibly demanding standard for making collective decisions. Gaus himself rejects unanimity because it has ‘severe problems in actual choice situations.’⁴⁵ In short, we might wonder if we could realistically make any decisions. This fact is amplified since it is not enough to achieve unanimity among the members of parliament; every single citizen must have reason to want the law enforced. Otherwise, dissenting citizens have grounds for complaint. This standard looks unfathomably high – surely, we could never find laws that no citizens have reason to disagree with? Especially if we allow, as Gaus does, that there might be reasonable disagreement about which law that should be enacted.

Institutionally speaking, the idea of leaving citizens with the power to veto all laws looks worrying. Suppose that we manage to find an instance where there is unanimous consent that the state should perform a certain task. If so, it would be illegitimate for the state to perform it if a single person changes her mind. If she shows that she no longer endorses the decision, the state cannot go ahead with its plans. Because of this, democratic decision-making is subjected to the whims of individual citizens, something that places a disproportionate amount of power in the hands of dissenters. This seems to me to be a clear violation of civic equality in the form of the principle of liberal collective self-legislation. Citizens have no real power to democratically choose to enact policies.

It might be asked if on some justifications for democracy the conclusion-based procedure remains superior. In examining this, I also respond to the main shortcoming of the premise-based procedure: that a proposal might be implemented even if a majority is against the conclusion. I

⁴⁵ Gaus, *The Order of Public Reason*, pp. 458–9.

shall argue that from the point of view of public reason liberalism, this should not worry us too much.

3.4. EPISTEMIC JUSTIFICATIONS FOR DEMOCRACY

I have in this chapter not relied on a particular justification of democracy. The argument does not presuppose a certain answer to the source question from chapter 1. However, things may look a bit different for those who value democracy for its epistemic credentials, for those who believe that democracy is valuable because it produces decisions that meet some epistemic threshold. On this view, democracy is valuable because democratic decisions are likely to be right.⁴⁶

When a court makes a ruling, there is a fact of the matter about whether the defendant is guilty or not. If she is guilty, the right outcome is that she goes to prison. If the same holds for democratic decisions, the fact that a majority believes that a law should be implemented might count so much in favour of implementing it that it does not matter that there is no coherent, procedure-independent, reason for why it is chosen.

In response, however, we cannot be certain that aggregating judgements on the conclusion should lead to better truth-tracking than aggregating judgements on the premises. On the contrary, it might be the case that if we want democratic decisions to meet an epistemic threshold, the premise-based approach could be superior. One reason for this is that it is difficult to interpret what the ‘rightness’ of a decision is outside the standard we use for assessing the decision. Hence, the proponent of epistemic democracy can plug in whatever arguments she uses for the truth-

⁴⁶ Elizabeth Anderson. 2006. ‘The epistemology of democracy,’ *Episteme: A Journal of Social Epistemology* 3(1): 8–22; Hélène Landemore. 2013. *Democratic Reason*. Princeton: Princeton University Press; Hayley Stevenson. 2016. ‘The wisdom of the many in global governance: An epistemic-democratic defense of diversity and inclusion,’ *International Studies Quarterly* 60(3): 400–412.

tracking properties of collective decisions (such as Condorcet's Jury Theorem or Aristotle's 'potluck') and apply them to the premise-based approach.⁴⁷

If it is true that aggregating the judgements about conclusions leads to better knowledge, the same could reasonably be expected to hold also when we aggregate judgements on individual premises. Thus, for epistemic democrats, the premise-based approach could ensure not only that we make the right decision, but that we make the right decision for the right reasons.⁴⁸

Nevertheless, this uncovers a peculiarity with the premise-based procedure. For it might sometimes be the case that there is a majority in favour of each premise that leads to the enactment of a policy, while only a minority supports the substantive conclusion that the policy should be enacted. This should be easy to see. Let us return to our three party leaders who are deciding whether to implement a new policy.⁴⁹

It has come to the government's attention that so-called political dark advertising, where individuals get targeted internet ads, invisible to others, might undermine trust between citizens and erode the democratic process.⁵⁰ If this is true, every party leader agrees that dark advertisement should be banned. Now, they make up their minds about the following propositions.

R₁: Dark advertising undermines trust between citizens.

R₂: If trust between citizens is undermined it will erode our democracy's functioning.

R₃: Dark advertising should be banned if it erodes our democracy's functioning.

C $\leftrightarrow$ (R₁ & R₂ & R₃): If all propositions hold our democracy's functioning is eroded and we should ban dark advertising.

C: Dark advertising should be banned.

⁴⁷ For Condorcet's Jury Theorem, see Robert Goodin and Kai Spiekermann. 2018. *An Epistemic Theory of Democracy*. Oxford University Press; for the Aristotelian version see Josiah Ober. 2013. 'Democracy's wisdom: An Aristotelian middle way for collective judgment,' *American Political Science Review* 107(1): 104–122.

⁴⁸ For an argument to this effect, see Luc Bovens and Wlodek Rabinowicz. 2006. 'Democratic answers to complex questions – an epistemic perspective,' *Synthese* 150(1): 131–153.

⁴⁹ For a variation on this case, see List, 'The discursive dilemma and public reason.'

⁵⁰ See for instance, Joe Saunders. 2020. 'Dark advertising and the democratic process,' in Kevin Macnish and Jai Galliot (eds.), *Big Data and Democracy*. Edinburgh University Press; Carissa Véliz 2020. *Privacy is Power: Why and how You Should Take Back Control of Your Data*. London: Random House.

	R_1	R_2	R_3	$C \leftrightarrow (R_1 \& R_2 \& R_3)$	C
Anna	True	True	True	True	True
Beatrice	True	False	True	True	False
Charlotte	False	True	True	True	False
Majority	True	True	True	True	False

Anna believes all premises to be true, and that dark advertisement therefore should be banned. Beatrice believes that dark advertisement undermines trust between citizens, but that this does not affect how our democracy functions. Hence, she believes that dark advertisement should remain legal. Charlotte does not believe that dark advertisement currently undermines trust between citizens. However, she thinks that if (or when) it does so, this would erode democracy's functioning.

There is a majority in favour of each premise. Following the premise-based procedure would lead to dark advertisement being banned even if only a minority, Anna, shares this conclusion.

Equipped with cases like this, a critic might press that it could well be true that the decision retains citizens' political autonomy and that the law sends a powerful expressive message (dark advertisement is wrong because it undermines democracy's functioning). They might even say that the law is justified *to* citizens. And they could grant that from an epistemic point of view it might not be better to vote on the conclusion, since what is contested is arguably whether the premises are true. Nevertheless, even granting all this, she might suggest, there is still something deeply objectionable about the fact that only a minority believes that the policy should be implemented. Should this not worry us?

I grant that it seems worrying when the legislators are viewed as private individuals. From this perspective, we can see that two members of the government are unable to justify or explain why the law is in place. From their own, private, point of view it is wrong to have the law.

Let me, however, end this chapter by emphasising that the private point of view is not the right level of analysis when it comes to collective political decisions. At least not if we see democracy as being about more than the bargaining between different interest groups or the crude aggregation of preferences. Given a commitment to political autonomy, public reason liberals have

good reason to want to avoid seeing state power as being exercised by individual legislators over us. What they should be interested in is not whether a law is justified for the individual legislator. If they care about political autonomy, they should care about whether the law is justified for the government, as an entity, and to each citizen.

3.5 CONCLUSION

I have argued in favour of what I called strong political liberalism. On this view, public reasons should function as premises in the collective reasoning of decision-making state bodies. This ensures that citizens can exercise their political autonomy, which – in turn – ensures the expressive force of laws and justification to those subject to them. This insight has so far been overlooked: the two most prominent contemporary versions of public reason liberalism fail to ensure that these values are realised.

Gaus's justificatory liberalism cannot be salvaged because it would collapse into perfectionism. This gives us a new reason, previously unexplored, for being sceptical of it as a model of public reason – especially once we recognise that the state exercises its authority over us not as an amalgamation of individual agents, but as an agent in its own right. Of course, we might ask whether perfectionism really is objectionable. I take this question up in chapter 5. For now, I conclude that we have good reason to prefer strong political liberalism over weak political liberalism and justificatory liberalism.

Nevertheless, the issues raised in chapter 2 remain. We need to ensure that the principle of liberal collective self-legislation is met if we want to be certain of political liberalism's continued value and relevance as a guide for real-world liberal democracies.

The task of Part two of this thesis is to show how this should be done. In the next chapter, I begin outlining a positive account of public reason that can satisfy the principle of liberal collective self-legislation. Already equipped with the civic equality answer to the source

question, and its successful answers to the dependence and priority questions, I turn to what a requirement to give public reasons ought to look like. I argue that laws need to be justified with what I call *convergence accessible* reasons to ensure the civic equality of all.

Part two

CHAPTER 4: THE CONVERGENCE ACCESSIBILITY STANDARD

In the first part of this thesis, I showed that public reason liberalism has difficulties incorporating democratic concerns. In chapter 2, I argued that the two most prominent versions of political liberalism cannot guarantee that the principle of liberal collective self-legislation is satisfied. John Rawls's version, because its public reason proceduralism does not show why laws would be given to the citizenry by itself. And Jonathan Quong's version, because his account of public reason, paired with his broad view of its scope, makes seemingly uncontroversial exercises of political power impermissible. In chapter 3, I argued that justificatory liberalism also had significant democratic deficits, and that those gave us reason to prefer political liberalism.

At this point, it is therefore natural to ask whether we should give up on public reason liberalism. Justificatory requirements, or so it seems, places severe limitations on the political autonomy of the citizenry and it seriously constrains the democratic decision-making process.

This would be too quick, however. For, at the same time, there does seem to be something deeply objectionable about a state imposing laws on its citizens for reasons that are completely foreign or inaccessible to some of them. The view that it would be wrong for the liberal state to justify legislation with reasons that presuppose the existence of a God or the truth of a contested worldview is both plausible and widely shared. As Jürgen Habermas puts this idea:

The principle of separation of state and church obliges politicians and officials within political institutions to formulate and justify laws, court rulings, decrees and measures only in a language which is equally accessible to all citizens.¹

¹ Jürgen Habermas. 2006. 'Religion in the public sphere,' *European Journal of Philosophy* 14(1): 1–25, p. 5.

I suggested in section 1.4.3 that what is objectionable about public officials relying on inaccessible reasons is that such reasons threaten the civic equality of the citizens to whom they are inaccessible. In this chapter, I will elaborate and defend this claim.

To do so, I will develop a standard that can distinguish non-public reasons from public reasons. This is of fundamental importance; such a standard is necessary for determining what reasons that are permissible in public justification. We need it to know what reasons that can be used by the state and its officials when political power is justified. The standard cannot be too demanding, because the resulting theory then – like Quong’s political liberalism – risks violating the principle of liberal collective self-legislation too frequently. Specifically, many laws with consequences that do not violate civic equality would need to be overturned, even when the choice to enact them tracks the preferences of the citizenry (what I called condition (P) in section 2.1).

At the same time, the standard cannot be too permissive, because if so, it would permit legislation justified with reasons that themselves violate citizens’ civic equality.

To resolve this tension, I propose that political liberalism should incorporate what I call the convergence accessibility standard of public reason. This standard, inspired by Cécile Laborde’s epistemic, ‘*stricto sensu*,’ understanding of public reason, is situated in the appropriate middle-ground.² It retains the ability for collective self-legislation in normal cases. At the same time, it excludes appeals to reasons that presuppose the truth of religions and other metaphysical systems, reasons that would be alienating if they were used by public officials to justify legislation.

Next chapter will be devoted to showing that the convergence accessibility standard outperforms its rivals. I will compare it to the two most prominent non-public-reason views of permissible reason-giving in public justification: *the right reason* view and *argumentative*

² Cécile Laborde. 2017. *Liberalism’s Religion*. Cambridge: Harvard University Press, p. 127. See also Henrik D. Kugelberg. In press. ‘Civic equality as a democratic basis for public reason,’ *Critical Review of International Social and Political Philosophy*.

democracy. These comparisons are important, because if views that do not require public reasons can guarantee civic equality, then the convergence accessibility standard is superfluous. I then compare the convergence accessibility standard to stricter public reason views, because if such standards are better at protecting civic equality, then the convergence accessibility standard might be too weak. I conclude that the convergence accessibility standard is better at upholding civic equality than all alternatives.

In this chapter, however, I lay some important groundwork. Specifically, I outline what I take the standard to entail and provide a brief sketch of what reasons would be permissible according to it. It is important to note that I will not argue that citizens offering inaccessible reasons to each other threatens civic equality. On the contrary, I take it that public deliberation among citizens does not have bearing on the legitimacy of law in this direct way. Nevertheless, I will argue in chapter 6 that there are strong *instrumental* reasons for why citizens should give public reasons, and for why they should order their political views after a public-reason metric.

The present chapter begins by outlining the basic ideas of reason-giving in public justification (section 4.1), after which I discuss the main features of the convergence accessibility standard (section 4.2). I then argue that to be permissible, reasons should be convergence accessible to moderately idealised citizens (section 4.3). Finally, I consider two important objections: that the standard is too permissive and that it is too restrictive (section 4.4).

4.1 REASONS IN PUBLIC JUSTIFICATION

4.1.1 COUNTING IN FAVOUR OF LAWS

Let us start with the very basic idea. What is a reason? I take it that a reason to do something is a consideration that counts in favour of doing that thing.³

Public reason liberals are concerned with reasons in public justification. As discussed in section 3.1.3, public justification might be understood in two different ways. Either we might think of justification in a rather abstract sense, as in whether the law *is* objectively justified or not. Alternatively, justification can be understood as the concrete act of justifying laws and policies, carried out by public officials. It is this understanding that I will be focusing on. To illustrate it, imagine, for instance, that a state has decided to implement a new tax policy. Public officials justify the choice, enactment, or implementation of the policy by saying that they have adopted it ‘*because* it increases equality.’

Until now, I have mostly used the idea of public reasons as a placeholder, without defining precisely how the set of public reasons should be delineated. Public reason liberals have many different answers. It is often thought that only reasons that are epistemically justified in the right way are permissible.

Many different answers to the question of what makes a reason epistemically justified have been proposed. On some accounts, a reason is epistemically justified in the right way if citizens can recognise that the reason is epistemically justified for the person who uses it. On other views, the reason needs to be in some sense epistemically justified for a larger subset of the citizenry, or for everyone.⁴

³ T. M. Scanlon. ‘Reasons: A puzzling duality?’ in R. Jay Wallace, Philip Pettit, Samuel Scheffler, and Michael Smith (eds.), *Reason and Value: Themes from the Moral Philosophy of Joseph Raz*. Oxford: Oxford University Press, p. 231.

⁴ Gabriele Badano and Matteo Bonotti. 2019. ‘Rescuing public reason liberalism’s accessibility requirement,’ *Law and Philosophy* 39: 35–65, p. 37; Kevin Vallier. 2016. ‘In defence of intelligible reasons in public justification,’ *The Philosophical Quarterly* 66: 596–616, p. 599

Kevin Vallier has recently done important work to clarify the different bases we might have for saying that a reason is epistemically justified. Vallier talks of *evaluative standards*, helpfully characterised by Gabriele Badano and Matteo Bonotti as ‘norms on the basis of which members of the public can epistemically evaluate any reasons that are being proposed by other citizens, and determine whether such reasons can be justifiably held.’⁵

Vallier outlines three different answers to the question of which reasons that can permissibly be used for justifying laws: shareability, accessibility, and intelligibility. The shareability standard is the most demanding, it combines ‘shared evaluative standards with shared reasons.’⁶ On this view, a reason can only permissibly be used to justify a law if ‘each citizen will affirm the reason as her own at the right level of idealisation.’⁷

The traditional accessibility standard entails that public reasons are those that are justified in light of shared evaluative standards. Contrary to the shareability standard, it does not require that the reason itself be shared. Finally, the intelligibility standard requires that the reason be justified in light of the evaluative standards held by the person who uses the reason.⁸

4.1.2 THE TRADITIONAL ACCESSIBILITY STANDARD

To get a better understanding of the differences between shareability, accessibility, and intelligibility, a few more things need to be said about evaluative standards. The first thing to note is that evaluative standards may be both ‘prescriptive and descriptive.’⁹ Prescriptive

⁵ Badano and Bonotti, ‘Rescuing Public Reason Liberalism’s Accessibility Requirement,’ p. 37; Kevin Vallier. 2014. *Liberal Politics and Public Faith: Beyond Separation*. New York: Routledge, p. 109.

⁶ Vallier, *Liberal Politics and Public Faith*, p. 109. The view is held by, for instance, Micah Schwartzman. 2011. ‘The Sincerity of public reason’, *The Journal of Political Philosophy* 19(4): 375–398; James Bohman and Henry S. Richardson. 2009. ‘Liberalism, deliberative democracy, and “reasons that all can accept,”’ *The Journal of Political Philosophy* 17(3): 253–274; R.J. Leland and Han van Wietmarschen. 2012. ‘Reasonableness, intellectual modesty, and reciprocity in political justification,’ *Ethics* 122(4): 721–747; see also Badano and Bonotti, ‘Rescuing public reason liberalism’s accessibility requirement,’ p. 37.

⁷ Vallier, *Liberal Politics and Public Faith*, p. 109.

⁸ Ibid., p. 109–10.

⁹ Badano and Bonotti, ‘Rescuing Public Reason Liberalism’s Accessibility Requirement,’ p. 39; Vallier, ‘In defence of intelligible reasons in public justification,’ p. 607

evaluative standards are things like the ‘moral principles for action’ that are typically found in ethical and religious doctrines and the values that make up a conception of justice.¹⁰ It could also be ‘epistemic rules for the collection of factual evidence and for drawing inferences’.¹¹ Descriptive standard, on the other hand, are various ‘physical and meta-physical descriptive beliefs.’¹²

I will defend a version of the accessibility standard in what follows. Kevin Vallier gives a neat definition of the traditional version, such that ‘A’s reason R_A is accessible to the public if and only if all members of the public regard R_A as justified for A according to common evaluative standards.’¹³ To be able to separate it from the standard that I will defend, I will call it the traditional accessibility standard.

The idea is that in a society where, say, not everyone is a Christian, reasons that need to be evaluated and engaged with by drawing on Christian scripture would be inaccessible, and therefore impermissible in public justification. However, they might still be intelligible, if they are justified for the person who uses them. On the accessibility standard, on the other hand, reasons that are not ‘detachable’ from specific moral or religious frameworks are ruled out. An accessible reason in most societies today may, for instance, be an appeal to scientific theories that ‘are grounded in reasons and modes of inquiry that all can appreciate as valid.’¹⁴

The difference between the accessibility and the shareability standards is that reasons can be accessible to everyone due to being grounded in evaluative standards held by all, but they can nevertheless be unshared if, say, some citizens see them as a mistaken interpretation of the relevant value or overridden by other considerations.

¹⁰ Badano and Bonotti, ‘Rescuing Public Reason Liberalism’s Accessibility Requirement,’ p. 39.

¹¹ Ibid.

¹² Ibid.

¹³ Kevin Vallier. 2018. ‘Public justification,’ *The Stanford Encyclopedia of Philosophy* (Spring 2018 Edition), Edward N. Zalta (ed.). Available from: <https://plato.stanford.edu/archives/spr2018/entries/justification-public/>; see also Kevin Vallier. 2011. ‘Against public reason liberalism’s accessibility requirement,’ *The Journal of Moral Philosophy* 8(3): 366–389, p. 369.

¹⁴ Kevin Vallier. 2018. ‘The duties of political officials in a minimally secular state,’ *Journal of Applied Philosophy* 36 (5): 695–701, p. 696.

4.2 ACCESSIBLE TO ALL

4.2.1 ACCESSIBILITY FOR DIFFERENT REASONS

There is a plausible case to be made for leaving the traditional accessibility standard behind. We want all citizens to be able to appreciate the normative relevance of the laws that bind them (laws should be justified *to* them), and so it is hard to see why having shared standards is what matters. Rather, it should suffice that the reason is justified for the citizenry, regardless if this is so based on shared standards or every citizen's own, private, standards. Accessible reasons of this kind guarantee that citizens can evaluate and engage with the reasons with standards that they hold themselves. Thus, it is enough that a reason achieves *convergence accessibility*, accessibility for different reasons for different citizens. If the reason is justified in light of shared or private standards, it is convergence accessible.

Convergence accessibility: A's reason R_A is accessible to B if it is justified by evaluative standards held by B.¹⁵

The standards held by B may either be shared by all or B's own private standards. Public reasons are those reasons that are convergence accessible to all moderately idealised citizens in a given society.¹⁶ I say more about moderate idealisation in section 4.3.

It may well be the case that given reasonable pluralism, the convergence accessibility standard and the traditional accessibility standard would often diagnose the same reasons as accessible. It would be rare to find reasons that are convergence accessible but not accessible

¹⁵ To my knowledge, something like the convergence accessibility standard was first suggested by Sune Lægaard. 2020. 'Laborde's religion,' *Critical Review of International Social and Political Philosophy* 23(1): pp. 9–20 and developed in Cécile Laborde. 2020. 'Three cheers for liberal modesty,' *Critical Review of International Social and Political Philosophy*, 23(1): 119–135, p. 121.

¹⁶ Note, that it is not enough that the reason is justified only with A's standards. That is the intelligibility standard.

on the traditional view if there are few reasons that are justified only according to each citizens' evaluative standard, but not according to standards shared by all.

I have no problem accepting this upshot, however, and the argument below does not turn on whether the convergence accessibility standard is very different from the traditional accessibility standard. Both versions of the accessibility standard, in an important way, makes public reason an epistemic condition for legitimacy.¹⁷ A reason is accessible if it is justified according to our *worldview*, which constitutes our *epistemic perspective*. Some parts of this worldview are shared (i.e. they can be endorsed by shared standards or other people's private standards) and some parts are not. This entails that citizens can disagree about whether a convergence accessible reason justifies a law. At the same time, they can understand, evaluate, and engage with the reason critically because they see the normative relevance of it. The reason does not require inaccessible special knowledge. This holds for both the traditional and convergence versions of the accessibility standard.

4.2.2 WHAT IS INACCESSIBLE?

It may be helpful to consider a few examples to see how the standard is meant to work. Take the reason 'we should care for the vulnerable.' Anna sees the reason as justified in light of her liberal egalitarian commitments, and so it is accessible to her. Beatrice sees the reason 'we should care for the vulnerable' as justified in light of her reading of biblical passages.¹⁸ Hence, it is accessible also to her. On the other hand, Clare's reason 'God commands that we should care for the vulnerable' is accessible to Beatrice, but not to Anna. This reason assumes, as Laborde puts it, 'that those to whom the reason is addressed share a commitment to do what

¹⁷ Laborde, 'Three cheers for liberal modesty,' p. 123.

¹⁸ Typical examples are Isaiah 58:1–12 and Matthew 25:35–40.

God prescribes', and it is therefore inaccessible to citizens like Anna who do not share that commitment.¹⁹

To see how the convergence accessibility requirement works, let us put those different versions of the reason to the test in a stylised case based on the real-world debate on assisted suicide.²⁰ Anna believes that the best way of caring for the vulnerable is to keep assisted dying illegal. She believes that people with serious illnesses are vulnerable because they are under severe psychological distress. Allowing assisted dying would make their position even more insecure. Beatrice, on the other hand, believes that we should allow assisted dying because this is the best way of caring for the vulnerable. People in the late stage of their life with severe pain who wish to end their lives should be free to do so. Allowing assisted dying is a way of attending to the needs of the vulnerable. Even if Anna's and Beatrice's commitments to care for the vulnerable have different bases, they are detachable from their wider philosophical frameworks. And so, Beatrice's reason with a Christian basis can be understood and engaged with through the lens of Anna's liberal egalitarianism, and vice versa.

Now, imagine instead Clare who also thinks assisted dying should be illegal. She offers two reasons: R_{C1} : 'God commands that we should care for the vulnerable,' and R_{C2} 'life is the greatest gift from [the Christian] God and to tamper with it or interfere to end it is the most serious sin'. She believes that God's command to care for the vulnerable entails that we should not allow assisted dying, and she supports this claim by appealing to her view that interfering to end life prematurely is sinful. These reasons can only be evaluated according to standards held by those who share the worldview that the Christian God exists. Anna, who does not share Clare's worldview, could merely challenge the reason from the outside by inserting her own worldview with reason R_A : 'life is not a gift from the Christian God because the Christian God does not exist. Other Gods exists, and they have not given human life as a gift.' Beatrice,

¹⁹ Laborde, *Liberalism's Religion*, p. 127.

²⁰ Steven Kettell. 2019. 'How, when, and why do religious actors use public reason? The case of assisted dying in Britain,' *Politics and Religion* 12(2): 385–408, p. 6; see also Laborde, *Liberalism's Religion*, p. 121.

who on the other hand *does* share the worldview that the Christian God exists, can evaluate the reason in accordance with the same epistemic perspective as Clare. Recall that Beatrice also held that God commands that we should care for the vulnerable. However, she believes that saying that this entails that we should prohibit assisted dying is a mistaken way of applying this idea to the case at hand. She supports this claim by appealing, further, to the reason R_B ‘life is a gift from the Christian God, but there are conditions such that when they are met, we might still end it prematurely’. Clearly, Clare does not *share* this reason. Nevertheless, it is accessible to her because she shares the relevant evaluative standard.

Those who argue that public reasons must be drawn from a shared set of reasons that all members of the well-ordered society hold,²¹ would need to say that in a society consisting of only Clare and Beatrice, Clare would not be allowed to appeal to R_C when justifying legislation – despite both of them sharing the same epistemic perspective. The reason is neither shared nor derived from a view about citizens as free and equal, and it is therefore impermissible. The evaluative standard – what does scripture say about the matter – is, however, shared. Thus, on the accessible-reasons view presented here, Clare’s reason is *accessible* to Beatrice but not to Anna, since she does not believe in the Christian God.

This entails that in a society consisting of only Clare and Beatrice, Clare – were she a state official – could permissibly argue for legislation forbidding assisted suicide because of reason R_{C2} : life is a gift from the Christian God. If Beatrice were in power, she could justify legislation to Clare by using R_B . In a society consisting only of Anna and Clare, Anna could not permissibly appeal to R_A . Similarly, in a society consisting of all three, none of the reasons would be accessible – Anna does not find Beatrice’s and Clare’s reasons accessible and vice versa. Instead, all three would have to use reasons that are accessible to everyone, reasons that are convergence accessible, such as ‘we should care for the vulnerable.’

²¹ E.g., Quong *Liberalism Without Perfection*, pp. 261–3; Lori Watson and Christie Hartley. 2018. *Equal Citizenship and Public Reason: A Feminist Political Liberalism*. Oxford: Oxford University Press, pp. 62–87. See also section 2.2.

4.2.3 ACCESSIBILITY MATTERS EVEN WHEN IT IS A MATTER OF PRESENTATION

An important objection at this point is that what I have presented above as examples of inaccessibility might simply come down to how arguments are presented. Could Clare not, for instance, just drop the ‘God commands’-part of her reason in order to make it accessible?

I believe that this is correct. If her reason would have been presented in this way, it would have been convergence accessible. However, I want to emphasise that presentation does matter, because there is a crucial difference between these two versions of the reason.²² I think this should be easier to see when we consider that what I am concerned with is the reasons state officials give in favour of legislation.

In the UK, for instance, when the legislative process culminates in a decision, an act becomes an Act of Parliament. This Act of Parliament is justified by public officials ‘as an act of state rather than an act that happens to be favoured by those the official may be representing.’²³ In this moment, and in moments like it at the executive and judicial levels, it would be divisive and a breach of civic equality to base that justification on inaccessible reasoning. There seems to me to be a crucial difference, at this stage, between saying that ‘we have prohibited assisted dying because God commands that we should care for the vulnerable’ and saying that ‘we have prohibited assisted dying because we should care for the vulnerable.’ I develop this point in section 5.2.

Let me also emphasise that the convergence accessibility understanding of public reason entails that reasons that are not in themselves politically liberal can permissibly be used to justify law. Reasons drawn from religious doctrines are permissible insofar as they are detached from the deeper theological commitments, or if *everyone* in society share similar religious commitments. The latter is impossible in most real contemporary society, and so, following

²² For a similar thought, see Laborde, *Liberalism's Religion*, p. 122.

²³ Jonathan Chaplin. 2012. ‘Law, religion and public reasoning,’ *Oxford Journal of Law and Religion* 1(2): 319–337, p. 336, emphases in original.

Laborde, if the reasons' validity 'depend on the acceptance of the authority of a particular God, text, or religious hierarchy' it is almost always impermissible.²⁴ On the other hand, if it does not require 'special knowledge such as divine revelation', if all citizens can engage with and meaningfully discuss the reason by using standards that they themselves hold, it is accessible to all and therefore a public reason.²⁵

The next question is what the justificatory constituency should look like. Should the reasons used in public justification be convergence accessible to real or idealised citizens?

4.3 MODERATE IDEALISATION

4.3.1 THE JUSTIFICATORY CONSTITUENCY

For most political liberals, laws should be justified to reasonable citizens understood as the citizens who populate the well-ordered society.²⁶ Quong worries that justificatory constituencies based on real citizens are – as Rawls puts it – 'political in the wrong way'.²⁷ This means that legitimacy is tied to 'whatever views real citizens currently happen to hold', which is problematic since 'citizens might hold mistaken beliefs about empirical or normative matters, they might be blinded by self-interest, epistemic flaws, or be unreasonable in some other respect'.²⁸

It might therefore be asked: why should we care what they think? I think the answer is, simply put, that we should care about what they think precisely because they are real citizens. Public officials should justify policies to real citizens because they are the ones who are going to live under the laws and policies that are justified.

²⁴ Laborde, *Liberalism's Religion*, p. 127.

²⁵ Ibid., p. 128.

²⁶ Paul Billingham and Anthony Taylor. In press. 'A framework for analyzing public reason theories,' *European Journal of Political Theory*.

²⁷ Quong, *Liberalism Without Perfection*, p. 146. See also section 2.2.

²⁸ Ibid.

It is a separate question whether those policies are just or unjust.²⁹ With Laborde, I believe that a state

may offer sound public reasons for its policies, yet these policies may be illiberal (consider, for example, a state that justifies severe repressive policies by appeal to the notion of public order).³⁰

Public reason can lead both to liberal and non-liberal outcomes. Insofar as illiberal policies are illegitimate, it is not (necessarily) because they fail to be justified with public reason. They may well have genuine public reasons in favour of them. Rather, it is the fact of them being illiberal (or unjust) that is the problem. As I argued in chapter 1, I do not take legitimacy to be reducible to public reason. Determining whether a law is permissible to enforce demands that we investigate whether it is chosen in a way that treats citizens as civic equals. This limits the set of decision procedures to democratic ones. Crucially, however, the law also cannot have substantive consequences that violate civic equality. Both of these things are what the principle of liberal collective self-legislation is meant to ensure.

In this sense, public reason is on my view a necessary but not sufficient condition for legitimacy. It is an epistemic condition without substantive liberal principles built into it.

It might be helpful to contrast my view with Quong's political liberalism. Quong's public reason theory is meant to uniquely support liberal principles of justice as the substantive outcome. The question of the legitimacy of law is settled when we see that it has the right sort of justification.³¹ Put like this, we can in one way see that Quong and I are solving different problems. Quong tries to show how to get from his premises to legitimacy *and* justice, whereas I focus on how to get from civic equality to legitimacy, and not too serious injustice. In line

²⁹ For a similar argument, see Laborde, *Liberalism's Religion*, ch. 4.

³⁰ Cécile Laborde. In press. 'Reply to Quong, Patten, Miller and Waldron,' *Criminal Law and Philosophy*, p. 4; see also Gerald Gaus. 2015. 'Public reason liberalism,' in Steven Wall (ed.), *The Cambridge Companion to Liberalism*, Cambridge: Cambridge University Press, p. 133.

³¹ Quong *Liberalism Without Perfection*, p. 148; See also, Laborde, 'Reply to Quong, Patten, Miller and Waldron,' p. 5 for a similar point.

with this, a worry might be that my framework could be unable to show how a specific conception of justice (or a range of conceptions of justice) is (or are) uniquely justified. To get there, the objection might go, I would still need to idealise extensively, although at a different stage.

In response, I agree that this is a plausible way of understanding our different projects, but I want to stress that I do not see this as a limitation of my view. On the contrary, I believe that justice and legitimacy can come apart, and often to a significant degree. The same cannot be said for Quong's view. And this is, I think, a problem for the view; if we are unable to pull justice and legitimacy apart, insufficient room is left for democratic decision making.³²

Rawlsian public reason views have previously been criticised for conflating justice and legitimacy. Philip Pettit, for instance, argues that Rawlsian public justifiability is not about legitimacy at all, since on this view 'the legitimacy of a social order does not require a contingent relationship between the subjects and the order imposed that might enable us to say, for example, that they support the order.'³³ Hence, according to Pettit, public justification is simply a 'reformulation of the standard contractualist conception of justice.'³⁴ The view I propose here is not subject to this objection, so we should welcome the conclusion that it will make the set of legitimate social arrangements greater than the set of ideally just ones, even if, of course, arrangements that fall below a threshold of what is tolerably unjust – those that violate civic equality – are still excluded.

While I do subscribe to a substantive conception of justice that most likely is quite similar to Quong's, I do not defend it in this thesis. Because, I believe, it would be wrong to think that it would be impermissible for the state to enforce competing views of justice. Indeed, it is

³² In a way, this is a restatement of the argument of section 2.3 and section 2.4.

³³ Philip Pettit. 2012. *On the People's Terms: A Republican Theory and Model of Democracy*. Cambridge University Press, p. 146.

³⁴ Ibid.

permissible for the state to do so, given that the justificatory, procedural, and substantive conditions are met.

For Quong's project, on the other hand, it becomes a problem that real-world citizens have widely different views about what justice entails, even if we grant that they all share commitments to freedom, equality, and fairness. 'Libertarians, luck egalitarians, socialists, Republican flat-taxers, and Democrat tax-and-spenders can all be plausibly seen as developing conceptions of justice where freedom, equality, and fairness play central roles.'³⁵ This is only worrying if we believe that views reminiscent of Rawlsian justice should be the only *legitimate* outcome of public reasoning. In other words, for those who believe that considerations of justice and legitimacy never come apart to a significant degree.

The existence of non-Rawlsians who value freedom and equality should not worry those who believe that both libertarian and luck egalitarian policies can be legitimate. In fact, I consider this a *possibility result* – we should welcome the fact that these very different theories share central commitments. It may be that some – or many – libertarian or luck egalitarian policies are unjust (some of them may even be illegitimate if the injustice is serious enough to violate citizens' civic equality), but the fact alone that they are justified with 'libertarian reasons' – insofar as those reasons are convergence accessible – cannot make it the case that they are ruled out at the justificatory stage.

4.3.2 JUSTIFYING LAWS TO REAL CITIZENS

So much for the worries put towards basing views on real citizens. What are the benefits? There are, I believe, good reasons from the point of view of civic equality to base justificatory requirements on the views of actual citizens. This is so because the alternative – radical idealisation – is in and of itself a threat to civic equality.

³⁵ Quong, *Liberalism Without Perfection*, p. 148.

Consider one of the council members of section 2.3 who voted to stop the building of the chemical plant. She got elected because of her environmental commitments. The citizens who voted for her shared those commitments, and this is why they voted as they did. Let us say that, by stipulation, reasons based on those environmental commitments were convergence accessible to all who were affected by the decision.

What should we say to the citizens who wanted to protect their forest, and who consequently voted to elect their environmentally conscious council member? Why should they care that idealised persons, not at all based on themselves, would not need to endorse a commitment to natural beauty in order to be members of a well-ordered society? Wolterstorff makes a similar point. ‘It is said that since the law does not coerce my fully rational fictional counterpart, the rational autonomy of that fully rational fictional counterpart is respected. That is fine. But what does that have to do with how I, in my actual condition, am properly treated?’³⁶

The description of a fully fictional counterpart is accurate for radical forms of idealisation, since the citizens of the well-ordered society are not in any real way related to actual citizens. In that sense, they are not even counterparts to real citizens. Radical idealisation can therefore come across as infantilising, patronising, and paternalist.³⁷ Kevin Vallier has even suggested that this kind of idealisation violates our ‘personal integrity’ because we ascribe to persons ‘reasons based on projects and plans that are entirely alien to them as real-world persons.’³⁸ I think that there is something to be said for this worry, and I develop precisely what I think it is in the next chapter.

At the same time, I agree with Quong that it would be disconcerting if we allow views that are clearly mistaken to figure as public reasons. Quong points out that, to solve this

³⁶ Nicholas Wolterstorff. 2012. ‘The paradoxical role of coercion in the theory of political liberalism,’ in Terence Cueno (ed.), *Understanding Liberal Democracy*. Oxford: Oxford University Press, p. 34. This worry, I believe, applies to Quong’s theory but not to more moderate accounts of idealisation, see Kevin Vallier. 2020. ‘In defense of idealization in public reason,’ *Erkenntnis* 85: 1109–1128. See also David Enoch. 2013. ‘The disorder of public reason,’ *Ethics* 124 (1): 141–176, pp. 164–70.

³⁷ Nicholas Wolterstorff. 2012. ‘The justificatory liberalism of Gerald Gaus,’ in Terence Cueno (ed.), *Understanding Liberal Democracy*. Oxford: Oxford University Press, p. 74.

³⁸ Vallier, ‘In defense of idealization in public reason,’ p. 1118.

problem, we could idealise the real citizens so as to include only citizens who are reasonable in the Rawlsian sense of the term. Quong maintains, correctly I believe, that such a move would make the justificatory constituency based on real citizens unnecessary – it is a spare wheel when what does the real normative work is the idealised constituency, not the views of real citizens.³⁹

But there are other routes open. In effect, it may seem as if Quong overridealizes to avoid the very real problems that he identifies. Because if what we are concerned with is avoiding epistemic flaws, we could impose a lighter idealisation.

In short, we do not need to take citizens precisely as they are. Rather, the justificatory constituency should consist of *moderately idealised* citizens. The idealisation is moderate, as it entails that the citizens of the justificatory constituency do not make faulty inferences, they have access to easily available information, et cetera.⁴⁰ This light idealisation is not vulnerable to the spare-wheel objection, since the content of public reason will ultimately depend on the views and beliefs of actual citizens.⁴¹ It also is not as vulnerable to the paternalist objection raised against the radically idealised view, because ‘fictional counterparts’ of citizens are not very fictional.

I realise that some may want to respond that it nevertheless is infantilising and paternalist that we idealise at all, even when the idealisation is comparatively light, when we think about what reasons that can permissibly be used in public justification. I grant that some of this may be unavoidable. But it is nevertheless important to note that the problem is far less pronounced on the view presented here than on a radically idealised view. Moderately idealised counterparts are merely a ‘heuristic to give the best account of *what reasons each person has*.’⁴² John Stuart Mill’s

³⁹ Quong, *Liberalism without Perfection*, p. 146–7.

⁴⁰ This has been suggested by Laborde, *Liberalism’s Religion*, ch. 4, Gerald Gaus. 2011. *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World*. Cambridge: Cambridge University Press, p. 276, and Vallier, ‘In defense of idealization in public reason’; Vallier, *Liberal Politics and Public Faith*, ch. 5.

⁴¹ See for instance Gaus, *The Order of Public Reason*, p. 276.

⁴² Vallier, ‘In defense of idealization in public reason,’ p. 1117.

classic broken bridge case comes to mind: is it really wrong to prevent someone from crossing a bridge we (but not them) know to be faulty?⁴³

Another possible worry is that laws would need to be justified also to people such as neo-Nazis, psychopaths, and religious fanatics. It seems as if including them in the justificatory constituency might make it hard to find anything we have in common. In response, I believe that any plausible theory of justification will need to exclude those who do not see their fellow citizens as moral equals.⁴⁴ This is an exclusion from the justificatory constituency on normative grounds. The members of the justificatory constituency need not accept the full theory of civic equality that I rely on, but they need to accept a minimal moral notion of basic equality – something that arguably only excludes very radical views. This is a moral commitment. I believe that the justification of a law would not need to be accessible to someone who despises the political system and her fellow citizens.

Or, put differently, I do not consider it a problem if we deny the salience of the views of Nazis.

Now, the important question that remains for the view outlined thus far is what reasons that ultimately would be public. While I cannot give a full answer to it, since ultimately it is an empirical question, I will respond to tentative worries that the standard either is too permissive or too restrictive.

⁴³ John Stuart Mill. 1859/1998. 'On liberty,' in John Gray (ed.), *On Liberty and Other Essays*. Oxford: Oxford University Press, p. 107.

⁴⁴ For a defence of a similar exclusion, see Laura Valentini. 2013. 'Justice, disagreement, and democracy,' *British Journal of Political Science* 43 (1): 177–99, p. 186; see also Gaus *The Order of Public Reason*, pp. 280–1.

4.4 TOO MUCH OR NOT ENOUGH?

4.4.1 TOO MUCH?

The first worry is that the convergence accessibility standard will allow for too many reasons to figure in public justification, including reasons that will threaten civic equality. For instance, ‘perfectionist reasons’ – reasons that make judgements about ‘the good’ rather than justice – might be thought to be divisive in this way.

Others might suggest the exact opposite: when we base public justification on the views of real citizens *nothing* will pass the test.

My first response to these worries is that the set of permissible reasons depends on the society in question. If and when perfectionist reasons are convergence accessible, they can permissibly figure in public justification. This should not be too worrying, however, because there is a sound non-perfectionist explanation for why they can do so. We do not allow these reasons because we make the judgement that they are ‘right’ or ‘correct’ in any loaded way of understanding those terms. They are permissible just because they are convergence accessible to everyone in the society in question.⁴⁵ In this way, perfectionism is neither ruled out at the outset nor permitted because of the truth of certain worldviews. Since I devote a large portion of chapter 5 to this question, I will leave it aside for now.

It is, however, possible to make a different and more far-reaching version of this argument. According to this version, the problem is not that some divisive reasons are ruled in. Rather, the problem is that virtually nothing is ruled out. On this version of the argument, the convergence accessibility standard cannot be enough for satisfying the justificatory aspect of civic equality because it almost does not exclude anything at all. Kevin Vallier has in line with this recently argued that accessibility standards are trivial because they permit practically

⁴⁵ Andrew Lister makes a similar point in Andrew Lister. 2014. ‘Public reason and perfectionism: Comments on Quong’s Liberalism Without Perfection,’ *Philosophy and Society* 25(1): 12–34.

all religious reasons. They permit in public justification even what is supposed to be the paradigmatic example of non-public reasons.

To understand Vallier's argument, a brief detour is first needed since so-called 'natural theology' figures extensively in it. Natural theology is the project of using 'all of the cognitive faculties that are "natural" to human beings – reason, sense-perception, introspection – to investigate religious or theological matters.'⁴⁶ Vallier points out that natural theology does not depend on assumptions that are any more controversial than other forms of reasoning. The arguments are 'based on inferences that purport to require no appeal to revelation.'⁴⁷ Natural theology may or may not be false, Vallier claims, but it would be wrong to refute it on accessibility grounds off hand since it is possible to assess the 'epistemic credentials' of the arguments.⁴⁸

Vallier goes on to argue that even religious testimony is accessible – things such as 'the ex cathedra infallible pronouncements of the Papacy..., Muhammad's link with the archangel Gabriel', and the teachings of the Bible and the Torah.⁴⁹ This brings him to a worrying conclusion for those who are in favour of accessibility standards. According to Vallier, even arguments appealing to Biblical condemnation of homosexuality would be accessible, and – therefore – permissible. Consider,

- (i) The Bible is the central communication of God to humanity.
- (ii) The Bible is therefore infallible.
- (iii) The Bible teaches that homosexual practices are morally impermissible.
- (iv) Therefore, homosexual practices are morally impermissible.

⁴⁶ Andrew Chignell and Derk Pereboom. 2020. 'Natural theology and natural religion,' in Edward N. Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Fall 2020 Edition). Available from: <https://plato.stanford.edu/archives/fall2020/entries/natural-theology/>. For a classic example, see for instance William Paley. 1829. *Natural Theology: or, Evidences of the Existence and Attributes of the Deity, Collected from the Appearances of Nature*. Boston, MA: Lincoln and Edmands.

⁴⁷ Vallier, 'Against public reason liberalism's accessibility requirement,' p. 377; see also pp. 375–80.

⁴⁸ Ibid.

⁴⁹ Ibid., p. 380.

Were this correct, the door is open for virtually all religious reasons. Again, the fact that they are religious is not a problem in and of itself, but if reasons such as the appeal to biblical authority, reasons that should have been the paradigmatic example of inaccessibility, are deemed accessible by our theory, we may worry that anything is permissible.

So how, precisely, is this argument accessible according to Vallier? He concedes that premise (i) looks inaccessible on the face of it. That is, all ‘non-Christian citizens will reject the proposition and many might regard it as unreasonable.’⁵⁰ However, Vallier argues that because natural theology can establish the prior premise that God exists in a way that is accessible to believers and non-believers alike, a citizen making the above argument can adapt it into accessible language. Her

fellow citizens might find her rationale for premise (i) accessible because she could situate it within an argument for God’s existence and a further argument that the Bible is reliable testimony of God’s will. Many reasonable persons have defended arguments for God’s existence. Further, philosophers of religion often defend the view that God’s existence entails His goodness. Several theologians and philosophers across history have argued that a good God would communicate with and aid His creatures. These arguments are often accompanied by arguments that the best candidate for revelation is the Bible. All of these arguments proceed by deductive and inductive inferences, and the chains of reasoning contained in these works are not clearly unjustified.⁵¹

By establishing premise (i), Vallier argues, it is possible to deduct the rightness of the other principles, and so the argument is accessible.

However, Vallier jumps too quickly to this conclusion. In making his argument, he relies on asserting things such as many ‘reasonable persons have defended the view that...’, philosophers of religion often defend..., and ‘theologians and philosophers across history have argued that...’ It is difficult to see what work these statements are meant to do. Arguing

⁵⁰ Ibid., p. 381

⁵¹ Ibid.

that religious testimony is inaccessible does not depend on establishing that there have not been clever, thoughtful, and reasonable (in the ordinary sense of the word) people making, thoughtful, and reasonable religious arguments throughout history. Denying this would, indeed, be unreasonable. Still, this is not the standard that establishes what accessibility entails. As Boettcher puts a similar point, ‘Vallier provides little support, beyond *ad populum* appeals to what many people happen to believe’.⁵² The fact that ‘many people subscribe to a belief does not mean that it can be meaningfully evaluated independently of comprehensive doctrine’.⁵³

Convergence accessibility turns on being compatible with each person’s evaluative standards, whether these be shared or not. The fact that the argument is reasonable, or that reasonable people have defended it, does nothing to change this. Premise (i) is not convergence accessible, because it is not justified either by shared standards or by the private standards of all. For those who do not share the worldview that God exists, the reason does not make any sense at all. Vallier would need to show that arguments for God’s existence can meaningfully be detached from wider religious commitments and assessed either by all citizens’ private standards or with standards shared by all. I am sceptical of this possibility. And, if this is right, the argument (at least in its present form) is not accessible to non-religious citizens.

I want to stress, moreover, that the convergence accessibility requirement is not a necessary condition for legitimacy simply to exclude religious reasons. Were that the purpose, a better strategy would be to have a requirement that laws be justified with secular reasons.⁵⁴ If it is the case that some reasons detachable from their religious theories are convergence accessible, they can permissibly figure in the pool of public reasons. It may well be, for instance, that some reasons drawn from natural theology are, indeed, convergence accessible, at least to

⁵² James Boettcher. 2015. ‘Against the asymmetric convergence model of public justification,’ *Ethical Theory and Moral Practice* 18 (1): 191–208, pp. 199–200.

⁵³ Ibid.

⁵⁴ See for instance Robert Audi. 2005. ‘Moral foundations of liberal democracy, Secular reasons, and liberal neutrality toward the good,’ *Notre Dame Journal of Law, Ethics & Public Policy* 19(1): 197–218.

some given publics.⁵⁵ In the same vein, Boettcher notes that if it turns out that ‘some religious beliefs are accessible and ultimately separable from religious comprehensive doctrine, so be it.’⁵⁶ Saying this, however, is not the same thing as holding that all religious reasons, including those based on religious testimony, are accessible.

4.4.2 NOT ENOUGH?

The other worry is just as serious. If the set of convergence accessible reasons is empty, the state would be unable to do anything. This is a result that would strike many liberal egalitarians as deeply objectionable. It might also be the reason why political liberals thus far have refrained from basing the set of public reasons on real citizens.⁵⁷ In response, however, I want to stress that public reason liberals do not need to hold that citizens must agree on the all-things-considered justifiability of a law. For political liberals, public justification is understood as a requirement concerning the type of reasons that can permissibly justify laws – not on the all-things-considered justifiability of those laws themselves. This is, in other words, the so-called ‘reasons-for-decisions model,’⁵⁸ where what is needed is only a set of *reasons* that all citizens can appreciate the normative relevance of. I cannot see why this set would be empty – there will be all kinds of reasons that are convergence accessible to all moderately idealised citizens.

In this way, the proposed account should be superior to Gaus and Vallier’s justificatory liberalism, that do demand that all citizens need to agree that having the law is preferable to having no law at all.⁵⁹ For their account, it might be a problem that the model seems to have

⁵⁵ On this, see Laborde *Liberalism’s Religion*, p. 127.

⁵⁶ Boettcher, ‘Against the asymmetric convergence model of public justification,’ p. 199.

⁵⁷ George Klosko. 2000. *Democratic Procedures and Liberal Consensus*. Oxford: Oxford University Press is an exception.

⁵⁸ Andrew Lister. 2013. *Public Reason and Political Community*. London: Bloomsbury, pp. 15–23. Gerald Gaus and Kevin Vallier. 2009. ‘The roles of religious conviction in a publicly justified polity: The implications of convergence, asymmetry, and political institutions,’ *Philosophy & Social Criticism* 35(1): 51–76.

⁵⁹ Gaus and Vallier, ‘The Roles of Religious Conviction in a Publicly Justified Polity.’

difficulties legitimising egalitarian policies – the mere existence of people such as reasonable libertarians rule them out.⁶⁰

The same is not true for the convergence accessibility standard, because the reasons based on equality are most likely accessible to most, or all, citizens in contemporary liberal democracies. Even libertarians.

4.5 CONCLUSION

What I have provided here is a method for determining which reasons that are public. By basing the value of public justification on the views of real-world citizens, we ensure that laws are justified to those who are subject to them.

It will require further empirical work to determine which reasons that are convergence accessible, and consequently, public, in each society. The set of permissible reasons will vary with the political context and culture. But many reasons that are typically used to justify laws in liberal democracies would be permissible. This means that the argument I put to Quong in section 2.3 does not apply – state officials will be free to appeal to a broader range of reasons than those that have to do with fairness, freedom, and equality, and the principle of liberal collective self-legislation will typically be satisfied.

Democratic theorists who do not subscribe to the basic ideas of public reason liberalism might want to respond to my account by saying that public reasons are not necessary for respecting civic equality. They might suggest that as long as decisions are made through the appropriate democratic procedures, the decisions respect the civic equality of all. Traditional public reason liberals, on the other hand, might say the opposite. They might worry that my account allows too many perfectionist reasons. If this is objectionable, it would be necessary to have a stricter standard.

⁶⁰ See also section 3.3.2.

In the next chapter, I respond to these objections. I argue that the strongest views of legitimacy that do not include public reason requirements fail to uphold civic equality. I then argue that more demanding public reason standards either are superfluous or themselves threats to civic equality. Having established this, I go on to show that my framework does not permit all perfectionist reasons. In particular, I argue that so-called local comparative judgements are impermissible.

CHAPTER 5:

HOW MUCH PERFECTIONISM IS TOO MUCH PERFECTIONISM?

In the previous chapter, I developed a positive view of how the set of public reasons should be delineated. I argued that reasons are public if and when they are convergence accessible to moderately idealised citizens. In this chapter, I consider objections from three directions. All objections revolve around the idea of perfectionism.

I take perfectionism to mean that the state makes judgements about what a good life is, or about the truth of a comprehensive doctrine such as a religion. Many political liberals believe that if the state justifies policies with reasons that presuppose the truth or goodness of a comprehensive doctrine or a way of life – ‘perfectionist reasons’ as I will call them – this is objectionable or illegitimate. Perfectionists, on the other hand, hold the opposite view. They might even believe it to be constitutive of legitimacy to use (the correct) perfectionist reasons in public justification.

The first set of objections focus on the idea that a requirement to offer public reasons is the wrong sort of justificatory requirement. Perfectionist opponents to public reason have suggested that the important thing for justifiability is that the state offers the *right* reasons, not that reasons are accessible, shared, or some such. If this is right, then the convergence accessibility standard puts the wrong demands on public officials, because it excludes making judgements based on the correct perfectionist reasons.

The second set of objections target the very idea of justificatory requirements. Many democratic theorists argue that we do not need justificatory requirements at all. On this view, it is enough that the decision is democratically made for it to respect civic equality. Here, the charge is not that a particular form of perfectionism is correct, but rather, that there is nothing problematic or illegitimate about perfectionist reasons – regardless of which comprehensive doctrine they are drawn from. If this is correct, the convergence accessibility standard is

unnecessary, or even harmful, since it unduly restricts the permissible political actions of public officials.

The third set of objections comes from public reason liberals with stricter understandings of what counts as a public reason, political liberals who would believe the convergence accessibility standard to be too weak. These political liberals could hold that the convergence accessibility standard allows *too much* perfectionism. If this is right, the convergence accessibility standard allows reasons that are alienating to some citizens, making it a threat to civic equality.

In response to the objections, I argue that the convergence accessibility standard does a better job than all competitors at respecting civic equality. The reasons that it allows in public justification are not perfectionist in an objectionable way, because the standard does not make claims about the rightness of certain ways of life or about the truth of a comprehensive doctrine. Insofar as these reasons should be called perfectionist, this form of perfectionism is not problematic from the point of view of civic equality.

I show this by considering in some more details which perfectionist reasons that would be permissible according to the convergence accessibility standard. Specifically, I examine whether the widely accepted method of using so-called local comparative judgements for grounding perfectionism is permissible. The idea behind this strategy is to say that reasonable citizens would agree that some ways of life are better than others, and that this fact legitimises perfectionist state action. For instance, it is often claimed that all reasonable people must recognise that the life of a drug addict is less worthwhile than the life of a person with a good family who is interested in music and philosophy. Since there is agreement on the weighting of this ‘local comparative judgement’, the argument goes, political liberals must concede that the state can legitimately rely on perfectionist reasons and arguments when justifying laws and policies.¹

¹ See also Henrik D. Kugelberg. In press. ‘Can local comparative judgements justify moderate perfectionism?’ *Philosophia*.

I end the chapter by arguing that the local comparative judgements strategy as it is standardly presented is based on two crucial mistakes, and that it cannot show why neither the convergence accessibility standard, nor political liberalism more broadly, should allow perfectionist reason-giving. First, we should not draw on the badness of addiction because the conditions of drug addicts in the world as it makes the case better explained as a matter of (in)justice. This makes reasons based on the badness of addiction permissible in public justification, but they are not perfectionist reasons. Second, and more importantly, *comparing* two ways of life cannot ground perfectionism because the comparison in itself can only tell us something about relative, not absolute, value. Comparisons are not convergence accessible, and so they are not permissible in public justification.

I begin the chapter by contrasting my idea of civic equality with the ideal of civic friendship – a value that has been said to ground public reason requirements. I argue that civic friendship cannot justify public reason because some democracies without public reason requirements can also guarantee civic friendship (section 5.1). I then show that the civic equality standard is not susceptible to the same problems because other democratic systems cannot guarantee civic equality. To establish this, I argue that the two strongest forms of non-public reason views fail to uphold the value of civic equality (section 5.2). After this, I argue that more demanding public reason standards are either unnecessary for, or in tension with, civic equality (section 5.3). Finally, I turn to the question of what kind of perfectionism would be permissible on my view. I conclude that it is an empirical question but that, at least, local comparative judgements would not be permissible, because such reasoning is based on two crucial mistakes (section 5.4 and section 5.5).

5.1 CIVIC EQUALITY AND CIVIC FRIENDSHIP

5.1.1 VERTICAL AND HORIZONTAL RELATIONSHIPS

I will begin by contrasting civic equality with the related notion of civic friendship, a value that has been said to ground public reason requirements. The idea has been attributed to John Rawls, who sees it as a relationship where citizens treat one another with mutual respect.² According to Rawls, it follows from the commitment to civic friendship that we should offer reasons that other citizens ‘not only understand – as Servetus could understand why Calvin wanted to burn him at the stake – but reasons we might reasonably expect that they as free and equal might reasonably also accept’.³

In recent years, Andrew Lister has done important work to develop the idea of civic friendship as a basis for public reason requirements. On Lister’s picture, ‘the joint commitment to making political decisions on public grounds realises a valuable kind of relationship’, that is, ‘public reason makes possible civic friendship despite deep disagreement’.⁴

Civic friendship concerns the relationship between citizens *qua* citizens. Civic equality, on the other hand, concerns the relationship between the state and its citizens. In other words, while civic friendship is a horizontal relationship, civic equality is vertical and top-down – the state needs to treat citizens as civic equals, the requirement is not for citizens to treat each other as civic equals.⁵

² John Rawls. 1993/2005. *Political Liberalism* (expanded edition). New York: Columbia University Press, p. li; see also Amy Gutmann. 2002. ‘Rawls on the relationship between liberalism and democracy,’ in Samuel Freeman (ed.), *The Cambridge Companion to Rawls*. Cambridge: Cambridge University Press, p. 185.

³ Rawls, *Political Liberalism*, p. li; see also Amy Gutmann. 2002. ‘Rawls on the relationship between liberalism and democracy,’ p. 185. Rawls, of course, also has other grounds for thinking that we should give public reasons in political discourse.

⁴ Andrew Lister. 2013. *Public Reason and Political Community*. London: Bloomsbury Academic, pp. 106; 116. For other recent examples of similar views, see Blain Neufeld. 2019. ‘Shared intentions, public reason, and political autonomy,’ *Canadian Journal of Philosophy* 49(6): 776–804; RJ Leland and Han van Wietmarschen. 2017. ‘Political Liberalism and political community,’ *Journal of Moral Philosophy* 14(2): 142–167; RJ Leland. 2019. ‘Civic friendship, public reason,’ *Philosophy & Public Affairs* 47(1): 72–103.

⁵ For a similar point, see Will Kymlicka. 2003. ‘Multicultural states and intercultural citizens,’ *Theory and Research in Education* 1(2): 147–169, p. 147.

Since what we are concerned with is permissible state action, I think we have good reason to prefer civic equality as a basis for legitimacy over civic friendship. To say that something is illegitimate is to make a strong normative judgement. For this reason, friendship between citizens seems to be the wrong kind of value.⁶ I grant that part of what Lister is describing is top down, and the right sort of value. Lister says, correctly I believe, that when legislation is based on public reasons, no one ‘can reasonably think that the collectivity’s decisions aim at fundamentally alien values’.⁷ However, when state officials fail to offer public reasons I do not believe that this omission is best described as a failure to act as a civic friend.

There are, however, other reasons for why civic friendship fails to ground political liberalism, and public reason requirements. Specifically, it has been argued that other forms of democracy, where public reasons are not offered, also can realise civic friendship. This is important, for if it can be shown that these other forms of democracy also can guarantee civic *equality*, then public reason requirements would be superfluous also on my view. Perfectionist reasons would be permissible because they would be uncontroversial.

I will begin by presenting the best version of the argument that civic friendship is realisable without public reason that I am aware of, before going on to argue that the same is not true for civic equality.

5.1.2 BILLINGHAM ON CIVIC FRIENDSHIP

Paul Billingham has recently provided a forceful argument to the effect that public reason is not necessary for realising civic friendship. The argument proceeds along the lines mentioned

⁶ Even if I of course grant that it would be nice to live in a polity of civic friends.

⁷ Lister, *Public Reason and Political Community*, pp. 106; 116; see also Paul Billingham. 2016. ‘Does political community require public reason? On Lister’s defence of political liberalism,’ *Politics, Philosophy & Economics* 15(1): 20–41, p. 22.

above; Billingham establishes that there are other forms of deliberative democracy that can realise the ideal. Hence, there is no need to give public reasons if we want to be civic friends.⁸

Billingham gives the example of a so-called ‘argumentative democracy,’ a democratic theory that is defended by people such as Christopher Eberle⁹ and Nicholas Wolterstorff.¹⁰ The idea is that citizens openly and honestly deliberate by trying to understand and respond to each other’s reasons. Decisions are made by democratic procedures. The reasons given for political proposals do not need to be public to be permissible. As Billingham summarises it:

Each citizen commits to understanding others’ points of view and to engaging in public deliberation as to what decisions best promote justice and the common good... Citizens also recognize that the views of each person matter equally, such that decisions should be made democratically, giving each an equal vote and an equal influence over outcomes. These practices are rightly seen as embodying many important aspects of mutual respect and realizing certain goods of friendship and community.¹¹

Hence, the idea is that an argumentative democracy also can realise civic friendship. Public reason requirements therefore cannot be a necessary condition for civic friendship, even if it may still be a sufficient one. That is, in

a polity where citizens’ basic rights are secured and laws are made through deliberative democratic processes, citizens engage in a shared enterprise, with the shared purpose of living under the resulting laws. Even when the only substantive justification for laws appeals to values or beliefs I reject, I can still recognize that those laws were enacted via a process of deliberation and democratic decision-making in which I participated as an equal citizen. I can appreciate that my compatriots listened to my arguments, sought to persuade me of their views and acted in good faith on the basis of what they consider to be the best reasons.¹²

⁸ Billingham, ‘Does political community require public reason?’ See also Paul Billingham. Unpublished manuscript. ‘Procedural democracy and civic friendship: Reply to Leland and van Wietmarschen.’

⁹ Christopher Eberle. 2002. *Religious Conviction in Liberal Politics*. Cambridge: Cambridge University Press, p. 84–108.

¹⁰ Nicholas Wolterstorff. 2012. ‘Liberal democracy as equal political voice,’ in Terence Cuneo (eds.), *Understanding Liberal Democracy: Essays in Political Philosophy*. Oxford: Oxford University Press.

¹¹ Billingham. ‘Does political community require public reason?’ p. 24–5.

¹² Ibid., p. 26.

I believe that this argument quite convincingly shows that civic friendship does not justify public reason requirements. However, since my aim is neither to vindicate nor reject Billingham's thesis, it does not matter much for my purposes whether this is true or not.

What is more important for me is, as mentioned, whether an argumentative democracy also would satisfy the ideal of civic equality. Because if this is so, legitimacy is not conditional on state officials offering public reasons in favour of their decisions. At least not if we tie legitimacy to civic equality.

5.2 COMPETING DEMOCRATIC THEORIES

5.2.1 ARGUMENTATIVE DEMOCRACY

In an argumentative democracy, public officials justify laws with intelligible reasons that they sincerely believe are sufficient for justification.¹³ Laws are enacted after open and robust deliberation in which citizens and public officials genuinely try to persuade others while remaining open persuasion themselves. This is a procedural account – if the right procedure has been followed it is permissible to enforce the laws that are ultimately decided on, even if the justification ultimately used by public officials is perfectionist or inaccessible.

For the sake of the present argument, I will turn to Eberle, a proponent of argumentative democracy, to 'remove the rhetorical clutter'¹⁴ and focus on a law that would be congruent with many liberal political philosophers' considered judgements about justice. This is not to say that only such laws would be permissible in an argumentative democracy. But it will help us isolate the relevant factor, that is, it will help us focus on the justification for the law rather than the substantive content of it. I will focus only on such laws, because if even laws that are compatible with liberal egalitarian commitments to justice fail to respect civic equality when they are

¹³ I discuss intelligibility in section 4.1.

¹⁴ Eberle, *Religious Conviction in Liberal Politics*, p. 115.

justified with inaccessible reasons, then so will laws justified with inaccessible reasons that are incompatible with these commitments.

A typical judgement among liberal political philosophers is that we should give some kind of distributive priority to the poor over the rich. Now, imagine Argumentania, an argumentative democracy where citizens with a diverse set of views live. In their political culture, public officials try to convince citizens, by offering the reasons that they consider relevant.

Suppose that the liberation theological Liberation Party from section 3.3 is voted into power through a fair democratic procedure. Recall that the party holds that ‘God has a preference for the poor,’ and that this ‘obliges us to take quite drastic measures in narrowing the disparities in life opportunities between rich and poor’.¹⁵ These reasons are intelligible, and so it is permissible for the Liberation Party to use them as justification for a tax policy in Argumentania. The party engages in deliberation and tries to persuade others that it is the right policy. After a period of deliberation, they implement the redistributive scheme that is not gravely unjust that takes resources from the rich and gives them to the poor. The reason that they appeal to is that this is what God’s love for the poor requires of us.

Would it be a problem, from the point of view of civic equality, to organise society as in Argumentania? I believe that it would. First of all, it is important to note that a reason is intelligible if the person who uses it is justified in doing so according to her own evaluative standards. It might therefore be the case that Alice, the Liberation Party prime minister, is the only person who adheres to the worldview in question. Alice can justify legislation with reasons that only she can assess and engage with. If she does so, reasons drawn from other worldviews could never challenge her legislation other than from the ‘outside’. Blair, who has a different epistemic perspective since she is not a Christian, is thus not treated as an equal source of authority. True, giving her voting rights ensures that she is an equal source of authority in the

¹⁵ Ibid., p. 112.

choice of representatives. And, true, she can participate in public deliberation. But her worldview and epistemic perspective are entirely irrelevant when legislation is crafted.

Allowing inaccessible reasoning entails that those voted into power not only get the privileged political position of governing the country. Their worldview and epistemic perspective also get a privileged position when their (sincerely held) reasons always are authoritative. At the same time, in domains where there is no overlap between different epistemic perspectives, the worldviews of others are not authoritative at all. The main concern here is not the one that philosophers like David Enoch and Joseph Raz carefully refute.¹⁶ It is not that ‘I am giving extra political weight to my own beliefs over yours’ simpliciter. Instead, the problem is that this discrepancy gets translated to differences in standing for the citizens of the same polity. Citizens adhering to the creed of the governing majority will have their beliefs affirmed and acknowledged by the state regularly. Non-Christian citizens will not. Every time the Christian beliefs justify legislation, the state will stipulate that liberation theology is the correct view. Recall from section 3.2.2 that laws have powerful expressive force. Laws justified with religious reasons will send messages such as ‘assisted dying is wrong because life is a gift from God.’ Minority citizens will consequently not see the reasons underpinning political institutions and legislation as important considerations.

Compare the Muslim friends Emma, a citizen of Argumentania, and Farid who lives in Accessibilien. In Accessibilien, the ruling parties always use reasons that are convergence accessible to the citizens with a diverse set of beliefs who live there. The governments of the two countries simultaneously propose identical redistributive schemes. In Argumentania, the scheme is implemented by the Liberation Party and justified with liberation theology. In Accessibilien, a Christian democratic party justifies it with convergence accessible considerations of fairness and equality.

¹⁶ Joseph Raz. 1984. *The Morality of Freedom*. Oxford: Oxford University Press, p. 27; David Enoch. 2015. ‘Against public reason,’ in David Sobel, Steven Wall and Peter Vallentyne (eds.), *Oxford Studies in Political Philosophy*, Volume 1. Oxford: Oxford University Press, pp. 130–4.

On the substantive side, both policies are permissible. Neither violates the outcome-standard of civic equality. However, the same is not true for their different justifications.

Emma and Farid both oppose the schemes publicly, but they have different resources for doing so. Farid agrees that the government's considerations are essential in assessing how the economy should be regulated, but in balancing these values against others, he finds that there are overriding considerations. He has strong, broadly luck egalitarian, views, so whether a state of affairs was brought about due to brute luck or option luck should partly determine what you are owed.¹⁷ Farid develops strong counterarguments that are accessible to both his fellow citizens and to himself.

Just as in Argumentania, the legislators of Accessibilien are Christians. Since Farid is a Muslim, there are significant parts of their worldview that he does not share. Yet, the reasons that the Christian democrats appeal to are not contingent on their Christian worldview or epistemic perspective. Therefore, Farid does not need to engage with Christian reasoning in order to assess the reasons presented to him. The parts of his worldview that are convergence accessible to his fellow citizens – important parts of his luck egalitarianism for instance – are treated as a potential source of authority and political power.

The situation is different for Emma.¹⁸ Since Emma also is a Muslim, many or most reasons drawn from the Bible are not accessible to her. To challenge the proposal in Argumentania, she needs to read up on the Christian theological debate surrounding God's preference for the poor. After careful study, she concludes that Liberation Theology seems justified in light of central Christian premises. However, the argument is not persuasive *to her*, only an intelligible consequence of the beliefs of the Christian majority. Her only way of challenging the proposal on its own terms is through reasoning from conjecture; she needs to show that the Christian God does not have a preference for the poor. Since she opposes the

¹⁷ Sara Amighetti and Siba Harb. 2019. 'On who matters: extending the scope of luck egalitarianism to groups,' *Critical Review of International Social and Political Philosophy* 22(3): 301–317.

¹⁸ For a similar argument, see Laborde, *Liberalism's Religion*, pp. 119–32

scheme, she does so, even though she does not believe this argument to be true. First, because she agrees that liberation theology looks plausible given central Christian tenets and, second, because she does not believe Christianity to be authoritative in the first place. Not only is there a certain kind of ‘top-down’ disrespect – from the parliamentarians to citizens like Emma when her worldview is not treated as a potential source of authority. She is also disempowered by being forced to debate and engage with others on unfamiliar ground. Farid can engage and challenge the policy in Accessibilien in a ‘thick’ way. Emma, on the other hand, needs to advocate inconsistent reasons that she does not believe in publicly. She must engage with reasons in a purely instrumental way – she is epistemically alienated from the reasons that legislation is based on.¹⁹ She is not treated as a civic equal.

This problem is even more significant if we allow that the law could be unjust. As Laborde puts it, there is an additional wrong in being mistreated in the name of reasons that ‘the broader democratic public’ cannot engage with – persecution ‘in the name of a faith that one does not share, just as oppression at the hands of an arbitrary and Kafkaesque power, adds the insult of epistemic alienation to the injury of unjust treatment.’²⁰

Thus, argumentative democracy fails to ensure that the civic equality of all is respected. Next, let us consider a view of legitimacy that does not demand public reasons, but that nevertheless includes justificatory requirements.

5.2.2 THE RIGHT REASON REQUIREMENT

On what I will call the right reason view, it is not enough that public officials offer reasons that they sincerely believe in. There are substantive constraints on the reasons that could permissibly figure as reasons for laws, but those constraints are not based on whether other

¹⁹ It might be *strategic* to sometimes engage with your opponents on their own terms to convince them. The argument here merely says that it is wrong if this is what you are *forced* to do in order to convince them.

²⁰ Cécile Laborde. 2020. ‘Three cheers for liberal modesty,’ *Critical Review of International Social and Political Philosophy* 23(1): 119–135, p. 123.

citizens see the reasons as epistemically justified or not. The set of permissible reasons is not the same as the set of reasons that are convergence accessible to moderately idealised citizens. Instead, the constraints are, first, that a permissible reason to implement a law should count in favour of that law.²¹ Second, the reason needs to be *intelligible* to others.²² Third, and finally, on this view, the reasons used to justify state action must be the right reasons. With this, I mean that the reason is agreement-independent. It does not matter whether people see the reason as the right one. What matters is that it actually *is* the right reason. The reason needs to be correct.

Let me explain. On a right reason view of legitimacy, whether a reason can justify law depends on ‘objective facts’. The legitimacy of laws ‘depends on how well they are supported by those reasons.’²³ For instance, if it is true that utilitarianism is the correct moral theory, it does not matter whether people believe utilitarianism to be true or not. If a policy is utility-maximising, and is justified as such, it is the correct policy supported by the right reasons. Hence, it is permissible to enforce it. Right reasons are fact-relatively right, they are right regardless of what evidence we have for them.²⁴

There are many versions of this view, especially when we consider all sorts of applied moral theories. I take it that views that say that reasons drawn from the correct comprehensive doctrine are permissible are right-reason views in the sense that I am interested in.²⁵ Richard Arneson’s view is like this, in that he argues that ‘respect for agency in persons requires treating them according to the moral principles that fully rational persons would choose, the principles best supported by moral reasons.’²⁶

²¹ T. M. Scanlon. 1998. *What We Owe To Each Other*. Cambridge: Harvard University Press, p. 17.

²² Kevin Vallier. ‘In defence of intelligible reasons in public justification,’ *The Philosophical Quarterly* 66(264): 596–616, p. 596.

²³ Fabienne Peter. 2020. ‘Political legitimacy under epistemic constraints: Why public reasons matter,’ in Jack Knight and Melissa Schwartzberg (eds.), *NOMOS LXI: Political Legitimacy*. New York: NYU Press, p. 147; see also Raz, *The Morality of Freedom*; David Enoch. ‘Against public reason,’ pp. 130–1. For a different argument against the right reason view, see Paul Billingham. 2015. *Justification to All: Liberalism, Legitimacy, and Theology*. Doctoral thesis, University of Oxford, ch. 4.

²⁴ Derek Parfit. 2011. *On What Matters*, Volume 1. New York: Oxford University Press, pp. 162–3.

²⁵ See for instance Clare Chambers. 2020. ‘Respect, religion, and feminism,’ *Journal of Applied Philosophy* 37(5): 863–872.

²⁶ Richard J. Arneson. 2004. ‘Democracy is not intrinsically just,’ in Keith Dowding, Robert E. Goodin, and Carole Pateman (eds.), *Justice and Democracy: Essays for Brian Barry*. Cambridge: Cambridge University Press, p. 52; see also Steven Wall. 2002. ‘Is public justification self-defeating?’ *American Philosophical Quarterly* 39(4) 385–394, p. 386.

Does appealing to the 'right reason' respect the equal civic status of all citizens? It is difficult to say, because a 'right reason requirement' is inoperational under conditions of epistemic uncertainty. To see this, suppose that the members of the Liberation Party have discovered that Liberation Theology is the correct comprehensive doctrine through their impressive reasoning. The members of Utility, their main competitor, have mistakenly found through their reasoning that utilitarianism is the correct moral theory. Both parties assert that their view is the right one, and the evidence that they present is equally credible. If, by hypothesis, liberation theology is true, on the right reason view of legitimacy only the Liberation Party can permissibly justify legislation with their comprehensive doctrine. Utility is not allowed to justify legislation with utilitarianism.

Assuming that a functional theory of legitimacy should be action-guiding under non-ideal conditions, not merely a stipulation of what the best state of affairs would be, the right-reason view does not hold up. Given our epistemic circumstances, we have no grounds for blocking the Utility-officials from saying that they, too, should be allowed to use their reasons to justify legislation. Given reasonable pluralism, we are unable to conclusively show that a specific moral theory or comprehensive doctrine is true. This is the case even though it might very well be that one doctrine *is* correct. Hence, if we are to let the fact-relatively right reason figure in the justification for actual laws, we must also allow reasons that *could* be the right reasons but that are not, since we have no way of separating the two types of reasons. In the real world it will undoubtedly often be the case that several different, mutually incompatible, views will have epistemic support.

A proponent of the right-reason requirement could respond that the mere practical possibility of identifying the right reasons is enough to undermine the plausibility of the public reason standard. If we manage to conclusively find the right reasons, we do not need public reason anymore.

In response, I believe that this is correct, but that it does not undermine the value of public reason. The right reason, in the strict sense, *would* fact-relatively justify a policy, but it does not provide an evidence-relative justification under epistemic circumstances such as our own. In a different world, where we could uncontroversially single out one moral theory or religious doctrine as correct, right reasons might be sufficient for fulfilling the justificatory aspect of legitimacy. Regrettably, our epistemic circumstances do not let us affirm with confidence the truth of most agreement-independent reasons.²⁷ It is impossible to single out one ‘vision of the moral truth’ and use it to organise the shared political system.²⁸

Finally, even if we somehow would manage to find the correct comprehensive doctrine, there are deeply undemocratic implications of tying legitimacy to it. For how should the citizens and parties who hold the wrong view be treated? If they are voted into power, should state institutions constantly overturn their decisions? If so, a particularly troubling version of the argument made against Quong’s view from section 2.3 and section 2.4 re-emerges – it is a serious violation of their civic equality. Or should they still be allowed to appeal to it? If so, it is not clear in what sense the right reason view is different from argumentative democracy. It is unclear what justificatory work the right reasons are actually doing.

5.2.3 PUBLIC REASON AS FAIRNESS

It might be objected that it is enough to have legislation imposed upon you that you do not agree with to be treated as an unequal source of authority, to have your civic equality violated. This is mistaken, I believe. It is true that it will often be the case that a majority of citizens will see a piece of legislation as a good thing, and a minority will hold that it is bad. However, those who belong to the minority are still treated as equal *sources* of authority, as equal *input*. First,

²⁷ For a similar argument, see Peter, ‘Political Legitimacy under Epistemic Constraints.’

²⁸ Gerald Gaus. 2015. ‘On dissing public reason: A reply to Enoch,’ *Ethics* 125(4): 1078–1095, p. 1094.

through being allowed to vote (something that holds both in Argumentania and Accessibilien, and presumably also in a society adopting the right reason view, although it is less clear how it would work in practice). And second, since their reasons might convince the majority – they are of the same kind as the reasons that justify the policy. Since the reasons in favour and against the proposal can be meaningfully evaluated by everyone, citizens do not first need to convince each other that their worldview is correct and second that a specific proposal is the correct interpretation of what follows from the commitments of that worldview. Their reasons are already on the same level as the reasons that they are challenging.

Opponents to public reason often point out that the requirements are unfair to religious citizens since they privilege secular worldviews.²⁹ In line with the argument above, a possible response to this is that an argumentative democracy, or other non-public reason views, is what arbitrarily privileges some views of the good over others: the views of those who currently are in power. In that sense, such views are inherently unequal when they are put into practice. Public reason, on the other hand, can be a tool for ensuring the civic equality of citizens of other faiths and worldviews than that of the governing majority.

Those aspects of all comprehensive views that are not translatable into terms that are accessible to all citizens will be excluded. The aspects that can be accessed by fellow citizens will be retained. Hence, the exclusion of some parts of all comprehensive doctrines is not arbitrary. The alternative to public reason for a large subset of citizens is not that their own comprehensive view is used to justify legislation. If they are lucky, the legislation will be based on someone else's broadly similar view. However, it might just as well be based on considerations that they view as entirely irrelevant. Epistemic equality creates a threshold that excludes the inaccessible parts of not only your comprehensive doctrine but also of the comprehensive views of your fellow citizens.

²⁹ Kent Greenawalt. 1995. *Private Consciences and Public Reasons*. New York: Oxford University Press; Steven D. Smith. 2010. *The Disenchantment of Secular Discourse*. Cambridge, MA: Harvard University Press.

I have shown that the most prominent alternatives to public reason fail to uphold civic equality. The kind of perfectionism that they allow is objectionable. A worry that arises at this point is that my argument could be turned on its head and used against me. Proponents of stricter public reason requirements might suggest that my view also lets too much perfectionism in. I consider this next.

5.3 WHY NOT SHARED REASONS?

5.3.1 IF ACCESSIBLE REASONS ALIENATE THEN SO DO SHARED REASONS

Political liberals with more demanding views of what counts as a public reason might press that convergence accessibility is not enough for upholding civic equality. For instance, Quong has previously argued that it can never be ‘legitimate for laws to be justified by appeal to religious reasons or specific claims about the good life’, even if these reasons are accessible.³⁰ This is so because that would ‘violate the ideal of civic inclusion in a pluralistic society.’³¹ Under conditions of pluralism, accessible but unshared reasons are alienating since they are not ‘drawn from shared political values such as freedom, equality, and fairness, but rather from controversial religious and ethical doctrines’, and thus there will be many citizens who will ‘rightly understand themselves to be, to some extent, excluded from the political and legal institutions that govern them.’³² The argument is, in other words, analogous to the one I pursued in section 5.2.1 against argumentative democracy.

A lot seems to turn on precisely what we mean when we say that a reason is drawn from a controversial religious or ethical doctrine. What Quong’s argument comes down to is, I take it, that the reason is alienating because it is unshared. I do not think he would suggest that the

³⁰ Jonathan Quong. 2021. ‘On Laborde’s liberalism,’ *Criminal Law and Philosophy* 15: 47–59, p. 58.

³¹ *Ibid*, p. 59.

³² *Ibid*.

mere fact that the reason has its *origin* in a religious worldview would be problematic. For instance, the history of liberalism is full of arguments about freedom and equality with a Christian basis.³³

Presumably, the problem also cannot be that the reason public officials have for holding the view has a religious basis, the second-order reason, as it were. There seems to me nothing immediately objectionable about appealing to values such as freedom and equality even if the reason we have for doing so happens to be religious.³⁴ So what Quong depicts as an argument about religious reasons turns out to be a restatement of his general view: we need to appeal to shared reasons. It is therefore important to note that in Quong's framework, it would be equally wrong to appeal to the value of natural beauty, insofar as this is not a shared political value, as it would be to appeal to the word of God.³⁵

These observations take away some of the force of the argument, and I believe that Quong's objection ultimately is not decisive. I will return to why that is momentarily. Before doing so, however, let me note that the problem for Quong is that if the argument were in fact to be decisive, it would not only undermine the convergence accessibility standard. It would undermine his own standard too: a law justified with reasons drawn from political values can be equally alienating as a law justified convergence accessible reasons.

To show this, I must first provide some additional details of Quong's view that I left out of the discussion in chapter 2. A central part of Quong's political liberalism is the idea that disagreements about justice and the good are of a different kind. Disagreement about justice is *justificatory* whereas disagreement about the good is 'almost certainly' *foundational*.³⁶ When there is foundational disagreement, there is no 'deeper standard of justification that... [the disagreeing

³³ To take just one example, see Jeremy Waldron. 2002. *God, Locke, and Equality: Christian Foundations in Locke's Political Thought*. Cambridge University Press.

³⁴ Paul Billingham. 2017. 'Can my religion influence my conception of justice? Political liberalism and the role of comprehensive doctrines,' *Critical Review of International Social and Political Philosophy* 20(4): 403–424.

³⁵ See also section 2.3 and section 2.4.

³⁶ Jonathan Quong. 2011. *Liberalism Without Perfection*. Oxford: Oxford University Press, p. 193.

parties] accept that could serve as the basis for adjudicating their dispute'.³⁷ Justificatory disagreement, on the other hand, means that we share the same view of 'what counts as a good reason when debating about the principles of justice',³⁸ and that we can 'accept the other's argument as a reasonable example of a public justification, although they do not believe it is the most reasonable public justification available'.³⁹ State action is legitimate if it is compatible with justificatory disagreement, but not with foundational disagreement. Disagreements that are justificatory are disputes involving shared public reasons such as those based on the political values of fairness, freedom and equality. This is so because all citizens in the well-ordered society share a commitment to these values.

As should be clear, however, from the philosophical debate about the true meaning of freedom (or equality), there are several different contenders for the label. Suppose that Philip Pettit, Nancy Hirschmann, and Isaiah Berlin argue for different policies based on their promotion of freedom. Is their disagreement really justificatory? Or is it disagreement that goes all the way down?⁴⁰

To put the point explicitly: when you, who hold the view that being free is not being a slave to your low desires, argue in favour of banning drugs ('drug-users are unfree') and I argue against it ('we should be free to use drugs if we want to') do we really share the same value?⁴¹

This becomes a problem for Quong for the following reason. Quong argues that statements such as 'hard-drug addiction is harmful to *most, if not all, people*' are unshared and non-public.⁴² Citizens in the well-ordered society would not need to agree to them. Consequently,

³⁷ Ibid.

³⁸ Ibid., p. 206

³⁹ Ibid., p. 212

⁴⁰ See also Timothy Fowler and Zofia Stemplowska. 2015. 'The asymmetry objection rides again: On the nature and significance of justificatory disagreement,' *Journal of Applied Philosophy* 32: 133–146. Indeed, these deep debates extend within each tradition. See e.g., Hallvard Sandven. 2020. 'Systemic domination, social institutions and the coalition problem,' *Politics, Philosophy & Economics* 19(4): 382–402.

⁴¹ Greenawalt, *Private Consciences and Public Reasons*, p. 28. For a similar point see the 'zoom problem' in Billingham, 'Does political community require public reason?' p. 32.

⁴² Franz Mang. 2013. 'Liberal neutrality and moderate perfectionism,' *Res Publica* 19(4): 297–315, pp. 302–3; Quong, 'On Laborde's liberalism,' p. 53. Emphasis in original.

he would diagnose the reason as alienating. But why would it be less alienating to be offered an interpretation of freedom that I vehemently disagree with than a convergence accessible reason that I also disagree with? Is the reason ‘drug-users are unfree’ less alienating to those committed to certain interpretations of negative freedom where this is not true than the statement ‘hard-drug addiction is harmful to most, if not all, people’?

I cannot see why it would be. Neither reason presupposes the truth of a comprehensive doctrine or a religion. In most societies it would be possible for most citizens to engage with both reasons with standards they hold themselves. They would therefore be convergence accessible.

In responding to this, Quong is faced with a dilemma. On the one hand, he could maintain that the value of freedom is shared even among people with very different interpretations of it. With this response, Quong would need to say that there is an important asymmetry between the two reasons: reasons based on the unfreedom of people addicted to drugs are not alienating while reasons based on the harms of drug addiction are alienating. This strikes me as a counterintuitive result, if anything claims about the true nature of freedom seems to me to be more metaphysically loaded, and potentially more alienating, than claims about the harms of drug use. It would also mean that public reason allows what, to me at least, looks like unshared values. If he goes for this horn of the dilemma, Quong would owe us an explanation for why laws based on these reasons are not alienating, whereas laws based on the value of natural beauty or the harmfulness of drug use are.

Alternatively, Quong could hold that only one interpretation (or a range of interpretations) of freedom, equality, and fairness is (or are) the correct one(s). Interpretations of freedom that lead us to believe that drug users are unfree are wrong because all citizens in the well-ordered society – all reasonable citizens – believe that freedom means something else. Clearly, this approach is available to him; in response to a related worry from Laborde, Quong notes that it is possible to ‘insist that a fully specified conception of the reasonable citizen...

would make reasonable disagreement over the limits of the liberal state impossible.⁴³ Similarly, he might say that all reasonable citizens have views about freedom that make deep disagreement about the value impossible.

This leads to another, even more serious, problem. The state would then only be allowed to appeal to the correct interpretation of freedom when making policies. But this would, of course, take us back to the problems associated with the right reason view from section 5.2.2 – how can we know which interpretation of freedom that is correct under epistemic circumstances such as our own?

Quong might respond that the correct view is whatever view the fully specified conception of the reasonable citizen holds. But this seems to me unconvincing – through this strategy we would have excluded virtually all reasonable disagreement from political liberalism. Quong's theory has previously been criticised for being sectarian because of the way it excludes considerations of the good.⁴⁴ The full-specification strategy would entail that even political liberal theories with only slightly different views about the liberal value of freedom or equality could not be permissible in public justification.

Thus, if Quong's argument undermines convergence accessibility, it undermines his own standard too.

Nevertheless, this is precisely what I deny. The argument undermines neither standard. Convergence accessibility excludes reasons that are fundamentally incompatible with every citizen's worldview, and whereas I believe that Quong's argument holds for things such as the liberation theological views discussed above, or the appeals to Biblical authority, I fail to see that it holds for convergence accessible reasons. Such reasons are not metaphysically loaded (again, at least not *more* metaphysically loaded than reasons making judgements about what freedom is). They are, ultimately, compatible with all, or most, worldviews. One does not have

⁴³ Quong, 'On Laborde's liberalism,' p. 54.

⁴⁴ Kevin Vallier. 2017. 'On Jonathan Quong's sectarian political liberalism,' *Criminal Law and Philosophy* 11(1): 175–194.

to be committed to them for the reason to fit with one's view of the world. Some will disagree with the reason but were they to change their minds they would not have to adopt a radically different worldview.

This is the difference between shared or convergence accessible reasons and merely intelligible reasons. Merely intelligible reasons demand that we change our whole epistemic perspective to accept them. Intelligible reasons therefore violate civic equality. Convergence accessible reasons do not.

5.3.2 DOES THE CONVERGENCE ACCESSIBILITY STANDARD COLLAPSE?

Quong might want to modify his argument slightly. He could offer a version of Vallier's argument, discussed in section 4.4.1. Quong has previously suggested that the reason people have for wanting to adopt an accessibility standard is because the intelligibility standard is too permissive. However, Quong argues, the problem is that the accessibility standard often collapses into the intelligibility standard. He gives the example of Albert, who 'endorses astrology, and as a result advances various "astrological reasons" in support of different laws.'⁴⁵ Those of us who do not believe in astrology can still see that the reasons are intelligible for Albert, because they are logical consequences of beliefs that he holds. At the same time, Quong argues, that fact alone cannot make it the case that we should 'take Albert's reasons seriously'.⁴⁶ The evaluative perspective, in itself, is 'indefensible'.⁴⁷ Thus, Quong argues, the accessibility standard must be able to avoid the result that Albert should be allowed to appeal to his astrological reasons. Yet, it cannot do so. On this version of the argument, it is not that accessible reasons are sometimes alienating. It is that they allow all kinds of impermissible forms of reasoning.

⁴⁵ Quong, 'On Laborde's Liberalism,' p. 58.

⁴⁶ Ibid.

⁴⁷ Ibid.

To show this, Quong asks us to imagine that ‘Albert is an unusual person who has grown up in a relatively closed epistemic environment.’⁴⁸ It is a community whose inhabitants all believe in astrology, and where it is taught to children. Community leaders teach and emphasise that astrology is fundamental for one’s ‘social and spiritual success,’ while ‘outside attempts to debunk astrology are subjected to unrelenting criticism and ridicule.’⁴⁹ When we imagine these epistemic conditions to hold, Quong notes, it is ‘possible that Albert will be justified (i.e., his evidence will give him apparently sufficient reason) not merely in holding specific astrological views, but also in accepting astrology as an evaluative perspective.’⁵⁰

Here is the important part. The things that justify Albert’s acceptance of astrology, Quong argues, is ‘the sorts of considerations that are drawn from our common evaluative standards.’⁵¹ These are things such as ‘the education received as a child and young adult, the testimony of trusted community leaders, and the selective facts to which an agent has access.’⁵² Why? Compare Albert with Betty, an ordinary citizen who believes in Darwinian evolution:

Betty isn’t a scientist, and so she is not justified in holding this view because she has access to mountains of data and understands complex scientific theories. Nevertheless, she can be justified in believing this view for the same sorts of reasons that Albert might be justified in believing in astrology. If Betty is justified by appeal to common evaluative standards (e.g., that we can mostly trust the education we receive and the testimony we get from respected leaders), then so is Albert.⁵³

If this argument holds, it would indeed be devastating for accessibility standards.

Would the convergence accessibility standard really say that if Albert were voted into power, he could justify legislation with his astrological reasons? I believe that it would not, and

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid., p. 59.

so this is a chance to clarify what I take the standard to say. Quong argues that things such as ‘we can mostly trust the education we receive and the testimony we get from respected leaders’ are the shared standards that make the reasons accessible. As I understand the convergence accessibility standard, this is not how it operates.⁵⁴

It is difficult to see how a democratic debate appealing to these kinds of standards in evaluating reasons would unfold. The convergence accessibility standard is meant to ensure that we can challenge and assess the reasons for the laws that bind us in a thick way. Albert says, ‘people I trust say that when the moon is in the seventh house, we should do such-and-such.’ If all the reason has going for it is that Beatrice has heard people *she* trusts say completely different things, she cannot effectively challenge the reasoning of the state. What is she meant to say? ‘People *I* trust say that the moon should not influence policy choices’?

The problem with Albert’s reasoning, from a convergence accessibility point of view, is that for a non-astrologer to accept his reasons they would have to change their entire worldview. In that sense, he is relevantly analogous to the liberation party officials. This is what makes the reason inaccessible.

This opens up further lines of inquiry. Specifically, it might be asked which perfectionist reasons would be permissible according to the convergence accessibility standard. Many opponents to antiperfectionist political liberalism have for instance said that so-called local comparative judgements can show that perfectionist reasons must sometimes be permissible in public justification. Are they right about this? And, specifically, would reasons based on local comparative judgements be permissible according to the convergence accessibility standard?

In the remainder of this chapter, I will argue that reasons based on local comparative judgements are not permissible in public justification. Indeed, this is true for both the convergence accessibility standard and for political liberalism more generally.

⁵⁴ See also, Cécile Laborde. In press. ‘Reply to Quong, Patten, Miller and Waldron,’ *Criminal Law and Philosophy*, p. 5.

5.4 OF DRUG USERS AND FAMILY MEN

5.4.1 JOHN AND MARK

To understand the local comparative judgement argument, we must first return to the basic ideas of political liberalism. As I have discussed, a central claim among many political liberals is that since there is disagreement among reasonable people about what a good life consists in, state actions cannot be justified by appealing to reasons drawn from ‘the good’.⁵⁵ In an influential article, Joseph Chan puts pressure on this by suggesting that we can use local comparative judgements to see that, when viewed in isolation, all reasonable points of view would agree that some ways of life are better than others.⁵⁶ It is, in other words, possible to find instances where all reasonable moral points of view agree about perfectionist judgements. The comparison of the life of a drug addict and a family man, Chan argues, is such a case. All reasonable people would agree that the life of the latter is better:

John... is wise, upright, talented in music and philosophy and has a good family and a few very good friends; Mark [is] a drug-addict, who spends all his time chasing after elusive drug pleasures at the expense of all other goods. I think no reasonable person would dispute the judgement that John’s way of life is more worthwhile than Mark’s.⁵⁷

This, Chan argues, entails that political liberals must concede that it would be permissible for the state to justify policies with reasons based on this agreement.

Since Chan’s initial argument, the example of the drug user has become a standard feature of virtually all perfectionist arguments challenging political liberalism on its own terms. For

⁵⁵ Quong, *Liberalism Without Perfection*, 37; see also Vallier, ‘On Jonathan Quong’s sectarian political liberalism,’ p. 177.

⁵⁶ Chan, J. 2000. ‘Legitimacy, unanimity, and perfectionism,’ *Philosophy & Public Affairs* 29(1): 5–42.

⁵⁷ Chan, ‘Legitimacy, unanimity, and perfectionism,’ pp. 13–14.

instance, Fowler and Stemplowska argue that if no ‘reasonable person with a plausible balance of values can believe... [a] drug-driven lifestyle to be better than... [the lifestyle of a family man],’ it follows on Quong’s theory that ‘there could be some occasions when a state can legitimately act for perfectionist reasons’.⁵⁸ Laborde holds that if people ‘broadly agree about the badness of addiction, it would seem to follow (on Quong’s theory) that the state can permissibly appeal to this reason to justify its tax and health policies’.⁵⁹ And, as mentioned, Mang points out that the statement ‘hard-drug addiction is harmful to *most, if not all, people*’ should be ‘accepted *beyond reasonable doubt*’, so the state’s ‘appeal to those judgments is compatible with Rawls’s idea of legitimacy’.⁶⁰

5.4.2 GIVING UP ALL GOODS

The first problem with drawing on the badness of addiction is that it cannot, or should not, only be explained in perfectionist terms. Despite this, previous comparisons of Mark and John have always been phrased as a question of the good, by proponents and opponents to the perfectionist argument alike.⁶¹ Perhaps this is so because it involves judgements about which kinds of life are deemed worthwhile. Against this, I propose that the case was about ‘the right’ all along. If I am right about this, then the badness of Mark’s life cannot undermine political liberalism’s antiperfectionism.

There is some initial difficulty in cashing the case out as a matter of justice. Chan describes Mark as chasing drug pleasures ‘at the expense of all other goods’. Surely, we might

⁵⁸ Fowler Stemplowska, ‘The asymmetry objection rides again,’ p. 140.

⁵⁹ Laborde, *Liberalism’s Religion*, p. 100.

⁶⁰ Mang, ‘Liberal neutrality and moderate perfectionism’ 302–3. See also Andrew Lister. 2014. ‘Public reason and perfectionism: Comments on Quong’s Liberalism Without Perfection,’ *Philosophy and Society* 25(1): 12–34, pp. 28–32. Even if Lister is careful to avoid some of the issues discussed below, he still relies on the strategy to make his argument.

⁶¹ Political liberals have previously not tried to accommodate the moderate perfectionist charge within the antiperfectionist framework in this way. Quong merely notes that it ‘may be possible to construct a non-perfectionist justification for state action discouraging drug addiction – e.g. the indirect harm it causes’ without taking a ‘position on that possibility’. Quong, *Liberalism Without Perfection*, p. 150 n. 31.

think, everyone would see this as an objectionable *way of life*. This is presumably correct, but the force of the example draws on our intuitions about the badness of drug addiction. And, as we shall see, these intuitions can be accounted for in a non-perfectionist way.

Prioritising one good at the expense of all others cannot in itself be sufficient to make all reasonable points of view see such a life as not being worthwhile. Many writers and artists have devoted virtually all their time to their art, and history is full of people who have given up all their goods and possessions to devote themselves to their religion.⁶²

These writers, artists, and sages pursued their art or religion at the expense of many other important goods, at least in periods. In this way, their lives are analogous to Mark's. However, it is an open question whether their lives are less worthwhile than John's. Many reasonable people would, I believe, say that their sacrifices are justified. Hence, to say that Mark's way of life is not worthwhile, it is not enough to say that he is pursuing one good at the expense of all others. We need to say, further, either (a) that all reasonable points of view believe that the good that he sacrifices his other goods for (drug use) is not valuable, or (b) that all reasonable points of view would agree that he gives up the goods involuntarily. (a) would be a perfectionist justification for the disvalue of Mark's life and (b) would not, if the goods that he involuntarily gives up can be justified non-perfectionistically. I believe (a) fails, while (b) can adequately explain the case without bringing in perfectionist judgements.

Turning first to (a). Would all reasonable points of view say that addiction to hard drugs is bad in itself? Intuitively, it undoubtedly sounds bad that Mark spends all his time chasing drug pleasures. But suppose that Mark received an enormous inheritance, and through it, he could always sustain his addiction. Every day he chases drug pleasures, and every day he succeeds. Contrary to folk theories of drug addiction, this way of life might not be as

⁶² To take a concrete example, the writer Emelie Dickinson lived parts of her life in isolation, giving up virtually all other goods for her writing. I admit that the relationship between Dickinson's *actual* isolation and the narrative she spun around it is disputed. On this, see Paula Bernat Bennet. 2002. 'Emily Dickinson and her American women poet peers,' in Wendy Martin (ed.), *The Cambridge Companion to Emily Dickinson*. Cambridge: Cambridge University Press, p. 217

implausible as it seems. There is empirical evidence that at least *suggests* that even on heroin, one of the most addictive drugs there is, it is possible for some users to uphold a well-functioning life if they have the means to continue using the drug.⁶³ Of course, I do not wish to suggest that this is common, but the mere possibility opens the door for a hedonist-utilitarian case for using heroin in an otherwise ‘normal’ life.⁶⁴ Because, for these few users, such a life could be incredibly hedonist-utility maximising. Just as some utilitarians believe that Nozick’s experience machine is preferable to the real world, they might reasonably say that a life of great pleasure derived from using drugs is one that can be justified – or even encouraged – from their point of view.⁶⁵ If we turn to less harmful drugs, the case of course becomes even stronger, and is made compatible with a broader range of moral theories.⁶⁶

Hence, there is nothing *intrinsically* or absolutely wrong from all moral points of view with being addicted to drugs. This can be a good way of living, at least on some views.⁶⁷

Mark’s way of life, however, presumably is not like this. What Chan asks us to picture is a ragged existence, devoid of self-respect and meaning. Mark does not have an inheritance and he chases elusive drug pleasure. Surely, no one could deny that this way of life is worse than

⁶³ E.g. Michael Agar and Heather Schacht Reisinger .2001. ‘Open marginality: Heroin epidemics in different groups,’ *Journal of Drug Issues* 31(3): 729–746; Paul J. Draus, Juliette Roddy and Mark Greenwald. 2010. ‘I always kept a job: Income generation, heroin use and economic uncertainty in 21st century Detroit,’ *Journal of Drug Issues* 40(4): 841–869; Todd G Pierce. 1999. ‘Gen-X junkie: Ethnographic research with young white heroin users in Washington, DC,’ *Substance use & misuse* 34(14): 2095–2114. For an early exploration of this idea, see David Caplovitz. 1976. ‘The working addict,’ *Journal of Psychedelic Drugs* 8(4): 313–316; and for the classic statement, see Norman E. Zinberg. 1984. *Drug, Set, and Setting: The basis for Controlled Intoxicant Use*. New Haven, Connecticut: Yale University Press.

⁶⁴ E.g. Michael Agar and Heather Schacht Reisinger .2001. ‘Open marginality: Heroin epidemics in different groups,’ *Journal of Drug Issues* 31(3): 729–746; Paul J. Draus, Juliette Roddy and Mark Greenwald. 2010. ‘I always kept a job: Income generation, heroin use and economic uncertainty in 21st century Detroit,’ *Journal of Drug Issues* 40(4): 841–869; Todd G Pierce. 1999. ‘Gen-X junkie: Ethnographic research with young white heroin users in Washington, DC,’ *Substance use & misuse* 34(14): 2095–2114. For an early exploration of this idea, see David Caplovitz. 1976. ‘The working addict,’ *Journal of Psychedelic Drugs* 8(4): 313–316; and for the classic statement, see Norman E. Zinberg. 1984. *Drug, Set, and Setting: The basis for Controlled Intoxicant Use*. New Haven, Connecticut: Yale University Press.

⁶⁵ See for instance Torbjörn Tännsjö. 2007. ‘Narrow Hedonism,’ *Journal of Happiness Studies* 8(1): 79–98, p. 95.

⁶⁶ Doug Husak and Peter De Marneffe. 2005. *The Legalization of Drugs*. Cambridge: Cambridge University Press, pp. 184–5.

⁶⁷ This is especially true for drugs such as caffeine. For caffeine users, part of the experience is getting cravings that get satisfied. Many people qualify as being addicted to caffeine, without much cause for alarm. Nils Olekalns and Peter Bardsley. 1996. ‘Rational addiction to caffeine: An analysis of coffee consumption,’ *Journal of Political Economy* 104(5): 1100–1104.

John's? And, it might be argued, this judgement is best explained by appealing to perfectionist ideas of what a good life consists in.

I agree that when described this way, it is hard to picture someone reasonably holding that such a life is better than a life lived among family and friends. Even when we limit our set of reasonable people to those who populate the well-ordered society.⁶⁸ However, or so I will argue, this judgement cannot only be explained with perfectionist reasons. Indeed, understanding it as a matter of justice has just as much explanatory power. Before going into the specifics, it is essential to give some background on which things are usually considered as matters of justice in liberal egalitarian theories.

5.4.3 PRIMARY GOODS AND JUSTICE

Any theory of distributive justice needs a prior idea of what it is that should be distributed. There are several different contenders, but among political liberals and moderate perfectionists alike, a popular view is that *primary goods*, rather than, say, utility, should be distributed in a just way.⁶⁹ On Rawls's view, primary goods are 'various social conditions and all-purpose means that are generally necessary to enable citizens adequately to develop and fully exercise their two moral powers, and to pursue their determinate conceptions of the good.'⁷⁰ Primary goods are things that all persons need and require when viewed as 'citizens who are fully cooperating members of society'.⁷¹ They are not to be confused with things that citizens merely desire or that it is rational for them to want. Rather, the goods are those that citizens 'need as free and

⁶⁸ Of course, Quong would respond that they do not *need* to share this judgement to be members of the well-ordered society. While this presumably is correct, it is difficult to see why they *would not* share it. Quong, 'On Laborde's liberalism,' p. 53.

⁶⁹ There may be several different 'things' that should be distributed. John Rawls. 2001. *Justice as Fairness: A Restatement*, Erin Kelly (ed.). Cambridge, MA: Harvard University Press, pp. 57–61; Amartya Sen, 1980. 'Equality of what?' in Sterling McMurrin (ed.), *Tanner Lectures on Human Values*, Vol. 1. Cambridge: Cambridge University Press.

⁷⁰ Rawls, *Justice as Fairness*, pp. 18–19; 57

⁷¹ *Ibid.*, p. 58.

equal persons living a complete life'.⁷² Importantly, these are defined independently of comprehensive moral doctrines or conceptions of the good – they are things that are necessary for all free and equal citizens regardless of their views of the good.⁷³

More concretely, liberal egalitarians typically hold that primary goods include things such as income and wealth, the social bases of self-respect, and health.⁷⁴ When we think about people addicted to heroin, we naturally tend to think of cases of persons who have insufficient access to primary goods, because that is often the condition of such addicts in the world as it is. We also believe that this is not voluntary, they would rather not give up these goods. In other words, Mark's way of life seems to trigger the intuition that he is lacking things such as health, income and wealth, and self-respect against his wishes. These 'thin' components of the good figure in most political liberals list of publicly justified goods. Assuming that it can be shown that, on average, hard drugs are harmful and addictive in a way that makes people give up primary goods against their will, we have a non-perfectionist reason for discouraging people from living like Mark, since structuring society in a way that enable people to live like him is an *injustice*.⁷⁵

The involuntariness is central here. Because many people give up primary goods without much cause for concern. A Buddhist monk who chooses to give up all his earthly possession does not trigger justice requirements. However, Mark's case is distinct because the addictive nature of hard drugs forces him to involuntarily give up his goods. Involuntariness, in this sense, is a thin concept – I only appeal to the intuitive understanding of the way addiction to hard drugs restructures people's wants and needs against their second-order wishes.⁷⁶

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Rawls's own view about health as a primary good is, at best, ambiguous. However, see Fabienne Peter. 2001. 'Health equity and social justice,' *Journal of Applied Philosophy* 18(2): 159–170; Norman Daniels. 1983. 'Health care needs and distributive justice,' in Ronald Bayer, Arthur L. Caplan, and Norman Daniels (eds.), *In Search of Equity*. The Hastings Center Series in Ethics. Springer, Boston, MA

⁷⁵ A whole range of policies and practices may be set up based on this injustice – ranging from compensation to criminalisation of hard drugs.

⁷⁶ Harry G. Frankfurt. 1971. 'Freedom of the will and the concept of a person,' *The Journal of Philosophy* 68(1): 5–20.

It is very important to note that I do not need to conclusively establish that it *is* an injustice for Mark to be in the situation that he is in. Indeed, I am certain that many people will disagree with this. There are conceptions of justice where we do not have a duty to care for those who give up primary goods against their wishes. Some Rawlsians, and many luck egalitarians, will believe this to be so. Importantly, however, this does not change the argument, because the debate in itself is within the realm of justice. What we are debating is not whether Mark's way of life is good in a perfectionist sense. We are debating whether he should have access to some state sponsored programme (or some such) because denying him this would be an injustice.

Many questions that are typically seen as within the realm of justice have the same structure. Liberal egalitarians also disagree about whether the difference principle is correct, how it should be interpreted in particular circumstances, what the list of basic rights and liberties looks like, and so on. There is no consensus on the content of justice, and all these debates about justice are debates about justice's correct scope.

Should we have religious exemptions from general laws? Should we have Universal Basic Income? Is it a requirement of justice that we should have open borders? The fact that people disagree about these matters does not make the disputes perfectionist. They are disagreements about the correct scope of justice.

A possible objection to the above is that we could picture a friend of Mark's, Ariel, that regularly uses drugs without being denied primary goods in an objectionable way. She is healthy, has self-respect, enough money, and so on – at least enough of each good so as not to trigger any requirements of justice, on any view of justice. Still, she spends all her time chasing elusive drug pleasures at the expense of many other goods. If all reasonable people would accept that Ariel, too, has a bad way of life, then that seems to be a case of perfectionist agreement.

This argument ultimately fails. Either, we should understand Ariel as having rationally chosen and pursued her way of life. She could stop using drugs and rationally pursue another

conception of the good if she wanted to. On this understanding, this drug-driven way of life is in line both with her first- and second-order desires. It is a life that is, according to Ariel, worth living. In this case, it is hard to see that there must be a contractualist agreement that her way of life is bad. It is not obviously clear that her way of life is in itself objectionable according to all reasonable moral points of view. Again, hedonist utilitarians come to mind.

We could also picture Ariel as not having the capacity to quit or change her way of life whenever she wants. She started using hard drugs and got addicted. Now she has a strong desire to stop living her life this way, but she is unable to. In this way, her life is similar to Mark's, although she does not lack primary goods. If this second description is what we are referring to, then she is subject to another justice-based concern. Ariel is lacking a capacity that primary goods are essential for achieving; the capacity to 'have, to revise, and rationally to pursue a conception of the good.'⁷⁷ Hence, the badness of this lifestyle, too, can be explained as an injustice.⁷⁸ I think that some Rawlsians would agree with this, but again, I am certain that not *everyone* will agree that this is so. However, this is beside the point since if only questions where there was universal agreement were questions of justice, nothing would pass the test.

All of that said, I do believe the arguments to be compatible with many views about justice, also views that are not explicitly Rawlsian. This is so because we do not need to accept much of Rawls's theory to make them. Most broadly liberal conceptions of justice need to have at least some idea of primary goods to get off the ground. It is easy to see why: how could we evaluate the justice of a health care system without appealing to the value of health? How could we understand distributive economic justice without a notion of the importance of access to material resources? And so on. From there, it is a short step to say that it is an injustice if some citizens are denied these primary goods against their wishes.

⁷⁷ Rawls, *Justice as Fairness*, p. 19.

⁷⁸ I set aside the question of whether there is still an injustice if Anna started using drugs fully aware and prepared to accept that she would not be able to give up this lifestyle in the future. But, again, this must be within the realm of reasonable disagreement about justice, so it does not undermine the argument.

It might be objected that the involuntary lack of primary goods argument does not do all the explanatory work when it comes to determining why people think that drug addiction is bad. We can imagine that moderate perfectionists will hold that many people will view drug addiction as in violation of their wider view of morality or conception of the good – not only as an inhibitor for the access to primary goods. This is true. But it does not undermine the argument. Public reason liberals typically welcome that citizens and legislators also give non-public reasons for their views. As long as public reasons are provided in due course. Hence, the same thing applies for virtually all political questions; someone who adheres to liberation theology can believe that a specific egalitarian distribution of wealth is justifiable because of her theological beliefs, while at the same time also holding that it follows from a commitment to viewing people as free and equal.⁷⁹

Mang even relies on seemingly antiperfectionist reasons when he explains what is bad about drug addiction, even if he does not acknowledge it. His formulation of the argument about the badness of addiction to hard drugs seems to be perfectly in line with the view that drug addiction is generally bad because it forces people to involuntarily give up primary goods. Mang talks about deteriorating health (often viewed as a primary good); being ‘alienated from normal personal relations’ (presumably⁸⁰ also a primary good), and the difficulty of quitting (the involuntariness condition).⁸¹

Despite its widespread popularity, drug addiction is – thus – not a very good case to use for showing that political liberalism must accept perfectionist arguments. It does not show that moderate perfectionism follows from commitments that political liberals already share. This is an important finding in and of itself.

⁷⁹ John Rawls. 1997. ‘The idea of public reason revisited,’ *The University of Chicago Law Review* 64(3): 765–807.

⁸⁰ I say presumably, because it depends on what we take normal to imply. To me, it sounds like a very low bar, undoubtedly necessary for being a co-operating member of the well-ordered society.

⁸¹ Mang, ‘Liberal neutrality and moderate perfectionism,’ p. 303.

I should emphasise, however, that statements such as ‘drugs are harmful for most people’ most likely are convergence accessible. For the purposes of my framework, it does not matter whether they should also be described as perfectionist or not. Nevertheless, I have shown that we have good reason for thinking that the statement is not perfectionist because it should be understood as within the realm of justice, not as a judgement about the truth of a specific comprehensive doctrine. The consequence of this is that it should also be permissible to appeal to the injustice of drug addiction on Quong’s view, and other views that do have stronger antiperfectionist commitments.

Next, I draw a broader conclusion. I show that the whole strategy of comparing different ways of life in order to ground perfectionism does not work. Reasons based on comparisons are neither shared nor convergence accessible.

5.5 CAN LOCAL COMPARATIVE JUDGEMENTS JUSTIFY PERFECTIONISM?

It is possible to put an objection to me along the following lines: ‘you may have shown that drug addiction is not the best perfectionist case. But that is beside the point, for the general argument still stands. It will be possible to find ways of life where all people make the same perfectionist judgements about their relative value.’

This is an important objection, and I shall address it in what follows. I will argue that regardless of which lives that are put in the comparison, the comparison cannot justify perfectionism.

To see this, we can begin by supposing that all reasonable people do, in fact, agree that John’s way of life is superior to Mark’s, for perfectionist reasons. Again, the discussion in this section does not rely on this particular comparison, the reader can insert any two lives. Maybe Mark spends all his time counting blades of grass or some such, and maybe John is a successful

political philosopher who wrote a celebrated DPhil thesis. I stick to how Chan describes John and Mark because we have gotten to know these versions already.

What kind of state action would this agreement, insofar as it exists, legitimise? I can think of two types of interventions that could be justified by using the example: the state can permissibly discourage people from living like Mark and/or the state can permissibly encourage people to live like John. Policies to discourage Mark-ness might be things such as the criminalisation of drugs and information campaigns about the dangers of drug use. To encourage John-ness, we could imagine policies such as subsidies for the opera or tax breaks for families.

Does the comparison entail that the state can permissibly discourage people from living like Mark? I cannot see why it would. Even if there is an overlapping consensus on the idea that John's way of life is preferable to Mark's, this agreement in itself is not based on the absolute disvalue of Mark's way of life. It only shows that his way of life is not preferable to John's. The comparison does not say anything about whether the overlapping consensus is on the idea that Mark's way of life is terrible or whether his way of life is simply worse than John's. Indeed, the very idea of a comparison points to the second interpretation; 'no reasonable person would dispute the judgement that John's way of life is more worthwhile than Mark's.' This is important, because the comparison, if it lacks an explicit judgement about the absolute badness of the 'lowest ranked life', cannot justify political action to discourage people from living it.

To make this point explicit, we can compare John's life with Kate's instead, who is *not* wise, *not* upright, *not* talented in music and philosophy. But she has a good family, and one good friend. In all other respects, her life is identical to John's. We may, perhaps, say that 'no reasonable person would dispute the judgement that John's way of life is more worthwhile' than Kate's. But this does not necessarily mean that Kate's life is not good. It may – in fact – be a great life.

Hence, the comparison does not suffice to justify state action, because the agreement only establishes that Mark's way of life is worse than John's, not that Mark's life is bad.

Nor does the comparison entail that we can encourage people to live like John. Because it might be the case that John's life is not that great. It could simply be better than Mark's. This effect, of course, increases if it could be conclusively established that Mark's way of life is terrible (and I take it that this is what Chan is suggesting). Because, if so, this tells us even less about John's way of life. To allow relative value judgements of this kind would let us appeal to any way of life as good as long as it is better than Mark's. And since Mark's life is (*ex hypothesi*) conclusively seen as bad by all reasonable citizens, this would include nearly all ways of life. In other words, suppose that we compare Mark's life with Natalie's instead. Natalie does not have any close friends. She does not have a family, and she knows nothing about philosophy or classical music. However, she enjoys counting blades of grass very much and she likes going to the church every Sunday. If it is true that Natalie's life is better than Mark's according to all reasonable moral points of view, this does not entail that the state could permissibly promote grass-counting or church-going or use Natalie's life as a basis for justifying policy. When comparing a terrible life with a life that is less terrible, all reasonable moral points of view would converge on the idea that the life that is less terrible is preferable. But this is too weak a condition for passing the test of public justification, or for allowing that reasons based on this agreement are public reasons. Analogously, it would be like accepting that a reason is a public reason simply because it is a better reason than a horrible reason. Compare:

- R₁: This law is what the devil wants, or
- R₂: This law maximises hedonist utility

Presumably, all reasonable (non-Satanist) points of view would agree that R₂ is a better justification than R₁. This is so even if all reasonable citizens are not hedonist utilitarians, because all reasonable citizens are probably not Satanists, and presumably all reasonable

citizens would believe Satanism to be worse than utilitarianism.⁸² It would be absurd to think that this automatically makes R_2 a shared public reason, since (on Quong's view) not all reasonable people would believe that it is a good, sufficient, or normatively relevant reason. It is not a shared reason. Similarly, (on my view) this does nothing to show that the reason is convergence accessible. This should be obvious – the mere fact that a reason is better than another does not make it the case that we can evaluate it in the right kind of way. Appealing to the fact that a reason is better than a terrible reason is not sufficient for upholding civic equality. A lawmaker who says 'maximising utility is better than following the will of the devil, therefore we should enact this law that maximises utility' has not provided convergence accessible grounds for her decision. Hence, at most, we can get an overlapping consensus on the fact that R_1 is a bad reason. But R_2 might also be a bad reason (it is). Perhaps, it is just slightly less bad than R_1 . In much the same way, saying: 'living a life with family, friends, and philosophy is better than chasing elusive drug pleasure, therefore we should enact this law that encourages family life (or that discourages drug use)' is not to provide convergence accessible reasons.

The state cannot choose only between Mark's and John's ways of life. It chooses between an infinite range of possible lives. And here, crucially, reasonable disagreement comes back in. For the local comparative judgement strategy to work, we need to establish that there are (good) ways of life to subsidise, and (bad) ways of life to discourage. On the shared reasons standard, the only way of doing so is through showing that there is reasonable agreement on what a good or bad life consists in, or on the goodness or badness of individual components of these ways of life, and that it is good enough so that we have reason to prioritise it over other ways of life. On Quong's interpretation of what this requires, it would need to be shown that all reasonable citizens in the well-ordered society would have to share this value: the Quongian political liberal

⁸² Stuart White has made me aware of the existence of reasonable Satanists. Let us suppose that the Satanists I am referring to are unreasonable. Joseph P. Laycock's. 2020. *Speak of the Devil*. Oxford: Oxford University Press.

state is only allowed to justify a policy based on the absolute value of John's way of life if all reasonable points of view agree that this life (or some of its components) is worth promoting.⁸³

Here is the important thing: it is not enough for the members of the well-ordered society to say that John's way of life is worth promoting over Mark's way of life. As should be clear, it is not possible to promote a full life. The only thing that the state could do is promote certain components of a life. In John's case, it could for instance be classical music. Even if all reasonable citizens agree that classical music is better than drug use, in promoting classical music the state also promotes this activity over other activities, not only over drug use. Money spent on a new music hall means less money for art galleries, football stadiums, housing subsidies, and so on. Trying to justify perfectionist policy on the basis of the local comparison is to commit a fallacy of reasoning. Including John in the description of Mark is merely a rhetorical distraction.

The convergence accessibility standard allows appeals to perfectionist reasons, insofar as we should call them that, when the reasons are convergence accessible. A reason is permissible when it is justified for each citizen according to evaluative standards that they themselves hold. The mere fact that it is comparably better than another reason does nothing to establish this. What needs to be shown is that the reason by itself is convergence accessible.

The conclusion of this discussion is, consequently, that the set of reasons that could permissibly be employed for justifying legislation in real societies depends on the views that real citizens hold. In that sense, it is an empirical question.

While I am hesitant to engage in empirical speculation, if it is the case that perfectionist reasons are convergence accessible, then they are acceptable according to the view presented here. But this is the strength of the view – as noted, basing justifiability on the views of real citizens will make public reason liberalism compatible with the principle of liberal collective

⁸³ Quong, 'On Laborde's liberalism.'

self-legislation. And by appealing to commitments that citizens actually hold, legislators treat them as civic equals.

5.6 CONCLUSION

I have defended the convergence accessibility standard against a series of objections from competing accounts of what makes laws justified and legitimate.

An observant reader might at this point object that it looks as if the convergence accessibility standard is susceptible to the arguments made in sections 2.6 and section 2.7 that were levelled against Rawls's public reason proceduralism. That is, even if my account would leave room for democratically deciding what to do, laws and policies would still be arbitrarily chosen if there is no way of mitigating the social choice problems.

In the next chapter, I show how the convergence accessibility standard, paired with Quong's broad understanding of public reason's scope and a public-reason-giving-requirement for individual citizens, can ensure that laws are not arbitrarily chosen, which will satisfy the principle of liberal collective self-legislation. This provides us with strong instrumental reasons for why citizens should give public reasons in their political advocacy.

CHAPTER 6: THE SCOPE OF PUBLIC REASON REVISITED

It is time for a brief recapitulation. I argued that respect for civic equality grounds a requirement for public officials to give public reasons, and a demand for institutional arrangements that satisfy the principle of liberal collective self-legislation. Then, I showed why influential versions of political liberalism fail to satisfy the principle of liberal collective self-legislation, and that justificatory liberalism failed to realise other important democratic values. In response, I proposed a less strict standard for delineating the set of public reasons that I called convergence accessibility, where a reason is public if it is justified according to every moderately idealised citizen's own evaluative standards. This standard, I argued, excluded perfectionist reasons that presupposed the truth of controversial conceptions of the good, but included reasons based on 'the good' when they were convergence accessible. This meant that the scope of democratic decision-making was not objectionably limited.

However, the question whether my view can respond to the argument outlined in section 2.6 and section 2.7 remains. Let me rehearse that argument quickly. On the Rawlsian view, not all political decisions need to meet the justificatory demands of public reason. Only decisions that are a part of the basic structure of society need to be justified directly with public reasons. This is the narrow view of the scope of public reason. Decisions beyond the basic structure are legitimate because public reason justifies the decision procedure with which they are made. I argued that this 'public reason proceduralism' failed to satisfy the principle of liberal collective self-legislation, because whereas it could satisfy the fairness condition (F), 'the procedure that selects law and policy treats citizens as free and equal,' we could not be certain that it would satisfy the preference-tracking condition (P), 'the preferences of the citizenry over whether a law or policy should be enacted determine whether the law or policy is enacted or not.'¹ This was so, because the framework allowed decisions that were arbitrarily made.

¹ See section 2.1.

The same worry could be raised against my own account. So far, I have said nothing about how an alternative to public reason proceduralism could avoid this charge. Making a positive case for this is the aim of this chapter.

The central proposal is this: only laws with public reasons in favour of them should be enacted, also beyond the basic structure. We should follow the *broad view* of public reason. The first reason in support of this is negative. Since there are no good reasons from the point of view of political liberalism to be satisfied with the standard view of legitimacy, public reason proceduralists will need a different account for showing that decisions outside the basic structure are publicly justified and legitimate.² If they are unable to provide such an account, they should demand first-order public reasons beyond the basic structure.

This argument, however, does not establish that the principle of liberal collective self-legislation is met. The choice of laws could still be arbitrarily made. If it could be shown that the broad view could somehow guarantee the non-arbitrary selection of laws, we would have very strong grounds for preferring it over the narrow view.

I will argue that public reasoning beyond the basic structure can order the preferences of citizens in a way that ensures that (F) and (P) are satisfied. The preferences of the citizenry could become single-peaked. From this it follows that the principle of liberal collective self-legislation is met.³

With this argument, I provide an instrumental reason for why citizens who are not public officials also should give public reasons. The chapter ends by considering a series of powerful objections to public reason requirements for ordinary citizens. I respond to them and provide additional reasons for the value of deliberative restraint.

² On this, see Jonathan Quong. 2011. *Liberalism Without Perfection*. Oxford: Oxford University Press, pp. 273–89.

³ See also Henrik D. Kugelberg. In press. ‘Social choice problems with public reason proceduralism,’ *Economics & Philosophy*.

I begin by outlining what single-peaked preferences are and how they can mitigate the social choice problems (section 6.1). I then consider whether a public reason proceduralist could respond that single-peaked preferences might also be induced in the basic structure, providing a different way to solve the problem (section 6.2). After this, I show that the argument is compatible with the premise-based procedure that I defended in chapter 3 (section 6.3). Finally, I consider whether requirements of deliberative restraint threaten the freedom and diversity of citizens (section 6.4).

6.1 COLLECTIVE SELF-LEGISLATION WITH THE BROAD VIEW

6.1.1 SINGLE-PEAKED PREFERENCES

Recall from section 2.6.2 that one of Kenneth Arrow's conditions for his impossibility theorem is Universal domain, the idea that all possible rankings of the alternatives are allowed. For deliberative democrats, this condition is not necessarily desirable. Deliberation could systematically shift people's preferences so that not all possible individual orderings are 'allowed'.⁴ Specifically, people's preferences can become *single-peaked* after deliberation. When preferences are single-peaked, there cannot be any Condorcet cycles, and pairwise majority voting will always produce transitive and complete social preferences. The rest of Arrow's conditions are satisfied, and it will be possible to determine what the winning alternative is, unless there is a tie.⁵ The winners generated will not be arbitrary, so if the procedure is fair both conditions for collective self-determination are satisfied.

If the preferences of a group of individuals are single-peaked, they all share the same scale for ordering alternatives. Voters may disagree about what should be done, but they all

⁴ They would still be legally permissible, of course.

⁵ Duncan Black. 1948. 'On the rationale of group decision-making,' *Journal of Political Economy* 56: 23–34; John S. Dryzek and Christian List. 2003. 'Social choice theory and deliberative democracy: A reconciliation,' *British Journal of Political Science* 33: 1–28.

agree on what the relevant evaluative dimension is for a given political question. An example of an evaluative dimension is the economic left-right scale, where egalitarian proposals are typically considered 'left', and proposals that emphasise the importance of not interfering with market outcomes are considered 'right'. The preferences of a group are single-peaked if there is agreement on 'how the political spectrum is arranged', what the ordering of the alternatives on the spectrum is, and every individual's own preference ranking is made in accordance with the shared scale.⁶

A simple example can illustrate this. Suppose that we are deciding between three border policies, Open, Semi-open, and Closed. We agree that the best scale for evaluating the policies is based on how many immigrants that would be admitted when they are implemented. We also agree that Open would give the most immigration, Semi-open would be in the middle, and Closed would be the most restrictive policy. Finally, we all use this scale when we are ranking our preferences over the proposals.

The idea is not that everyone will prefer one of the alternatives to the others. Instead, single-peakedness merely excludes the rank orders $\text{Open} \succ_i \text{Closed} \succ_i \text{Semi-open}$ and $\text{Closed} \succ_i \text{Open} \succ_i \text{Semi-open}$. Some people will prefer a restrictive policy, others one that allows for many immigrants, a third group the policy situated between the two extremes. No one would prefer the most restrictive policy to the least restrictive one while simultaneously preferring both these policies to the second-most restrictive policy. Single-peakedness only demands consistency. Voters can disagree, but their disagreement should be logical.⁷

With this, I do not mean to suggest that there cannot be a certain logic to rankings such as $\text{Open} \succ_i \text{Closed} \succ_i \text{Semi-open}$. For instance, someone might want either no immigration or, for fairness reasons, completely open borders. For her, the worst option is semi-closed.

⁶ William Riker. 2003. 'Social choice theory and constitutional democracy,' in Thomas Christiano (ed.), *Philosophy and Democracy*. Oxford: Oxford University Press, p. 171.

⁷ David Miller. 1992. 'Deliberative democracy and social choice,' *Political Studies* 40: 54–67, p. 64.

However, this person does not use the shared scale for ordering the proposals, she applies another metric. Hence, this ranking is not logical in relation to the shared scale.

6.1.2 SATISFYING FAIRNESS AND POSITIVE PREFERENCE-TRACKING

It has been hypothesised that deliberation is one way of achieving single-peakedness. David Miller provides two reasons. First, deliberation will likely reduce the number of people who are making faulty inferences and empirical mistakes. Second, and more importantly, when a political issue is discussed, it is possible to agree on a shared evaluative standard and divide decisions into different parts when several competing values are at stake. As Miller puts it, ‘discussion amalgamates separate dimensions of choice to which different voters attach different weights.’⁸ The idea is that there should be a ‘general willingness to break the decision down along its several dimensions, on each of which we should expect to find a winning position’.⁹ Then, the winning outcome will be a fair representation of the will of the majority since it ‘follows the majority’s judgement on each dimension of policy choice.’¹⁰

Miller’s argument makes intuitive sense. And it has been empirically shown that small-scale deliberation moves the deliberating individuals towards single-peaked preferences.¹¹ It is still an open question whether this result can be generalisable to a large-scale setting.

I believe that we have good reason to think that public deliberation with public reasons among a large group of citizens, preferably a significant proportion of the electorate, might be even better at systematically shifting preferences towards single-peakedness than unconstrained deliberation. While empirical work remains to determine whether this is so, the idea has intuitive appeal. It is difficult to see how people could construct a shared scale around

⁸ Miller, ‘Deliberative democracy and social choice,’ p. 65.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Christian List, Robert C. Luskin, James S. Fishkin and Iain McLean. 2013. ‘Deliberation, single-peakedness, and the possibility of meaningful democracy: Evidence from deliberative polls,’ *Journal of Politics* 75: 80–95.

inaccessible reasons. There is a discrepancy between the shared scale and relying on reasons that many people do not see the normative relevance of.

So, whereas I grant that the public reason proceduralist might suggest that some version of deliberative democracy that does not restrict the permissible set of reasons to public reasons could be their proposed decision procedure beyond the basic structure, and that this will diffuse several problems, the strategy is less convincing than deliberation with public reasons. A normative imperative to deliberate using public reasons beyond the basic structure should provide more fertile ground for inducing single-peakedness than unconstrained deliberation, because public reasons are, by definition, accessible to all. When we order proposals after a public reason metric, a reasonable hypothesis is that people will be more likely to accept the ranking as their preferred one than if non-public reasons are permitted. Constructing a scale often involves trading off different public or political values.

Of course, we could picture a shared scale with public and non-public reasons as entailing that those who do not agree on the relevance of the reason are on the same extreme end of the scale. When a proposal is presented and understood only in non-public terms, people with a wide range of moral commitments could disagree with it, to different extents and for different reasons. However, if their preferences are all grouped on the same extreme end of the spectrum, it does not capture the complexity of the decision at hand. In one sense, all of those who do not share the comprehensive worldview could agree – the proposal is unjustified because it is based on faulty reasoning. At the same time, they disagree for different reasons and will prefer a whole range of different proposals in place of the non-public one. My hypothesis is that the absence of public reasons makes it more likely that we need several competing dimensions for understanding a political issue. It would then be more difficult – perhaps impossible – to achieve single-peakedness.

If it is true that public reasoning beyond the basic structure can induce single-peaked preferences, that, in conjunction with a publicly justified decision procedure, will ensure that

(F) and (P) holds. First, because there will not be any cycles, so the arbitrariness stemming from them is eliminated. Second, because it could also eliminate the arbitrariness arising from having different procedures generating different social choices from identical profiles of individual preferences. For this condition to hold, it is vital to have single-peaked preferences in a large group. Thus, it is not enough that only the legislative assembly or other public officials conduct their deliberations using public reasons. As Brian Kogelmann points out, it has recently been shown that ‘for all constant scoring rules, if preferences satisfy the *single-peaked* domain restriction, then, as population size increases, the Condorcet efficiency – the conditional probability that a rule will select the Condorcet winner, given that a Condorcet winner exists – of all such rules approaches one’.¹² Drawing on results such as this, Kogelmann argues that given (assumptions like) single-peaked preferences and a large enough electorate, it will often be the case that ‘all major social choice mechanisms end up selecting the same moral rule.’¹³

If deliberation using public reasons increases the likelihood of inducing single-peaked preferences, we have a strong instrumental argument for why individual citizens should try to think about political issues in terms of public reasons. Why? Because we want as many people as possible to deliberate using public reasons since (if the first part of the argument is correct), this increases the probability that a larger proportion of the electorate end up with single-peaked preferences. If a large proportion of the electorate has single-peaked preferences, it is almost certain that we will have Condorcet efficiency, and (P) is likely to be satisfied. The preferences of the citizenry are what determines which laws and policies to implement. It then does not matter whether *the procedure* is collectively self-legislated or not, because its main competitors would generate the same winners.

¹² Brian Kogelmann. 2017. ‘Aggregating out of indeterminacy: Social choice theory to the rescue,’ *Politics Philosophy & Economics* 16(2): 210–232, p. 225; Dominique Lepelly, Patrick Pierron, and Fabrice Valognes. 2000. ‘Scoring rules, Condorcet efficiency, and social homogeneity,’ *Theory and Decision* 49: 175–196, table 1.

¹³ Kogelmann, ‘Aggregating out of indeterminacy,’ p. 225.

Public reason proceduralists could not appeal to Kogelmann's argument unless they provide a more plausible story for why, without public reasons at the substantive level, the profiles of individual citizens would be likely to be single-peaked.

Moreover, even if we cannot fully achieve single-peaked preferences, deliberation with public reasons could produce more homogeneity and mutual coherence. There would be more agreement on the relevant rankings of options. As Gehrlein and Lepelley argue, this is promising because when 'voters have preferences on [options] that reflect increased levels of social homogeneity or group mutual coherence, voting rules should tend to show an increased level of Condorcet Efficiency'.¹⁴ Hence, if so, deliberation with public reasons is more likely than unrestricted public reason proceduralism to avoid arbitrariness.¹⁵

6.2 SINGLE-PEAKEDNESS IN THE BASIC STRUCTURE

A central reason we had for rejecting the narrow view was that it could not guarantee that the choice of decision procedure for choosing laws beyond the basic structure was not arbitrarily made. Consequently, if a proponent of the narrow view could show that it is possible to do so, it looks as if public reason proceduralism could be rescued.

One strategy that could be employed to do so would be to apply the argument from the previous section to the constitutional level. In other words, if it could be established that deliberation based on public reasons could induce single-peaked preferences over the choice

¹⁴ William V. Gehrlein and Dominique Lepelley. 2011. *Voting Paradoxes and Group Coherence. The Condorcet Efficiency of Voting Rules*. Heidelberg: Springer, p. 190; see also Kogelmann 'Aggregating out of indeterminacy,' pp. 225–8.

¹⁵ Game-theoretical work also supports the conclusion. Chung and Duggan have recently argued that deliberative democratic procedures need to have a certain form to confer legitimacy to decisions. What they call 'competitive debate,' can generate a stable equilibrium. One of the conditions that need to be met for this view is that 'positions should be supported by reasons that all endorse'. If their view holds, if there are institutional ways of avoiding path-dependencies and arbitrariness by deliberating using public reasons, this lends support to the idea of extending public reasoning beyond the basic structure. Hun Chung and John Duggan. 2020. 'A formal theory of democratic deliberation,' *American Political Science Review* 114(1): 14–35, p. 27. Tentatively, this might speak in favour of a shared-reasons standard over the convergence accessibility standard. Based on Chung and Duggan's work, it is difficult to assess since they do not consider and compare different public reason standards. Nevertheless, the shared reasons standard would still be faced with the problems discussed in section 2.3, section 2.4, and section 5.3.

of *decision procedures*, the resulting procedure would – through the same mechanisms discussed in the previous section – satisfy (F) and (P). That choice would consequently be collectively self-legislated, and it would thus transfer legitimacy to the outcomes it would produce. In support of this argument, the critic could suggest that it is likely to hold because legislative questions typically are multi-dimensional and difficult to boil down to one dimension. Constitutional questions, on the other hand, may be less complex, allowing a structured ordering of the different positions.

I readily grant that this is true for many constitutional questions. Different proposals in discussions about, for instance, the limits of free speech, the scope of religious freedom, and minority group rights could often, and quite easily, be ordered after a shared public reason metric. However, what needs to be established is that different *decision procedures* could be more easily ordered on a shared scale than different legislative options. What needs to happen is that citizens must agree that, for instance, the Borda count is at the far-left end of the spectrum, that pairwise majority rule is in the middle, and that plurality rule is on the far-right end. Single-peaked preferences, then, demand that citizens not be ‘allowed’ to have the rankings Borda $\succ_i$ Plurality $\succ_i$ Pairwise majority, and; Pairwise majority $\succ_i$ Plurality $\succ_i$ Borda. If this happens, it is – by the same logic as the argument above – possible to non-arbitrarily choose between the procedures. (F) and (P) is satisfied.

Nevertheless, it is difficult to see on what basis such a ranking could be made. The public reason framework offers no resources for constructing the shared scale. All proposals respect equality, the inputs of every citizen are treated equally. They also respect freedom to the same degree, as citizens are free to use their votes as they see fit under all voting rules. And, as discussed, they are all (arguably) examples of fair procedures. Thus, it does not make sense to say that the Borda count trades freedom for equality whereas the opposite is true for Plurality rule. We have no resources for saying that the Borda count, rather than Plurality or Pairwise majority rule, should be at the far-end of the spectrum.

A possible response is that the different ways the procedures violate Arrow's conditions could serve as a way of arranging the alternatives. However, this, too, would be difficult. Many decision procedures violate the same condition. How do we know in which order to put them? And, further, what should we think when several different conditions are violated? How do we order (I), (O) and (PP)? Relying on an ordering based on the Arrovian conditions is just a different way of redescribing the same problem – there is no intuitive way of arranging different decision procedures along this shared scale either. Hence, it is very difficult to achieve single-peaked preferences over different decision procedures. All different rankings; Plurality $\succ_i$ Pairwise majority $\succ_i$ Borda; Borda $\succ_i$ Plurality $\succ_i$ Pairwise majority;... and so on, are equally logical unless we can find some way of constructing a scale in which they are not. Even finding such a scale is not enough. We would also need to show that citizens will have good reason to accept this scale as their own.

Hence, even if it is true that there are constitutional questions where single-peaked preferences are common, the ranking of decision procedures is not such a case. At the level of substantive law, however, public reason can often function as a way of ordering alternatives. The previously mentioned left-right scale is widely used by citizens when they make up their minds about what to vote for.

Moreover, the difficulties with legitimacy stemming from public reason proceduralism imply that it would be desirable if all options on the agenda had public reasons in favour of them – including in contests outside the basic structure. If so, even with a decision procedure that is not collectively self-legislated, the winning outcome will – consequently – have public reasons in favour of it. This does not imply that there is a consensus on the winning option, but it does mean that those who were against the winning proposal at least can appreciate the normative relevance of the reasons in favour of it. Of course, this is something that only looks plausible to someone who is already convinced that public reason generally is valuable.

The discussion above also points to a broader conclusion, however. If the common currency of disagreement generates single-peaked preferences it could potentially play a previously unexplored part in dissolving several fundamental social choice problems. This implies that public reason critics have good reason to revisit their scepticism. Promoting the use of public reasoning in public discourse could potentially provide an attractive escape-route from Arrow's theorem and other canonical results from social choice theory. This should be an important concern for any democrat.

6.3 WHAT ABOUT JUDGEMENT AGGREGATION?

For reasons of simplicity, the discussion has thus far been modelled on the same framework that public reason proceduralists use – I have refrained from discussing the premise-based procedure that I defended in section 3.3. The main reason for this is pedagogical: it makes the response clearer. It is probably also easier and more intuitive to understand the argument when it is framed in terms of conclusion-based voting. Further, and more substantively, there are also important benefits with not making the argument conditional on accepting the superiority of the premise-based procedure. Nevertheless, it is of course still important to discuss how the present argument relates to the judgement aggregation framework.

Recall that the central problem of chapter 3 was the discrepancy that could arise between the judgements about the premises justifying a decision and the conclusion about whether the proposal should be enacted or not. This is the 'discursive dilemma.'¹⁶

In this section, I explain that there is a condition such that, if it holds, the discursive dilemma disappears. It disappears in the sense that the majority judgements on the premises always are logically consistent with the majority judgement on the conclusion. I will not discuss the condition at length, the important thing to note for my purposes is that there are strong

¹⁶ Ruth Weintraub. 2011. 'A solution to the discursive dilemma,' *Philosophical Studies* 152(2): 181–188.

similarities between it and the single-peakedness condition in the preference aggregation framework. Consequently, I believe that there is an analogous argument available for how deliberation using public reasons can help fulfil it.

The condition is called *unidimensional alignment*. It, too, is a restriction of universal domain. Not all possible judgements are possible. Christian List explains the condition thus:

Suppose (i) the individuals disagree on what set of judgments to endorse, but they agree on a single left / right dimension (such as from ‘most liberal’ to ‘most conservative’) that characterizes the range of their disagreement; in particular, suppose that each individual takes a certain position on that dimension. And suppose (ii), for each proposition, the extreme positions on the left / right dimension correspond to either clear acceptance or clear rejection of the proposition and there exists an ‘acceptance threshold’ on the dimension (possibly different for different propositions) such that all the individuals to the left of the threshold accept the proposition and all the individuals to its right reject it (or vice-versa).¹⁷

When (i) and (ii) holds, we have unidimensional alignment. If we think of a concrete example, we could for instance imagine that ‘all individuals to the left of some threshold might be in favour of a certain binary “free trade” proposition while all individuals to its right might be against it.’¹⁸

Let me clarify the importance of this. When there is unidimensional alignment, it does not matter whether we use the premise-based or conclusion-based procedure, because the majority judgements on the premises will always be consistent with the majority judgement on the conclusion. Therefore, I can make the argument above in terms of the conclusion-based framework. When there is unidimensional alignment, there is always rational consistency between these two ways of understanding political issues.

Just as for single-peaked preferences over policy choices, we have good reason for thinking that deliberation using public reasons will increase the likelihood that we get

¹⁷ Christian List. 2003. ‘A possibility theorem on aggregation over multiple interconnected propositions,’ *Mathematical Social Sciences* 45(1): 1–13, pp. 8–9.

¹⁸ List, ‘A possibility theorem on aggregation over multiple interconnected propositions,’ p. 9.

unidimensional alignment in disagreements over a given policy choice. As per above, a shared scale for ordering disagreement is much more likely to be salient if that scale is based on reasons that are accessible to all.

In this way, there are important synergies. Regardless of whether we want to understand political disagreements in a preference aggregation framework or in a judgement aggregation framework, deliberation using public reasons can ensure consistency and that non-arbitrary and rational choices can be made.

I have thus provided an *instrumental* argument for why citizens should deliberate using public reasons. It is not that it is disrespectful (or some such) for citizens to rely only on non-public reasons. And it is not a *direct* requirement of civic equality. Rather, public reasoning provides positive results – justified and legitimate legislation. In that sense, it is an indirect requirement of civic equality, because it entails that the principle of liberal collective self-legislation can be satisfied.

The solution I have outlined comes with a price. Universal domain is no longer satisfied. Only public reason preference or judgement rankings would be permissible. Still, this restriction would not be backed by coercive state power. Rather, the goal is that the norms of public reason can appear appealing to all citizens so that they voluntarily conduct their political discussions in this ordered way. If the consequence of this is that we have traded universal domain for the ability to make legitimate decisions, the latter comes at a cheap price.

Some might disagree, arguing that the price is too high. Specifically, it has recently been suggested that requirements of deliberative restraint are unjustified infringements on the freedom of citizens. I consider and respond to this argument in the next section.

6.4 ANSWERING THE LIBERTY AND DIVERSITY ARGUMENTS

6.4.1 CAN CITIZENS IMPACT POLICY?

Several leading public reason theorists have recently made arguments against public reason requirements for individual citizens. For instance, Cécile Laborde holds that state officials must provide accessible public reasons, but ‘citizens may bring to democratic debate any consideration or argument they think is relevant to the issue at stake’.¹⁹ Public justification does not bar ‘citizens from bringing religious arguments in the public sphere’ – ‘only the state and its officials are under an obligation to justify state coercion by appeal to public – that is, accessible – reasons.’²⁰ An important reason for this, Laborde argues, is that it is *unfair* to ask citizens who are not public officials to give public reasons because doing so imposes extra burdens on religious citizens by forcing them to translate their religious reasons into accessible language.²¹ Similarly, Jürgen Habermas, Matteo Bonotti, and Aurélia Bardon have all argued that individual citizens do not need to give public reasons when they are deliberating.²²

These theorists all have provided different reasons for thinking that public reason requirements only should apply to state officials. Some of their arguments do not apply to the view defended here, because I do not see public reason requirements as a moral duty of respect or civility.

One argument that on the face of it does seem to apply is Kevin Vallier’s recent critique of requirements of restraint. Vallier provides two reasons for why citizens should be allowed

¹⁹ Cécile Laborde. 2020. ‘Three cheers for liberal modesty,’ *Critical Review of International Social and Political Philosophy*, 23(1): 119–135, p. 121.

²⁰ Cécile Laborde. 2020. ‘Can religious establishment be liberal enough?’ *Studies in Christian Ethics*, 33(2): 215–223, p. 216. see also Laborde, *Liberalism’s Religion*, p. 125.

²¹ Laborde, *Liberalism’s religion*, p. 124.

²² Jürgen Habermas. 2006. ‘Religion in the public sphere,’ *European Journal of Philosophy*, 14: 1–25; Matteo Bonotti. 2017. *Partisanship and Political Liberalism in Diverse Societies*. New York: Oxford University Press, pp. 124–51; Aurélia Bardon. 2018. ‘Two misunderstandings about public justification and religious reason,’ *Law and Philosophy* 37: 639–669; Aurélia Bardon. 2020. ‘Is epistemic accessibility enough? Same-sex marriage, tradition, and the Bible,’ *Critical Review of International Social and Political Philosophy*, 23(1): 21–35.

to appeal to whatever reasons they see fit in the public sphere. First, he argues that restraint requirements infringe on the liberty of citizens. Moral rules can objectionably limit and remove options from people. Second, Vallier argues that restraint homogenises people. Instead of allowing a wide range of expressions and perspectives, the principle entails that people must become more similar to each other in the public sphere – ‘it prioritizes shared reasoning over diverse reasoning’.²³ The arguments are Millian in the sense that a central premise is that moral rules can limit our freedom and in how they assign great value to diversity of thought. If we value liberty and diversity, Vallier argues, we should want to promote these ideals. It is costly to have social rules in place that limit freedom and diversity. By letting deliberative restraint apply to as few people as possible – that is, only legislators and other public officials – we avoid these costs.²⁴

It is important to note, first and in response, that it is perfectly possible to agree with Vallier that restraint is costly, but still hold that the benefits of restraint outweigh the cost to liberty and diversity. Indeed, I will argue in the next chapter that the costs of public-reason requirements make it the case that they sometimes should not apply.

To me it seems as if what is at stake is whether the costs are justifiable or not. Or, put differently, I think it should be uncontroversial to say that what we are interested in is how far-reaching requirements of deliberative restraints can be.

Consider how it is commonly accepted that we (at the very least) should frown upon those who use derogatory language and insults in public debates. It is a good thing, for instance, that there are norms against using sexist and racist language in political advocacy. Vallier recognises this, and so, in this way, he already accepts some limitations of the freedom and

²³ Kevin Vallier. 2015. ‘Public justification versus public deliberation: the case for divorce,’ *Canadian Journal of Philosophy* 45(2): 139–158, p. 146.

²⁴ Ibid., p. 147. Instead of a general principle of restraint where individual citizens only can rely on public reasons in their political deliberation, Vallier argues in favour of a principle of restraint that applies only to legislators. The principle entails that a legislator should not vote for a law, ‘or publicly encourage effective others’ to do so, if she ‘justifiably believes’ that there are citizens who do not have reason to endorse it. Thus, it is a justificatory-liberal version of restraint.

viewpoint diversity of citizens.²⁵ Having moral rules in place for avoiding insulting language contributes to the goal of a healthy and constructive public culture. So, I take it that if it could be shown, in the same way, that further restrictions generate enough other important goods, then these restrictions, too, are justified.²⁶ One such good is, I have argued, the satisfaction of the principle of liberal collective self-legislation.

To conclusively make his case, Vallier would need to show that there is no benefit to restraint, or that the benefit does not outweigh the cost. He tries to do so by contrasting individual citizens with legislators. The latter group has an ‘an obvious and direct impact on whether citizens are coerced’.²⁷ Legislators ‘seek to legislate’, they ‘generally aim to coerce’, and their votes ‘make a predictable, substantive contribution to outcomes.’²⁸ The same does not hold for individual citizens.

Vallier acknowledges that the votes of individual legislators often fail to change the outcome by themselves, but while one ‘in several hundred is a small contribution’, it is ‘many orders of magnitude greater than the contribution made by ordinary citizens.’²⁹ The advocacy of individual citizens has ‘an extremely small effect on outcomes’.³⁰ Therefore, they do not need to give public reasons (or in Vallier’s case, they do not need to only advocate laws that are publicly acceptable). Since those who do not hold public offices ‘have no real impact’ in determining which laws that should apply to them it is pointless to hold them accountable to discourse norms.³¹

There is something odd about this argument. It is true that the opportunities individual citizens have for influencing policy is much smaller than the power that public officials wield.

²⁵ Ibid., p. 152.

²⁶ Here is another way of putting the same point. It would be mistaken to assume that whatever regime is the most freedom and viewpoint-diversity promoting is superior. Naturally, such a view would not have any rules, and very few people would consider that normatively desirable. Thus, we are already engaged in the project of determining just how great limitations of freedom and viewpoint diversity that are permissible.

²⁷ Ibid., p. 154.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid., p. 152.

³¹ Ibid.

However, this by itself does not show that the opportunity is small enough to warrant a principle of restraint for public officials but not for individual citizens. The important question is whether individual citizens are over some influence-threshold that makes their contribution salient, not whether public officials have an even greater influence.

In other words, even if the contributions of individuals are small, they might still be significant enough to ground moral duties for regulating political behaviour. As Boettcher forcefully puts it, the rationale behind Vallier's view seems

to reach beyond the question of restraint and apply to almost all of the political activity of most ordinary citizens. After all, if an individual citizen's vote is almost never going to have a real impact on an election or referendum, and if he or she has a legitimate liberty interest in doing anything preferable to voting, then why vote at all? We could pose a similar question about efforts to become more politically informed or more engaged in preventing widely agreed upon political problems such as corruption or malfeasance. In short, the empirical fact that no individual citizen's activity is especially impactful could be used to deny widely recognized civic duties such as voting just as easily as duties of restraint. While critics of democracy might enthusiastically accept this implication, public reason liberals should not.³²

Another way of putting a similar point is that even if an individual's contribution is small, the aggregate macro-level contribution of all individuals becomes significant. A society's public culture influences which policies are enacted and how politicians conceptualise what is at stake. Vallier anticipates this argument, but quickly dismisses it since the claim has 'little empirical ground, given the complex social processes by which citizens' advocacy is translated into legislative outcomes.'³³ Defenders of restraint, Vallier argues, 'assume that if citizens comply with principles of restraint, private reasons will be effectively excluded for legal decision-making'.³⁴ But this is wrong, Vallier claims, because the 'way in which public discourse satisfies

³² James Boettcher. 2019. 'Deliberative democracy, diversity, and restraint,' *Res Publica* 26: 215–235, p. 231.

³³ Vallier, 'Public justification versus public deliberation,' p. 152.

³⁴ *Ibid.*, p. 144.

principles of exclusion is likely to be a complex sociological question with no straightforward a-priori answer.’³⁵

6.4.2 EMPIRICAL RESULTS

I agree that it is a complicated question. However, recent empirical evidence at least suggests that there is a link between public opinion and the speech and policy positions of public officials. For instance, Anselm Hager and Hanno Hilbig have found that politicians who receive opinion polling on the views of citizens ‘become more responsive to the public’s preferences’ and that ‘linguistic similarity between politicians’ speech and the public opinion reports increases’.³⁶ Similarly, Jeroen Romeijn has found that there is a link between ‘public preferences and the positions of political parties’.³⁷

The connection between public opinion and political action is not only demonstrated among elected officials. Casillas, Enns and Wohlfarth have found that the ‘influence of public opinion on [US] Supreme Court decisions is real... [and] substantively important’.³⁸

Naturally, there is a further question about whether (and if so, to what extent) requirements of deliberative restraint would make politicians more likely to adopt an attitude of restraint themselves. However, the evidence suggesting that public opinion influences the speech, decisions, and reasoning of public officials, at least points in this direction. It does not seem unlikely that changes in discursive norms also produce corresponding changes in the behaviour of public officials.

³⁵ Ibid.

³⁶ Anselm Hager and Hanno Hilbig. In press. ‘Does public opinion affect political speech?’ *American Journal of Political Science*, p. 2; see also Brandon Rottinghaus. 2008. ‘Presidential leadership on foreign policy, opinion polling, and the possible limits of “crafted talk”’, *Political Communication* 25(2): 138–57.

³⁷ Jeroen Romeijn. 2020. ‘Do political parties listen to the(ir) public? Public opinion–party linkage on specific policy issues,’ *American Political Science Review* 26(4): 426–436, p. 426.

³⁸ Christopher J. Casillas, Peter K. Enns, and Patrick C. Wohlfarth. 2011. ‘How public opinion constrains the US Supreme Court,’ *American Journal of Political Science* 55(1) 74–88, p. 74.

We cannot dismiss the aggregative effects of individual speech-acts off hand. Indeed, given the empirical results just discussed, the onus is on Vallier to show that individual contributions are not enough to make an aggregative difference.

There is a further problem with Vallier's view, and views like it. Assigning public reason requirements to one group – 'public officials' – while holding that those beyond this group are exempted precludes the possibility that requirements of deliberative restraint could be scalar. This should be important because some individual citizens will by themselves be powerful enough to make a difference, beyond their contribution to the aggregative effects. 'Influential citizens' often have a direct effect on politics. For instance, the journalists (and their team of researchers) who decide which questions to ask in political debates have a significant 'agenda-setting' power.³⁹ If they are 'allowed' to consistently frame problems in non-public terms, this will most likely influence the way ordinary citizens see what is at stake in these debates. In the US context, it has been shown that presidential debates play a significant role in influencing people's views about politics and candidates.⁴⁰ For these reasons, there seems to be something problematic, from a public reason perspective, if in every presidential debate the journalists framed all political questions after a specific comprehensive doctrine. Vallier's view, however, cannot make this judgement.

We do not even have to go as far as to the people involved in presidential debates. Ordinary news media has been shown to structure 'the overall tone' of debates, with a framing that can sometimes differ 'from that of politicians and interest groups'.⁴¹ It undoubtedly seems possible that this could translate into a clear and direct influence on policy. And so, a public political culture where journalists consistently frame political questions in a way that favours

³⁹ William L. Benoit and Glenn J. Hansen. 2001. 'Presidential debate questions and the public agenda,' *Communication Quarterly* 49(2): 130–141.

⁴⁰ William L. Benoit, Glenn J. Hansen and Rebecca M. Verser. 2003. 'A meta-analysis of the effects of viewing U.S. presidential debates,' *Communication Monographs* 70(4): 335–350.

⁴¹ Karen Callaghan and Frauke Schnell. 2001. 'Assessing the democratic debate: How the news media frame elite policy discourse,' *Political communication* 18(2): 183–213, p. 183.

only one comprehensive perspective could force public officials away from publicly justified policies and arguments.

Or consider very wealthy people. Through buying advertisement space, and through other measures, they, too, can have a significant agenda-setting power.⁴² To take just one example, billionaire Bill Gates ‘gave millions of dollars to see a charter school law approved despite multiple failed ballot referendums.’⁴³ Similar things can be said for community leaders, public figures, and celebrities. Indeed, when the singer Taylor Swift endorsed candidates for public office in Tennessee, a voting registration service received more registrations to vote in 24 hours than it had for the whole previous month.⁴⁴ Similarly, evidence suggests that Oprah Winfrey’s endorsement of Barack Obama made a notable difference for his votes and campaign contributions.⁴⁵

6.4.3 SCALAR DUTIES AND BURDENS FOR RELIGIOUS CITIZENS

On Vallier’s view, none of these influential citizens would be under a duty to limit their political advocacy to proposals that are publicly justifiable. In contrast to this, I propose that there are clear benefits of morally restricting the discourse of citizens. First, because it will – as argued – increase chances that the principle of liberal collective self-legislation is satisfied. And second, because it will increase the likelihood that politicians will advocate publicly justified policy positions.

⁴² Gordon Arlen. 2019. ‘Aristotle and the problem of oligarchic harm: Insights for democracy,’ *European Journal of Political Theory* 18: 393–414; Gordon Arlen and Enzo Rossi. In press. ‘Must realists be pessimists about democracy? Responding to epistemic and oligarchic challenges,’ *Moral Philosophy and Politics*; Jeffrey A. Winters. 2011. *Oligarchy*. Cambridge: Cambridge University Press.

⁴³ Sally Ho. 2018. ‘AP Exclusive: Billionaires fuel US charter schools movement,’ *AP News*. Available from: <https://apnews.com/article/92dc914dd97c487a9b9aa4b006909a8c>.

⁴⁴ Gwendelyn Nisbettaand and Stephanie Schartel Dunn. In press. ‘Reputation matters: parasocial attachment, narrative engagement, and the 2018 Taylor Swift political endorsement,’ *Atlantic Journal of Communication*.

⁴⁵ Craig Garthwaite and Timothy J. Moore. 2013. ‘Can celebrity endorsements affect political outcomes? Evidence from the 2008 US Democratic presidential primary,’ *The Journal of Law, Economics, and Organization* 29(2): 355–384.

Since it is an instrumental duty, it makes perfect sense that it is scalar. Influential citizens are under a stricter duty to give public reasons than less influential citizens. Because citizens do have unequal power to shape and influence policy. In addition, different *sites* are asymmetrically situated. A journalist leading a presidential debate wields significant political power, whereas if that same journalist is talking to her friends in a pub the same is not true. A legislator is in a different situation in the parliamentary chamber than when she is at home with her spouse.

So, what I propose is this. In line with the instrumental defence of deliberative restraint, the duty to give public reasons correlates positively with an individual citizens' opportunity to influence policy. 'Influential citizens' are under public reason requirements in a greater number of sites than 'uninfluential citizens.' Consequently, influential citizens may sometimes have to give public reasons in less influential sites while uninfluential citizens sometimes may not need to give public reason in more influential sites.

This retains Vallier's key insights, while recognising that some individuals have a direct effect on policy. Others at least contribute to the overall tone of the public political culture through their aggregate output.

Fully specifying what these scalar requirements should look like is an important avenue for further research. It should be clear, however, that journalists leading political debates, for instance, will typically have to refrain from structuring their questions after a comprehensive perspective.

The main takeaway is that we have good reason for thinking that citizens who do not hold public office, and who are not otherwise very influential, sometimes do not have to give public reasons. Especially once we consider Laborde's argument that public reason requirements impose extra burdens on religious citizens.

The next chapter will be devoted to exploring one sort of case where the requirement to give public reasons ought to be lifted for these 'uninfluential' citizens. They should not have

to give public reasons when they are opposing what I will call invasive laws, laws that would remove choices that are necessary for their life plans. This asymmetric distribution of public reason requirements will make the life of a religious citizen less costly.

6.5 CONCLUSION

I have argued that extending the scope of public reason beyond the basic structure can ensure that the principle of liberal collective self-legislation is met. This is an instrumental argument for why individual citizens should give public reasons in their political advocacy. And I have answered an important objection: that requirements of deliberative restraint for individual citizens are too costly. I conceded that it was costly, but not unjustifiably so since individual citizens influence the language and actions of public officials, and since the right sort of public political culture could lead to the principle of liberal collective self-legislation being satisfied.

In the next chapter, I consider whether there are cases where requirements of restraint should be relaxed for individual citizens. I argue that when citizens oppose so-called invasive laws, they do not need to give public reasons. The upshot of this asymmetric understanding of public reason giving requirements is that it alleviates some of the burdens on religious citizens discussed in this chapter.

CHAPTER 7: ASYMMETRY AND RELIGIOUS CITIZENS

In the previous chapter, I argued that the close connection between political deliberation and chosen laws and policies meant that there are instrumental reasons for enforcing a duty for citizens to give public reasons in support of their political advocacy. This idea is shared by many proponents of public reason liberalism, albeit often for other reasons.⁴⁶ According to virtually all proponents of such deliberative public reason requirements, these demands are symmetrical. If there is a moral duty to give public reasons in favour of a law or a policy, those who are opposed to the proposal will always have a corresponding duty to provide public reasons against it.

I suggested that public-reason requirements are scalar. With this, I meant that sometimes they will be relaxed. In this chapter,⁴⁷ I focus on a class of cases where some citizens should not have to provide public reasons in favour of their political advocacy. These are cases where the public-reason-giving requirements should be *asymmetric*. A regular citizen opposing an ‘invasive law’ – a law that interferes with important life choices – is under no obligation to give public reasons. A proponent of the law is. It is morally acceptable to provide only non-public reasons against invasive laws, but not in favour of them.

I apply the asymmetric view to the public debates around European so-called ‘burqa bans’ to illuminate the benefits and demonstrate how it works.⁴⁸ Empirical research suggests

⁴⁶ Leland, RJ., and Han van Wietmarschen. 2017. ‘Political liberalism and political community,’ *Journal of Moral Philosophy* 14 (2): 142–167, p. 162; John Rawls. 1997. ‘The idea of public reason revisited,’ *The University of Chicago Law Review* 64 (3): 765–807, p. 769; Lori Watson and Christie Hartley. 2018. *Equal Citizenship and Public Reason: A Feminist Political Liberalism*. Oxford: Oxford University Press, p. 7. As Vallier puts it, it is ‘widely thought’ that public reason liberalism entails that ordinary citizens need to give public reasons. Kevin Vallier. 2015. ‘Public justification versus public deliberation: The case for divorce,’ *Canadian Journal of Philosophy*, 45(2): 139–158, p. 139.

⁴⁷ See also my article based on this chapter, Henrik D. Kugelberg. 2021. ‘Opposing Laws with Religious Reasons,’ *Journal of Social Philosophy* 52(1): 131–151. An embryonic version of this argument can be found in my master’s dissertation. Henrik Dahlquist. 2017. ‘The scope of public reason under non-ideal conditions: Introducing the interference view,’ MSc in Political Theory, dissertation. London School of Economics. Available from: <https://www.lse.ac.uk/government/Assets/Documents/pdf/masters/2017/PT-Henrik-Dahlquist-2016-17.pdf>

⁴⁸ I will refer to such laws as ‘burqa bans.’ It is a misnomer since most Muslim women in Europe who cover their faces wear the niqab. Nevertheless, this is what the bans are typically called in the literature. Margit Warburg, Birgitte Schepelern Johansen and Kate Østergaard. 2013. ‘Counting niqabs and burqas in Denmark: Methodological aspects of quantifying rare and elusive religious sub-cultures,’ *Journal of Contemporary Religion* 28(1): 33–48. I do not intend to

that many niqab wearers believe that they have a religious obligation to cover their faces. Assuming some degree of non-compliance to the norms of public reason under non-ideal circumstances, a subset of these women will not be prepared to give public reasons against the bans. On the standard, symmetric, view of public reason, they would be excluded from the public political forum. If they believe that the religious reasons against banning the niqab are what truly motivates their opposition, they must ‘split themselves’. Of course, this is just a general corollary of the public reason requirement. However, I shall argue that this splitting is especially problematic in cases where citizens are defending their own comprehensive practices.

Note, that the idea of asymmetric requirement does not extend to public officials. Here, the importance of the justificatory aspect of civic equality overrides the benefits for the individual legislator. As I argued in chapter 3, viewing legislators primarily as individual citizens is not the right level of analysis. And, as I argued in chapter 4 and chapter 5, public officials justifying legislation with non-public reasons can lead to epistemic alienation. Taken together, these concerns outweigh the potential costs that legislators must bear when they offer public reasons.

The chapter begins by outlining how public-reason-giving requirements are traditionally understood (section 7.1), after which I present the main features of the asymmetric view (section 7.2). I then show how the view functions by discussing it against the debate around burqa bans (section 7.3), concluding that the view is less costly than symmetric views of public reason (section 7.4). Finally, I defend the view against a series of objections, concluding that it is a distinct and plausible implication of commitments that political liberals typically already hold (section 7.5).

offer a comprehensive account of burqa bans or the question of religious clothing. Instead, the niqab case merely serves as a way of making the advantages of the asymmetric view explicit.

7.1 SYMMETRIC VIEWS OF PUBLIC REASON

Just as chapter 6, this chapter focuses on the deliberative aspect of public reason. As discussed in that chapter, the deliberative aspect of public reason is a key feature of standard accounts of political liberalism. To rehearse the idea, the thought is that when we deliberate in public – as citizens – on which political action to take, we should not appeal only to controversial metaphysical doctrines or our own conceptions of the good. Instead, we should appeal to public reasons.⁴⁹ As Aurélia Bardon puts it, the question is whether citizens ‘have the moral right to refer to [only] religious reasons to support or oppose particular political decisions?’⁵⁰

What it means to deliberate in public is a somewhat undertheorised notion. It is often said that citizens need to offer public reasons in the ‘public political forum.’ When this kind of deliberation takes place, all citizens have a moral duty to offer one another public reasons. There is a moral ‘public-reason-giving requirement’.⁵¹ Often, the public political forum is defined in contrast to what it is not; citizens do *not* have to appeal to public reason around the dinner table, in the church, or in other private associations.⁵²

A few more clarifications are in order. In chapter 4, I argued that public reasons are those that are convergence accessible to all moderately idealised citizens. The argument in the present chapter, however, does not depend on accepting this standard. For the purposes of this chapter, it does not matter precisely how the line between ‘public’ and ‘non-public’ reasons is drawn. It suffices to assume that reasons that draw solely on divine sources are not public.

⁴⁹ John Rawls. 1993/2005. *Political Liberalism* (expanded edition). New York: Columbia University Press, p. 226.

⁵⁰ Aurélia Bardon. 2018. ‘Two misunderstandings about public justification and religious reasons,’ *Law and Philosophy* 37(6): 639–669, p. 646.

⁵¹ With Rawls, I will assume that this an ‘intrinsically moral duty’, not a legal standard. Rawls, ‘The idea of public reason revisited,’ p. 769. Rawls calls this a duty of civility. I take the more general term, ‘public-reason-giving requirement’, from Marc Stears and Mathew Humphrey. 2012. ‘Public reason and political action: Justifying citizen behaviour in actually-existing democracies,’ *The Review of Politics* 74(2): 285–306, p. 287.

⁵² Rawls, *Political Liberalism*, p. 217.

I will also accept – without defending it further – John Rawls’s ‘wide view’, the idea that citizens are allowed to give non-public reasons, provided that they also provide public reasons ‘in due course’.⁵³

With these remarks out of the way, let us begin. Recall from section 2.5 and chapter 6 the important distinction between the narrow view and the broad view of public reason. On the widely accepted narrow view,⁵⁴ held by theorists such as Rawls, Brian Barry,⁵⁵ and T. M. Scanlon,⁵⁶ public reasons need to be given only when we discuss questions concerning the ‘basic structure of society’.⁵⁷ The broad view, on the other hand, demands public reasons for debates over all (or most) political questions.

I argued in chapter 6 that the broad view is superior because it can ensure that the principle of liberal collective self-legislation is satisfied. Note, however, that there are cases where the two views converge. When a question is a part of the basic structure of society, all political liberals who are in favour of public-reason-giving requirements agree that we should be prepared to give public reasons. However, political liberals have previously failed to incorporate an essential distinction in their theories. If it is true that we should give public reasons for a certain set of laws, it does not entail that it would not be more worrying to justify *some* laws within this set non-publicly than others. It does not follow from the claim (1) it would be desirable to have public reasons for a set of laws that:

⁵³ Rawls, ‘The idea of public reason revisited,’ p. 784.

⁵⁴ Jonathan Quong. 2011. *Liberalism Without Perfection*. Oxford: Oxford University Press, p. 274.

⁵⁵ Brian Barry. 1995. *Justice as Impartiality*. Oxford: Oxford University Press, pp. 143–5.

⁵⁶ T. M. Scanlon. 2003. ‘Rawls on justification,’ in Samuel Freeman (ed.), *The Cambridge Companion to Rawls*. Cambridge: Cambridge University Press, pp. 162–3.

⁵⁷ To reiterate, the basic structure of society encompasses constitutional essentials, such as principles for the structure of the government and political processes, and the set of basic rights and liberties with constitutional protection, and matters of basic justice. Rawls, *Political Liberalism*, p. 227; see also Quong, *Liberalism Without Perfection*, p. 51.

(2) it would be equally troubling for all of these laws not to be publicly justified.⁵⁸

Further, it does not follow that:

(3) it would be equally troubling to oppose laws for perfectionist reasons as it would be to implement them.

Thus, it is possible to accept (1) without accepting (2) and (3). To my knowledge, all political liberals accept (3), regardless if we are for or against a law, we should give public reasons.⁵⁹ For instance, Jonathan Quong argues that citizens should offer ‘one another’ arguments that meet the public reason standard, in other words that citizens on both sides of a political dispute need to give public reasons.⁶⁰ I will call this the *symmetric view* of public reason. To reiterate, both narrow and broad views of public reason can be, and are, symmetric in this way.

In this chapter, I will reject (2) and (3). On (2), I will argue that there are paradigmatic cases where interfering legislation, all else equal, puts a greater burden on those subject to it than legislation in other areas. From this, I derive my rejection of (3).⁶¹ Stopping a law that would have interfered in a paradigmatic case from being implemented will, naturally, decrease the number of such interferences. When reasoning about these laws, it would not be as troubling to oppose them for perfectionist or comprehensive reasons as it would be to advocate them for those reasons. Indeed, as I shall argue, it can even be desirable to allow non-public reasoning when opposing such laws.

⁵⁸ To illustrate this distinction, suppose that ideally, passengers on the Underground should give up their seat to senior citizens. It may still be true that it would be particularly troubling if a person from a certain subset of seniors (for instance, those with physical disabilities) were not given a seat.

⁵⁹ Christopher Eberle, a notable critic of public reason discussed in section 5.2.2, summarises it so in Eberle. 2002. *Religious Conviction in Liberal Politics*. New York: Cambridge University Press, p. 14.

⁶⁰ Quong, *Liberalism Without Perfection*, p. 209.

⁶¹ Interestingly, to my knowledge no one has thus far shed light on the distinction between imposing and opposing laws within political liberalism. The symmetric view is implied without being explicitly defended. I believe that political liberals have reason to adopt the asymmetric view in paradigmatic cases, since it is consistent with the basic premises of public reason liberalism.

7.2 THE ASYMMETRIC VIEW

7.2.1 NON-INTERFERENCE

In chapter 6, I argued that there are strong instrumental reasons for why citizens should offer one another public reasons. In this chapter, I suggest that these requirements are defeasible. Citizens who oppose laws that would interfere in paradigmatic cases do not have to offer public reasons to make their case. Citizens who are in favour of such laws should give public reasons, just as they should for all other laws. This is an asymmetric public-reason-giving requirement, that entails that someone opposing a law that would forcibly prevent her from fulfilling her life plan can defend it with whatever arguments she sees fit.⁶²

Justificatory liberals have previously defended asymmetric views. Recall, that according to justificatory liberals, a law can be justified to different citizens for different reasons,⁶³ and all intelligible reasons, including inaccessible reasons, can be used as ‘defeaters’.⁶⁴

The claim I will be defending in this chapter is weaker. I argue that all reasons can be brought forth against a law in public deliberation, but I do not argue that it automatically renders a law publicly unjustified. At the same time, the insight of justificatory liberals about the difference between imposing laws and opposing laws should be important also for political liberals. In fact, it seems to be perfectly consistent with some of the fundamental ideas underpinning public reason.

⁶² It also entails that if Adriene wants to defend Bo’s way of life, she is free to do so with whatever arguments that *she* sees fit, perhaps something like comprehensive and far-reaching libertarianism. In what follows, I mainly focus on someone defending her own way of life.

⁶³ Paul Billingham. 2016. ‘Convergence justifications within political liberalism: A defence,’ *Res Publica* 22: 135–153.

⁶⁴ Gerald Gaus and Kevin Vallier. 2009. ‘The roles of religious conviction in a publicly justified polity: The implications of convergence, asymmetry, and political institutions,’ *Philosophy & Social Criticism* 35(1): 51–76, p. 61.

Kevin Vallier. 2016. ‘In defense of the asymmetric convergence model of public justification: A reply to Boettcher,’ *Ethical Theory and Moral Practice* 19: 255–266. I merely note here that the exact interpretation of the idea of defeater reasons is ambiguous. Because Gerald Gaus neither thinks that democratic decisions need to be unanimous, nor that institutional veto mechanisms should be in place. Gerald Gaus. 2011. *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World*. Cambridge: Cambridge University Press, pp. 458 – 9; 462–8; 495; see also chapter 3.

Political liberals have thus far overlooked the fact that it seems morally objectionable to only be prepared to accept a certain kind of justification or response when forcing someone else to change her way of life. The asymmetric view, on the other hand, incorporates a presumption in favour of non-interference in paradigmatic cases. Interference, here, is merely the absence of being forced to do or not to do something. This is broadly consistent with the standard, Berlinian, negative concept of liberty, the idea that ‘I am normally said to be free to the degree to which no man or body of men interferes with my activity’.⁶⁵ To work out the details of the asymmetric view, it is, therefore, useful to consider Berlin’s view in some more detail. I do not suggest that this is the ‘proper’ way of understanding freedom or that Berlin has the best or most fully worked out view of negative freedom. He probably does not. I turn to Berlin simply because I will be using only the core idea of non-interference, and for this, Berlin’s view is a widely shared and plausible starting point. The precise details are not important, and the following would most likely be compatible with many different ways of conceptualising non-interference and negative freedom.⁶⁶

To Berlin, interference does not have to be about a person being physically prevented from performing an act that she otherwise would have performed. A human-made act restricting options that a person has no desire to pursue also counts as interference. Non-interference is not about the realisation of particular desires, but about the ‘actual doors that are open’ – not being interfered with is having ‘a range of objectively open possibilities, whether these are desired or not.’⁶⁷

⁶⁵ Isaiah Berlin. 2006. ‘Two concepts of liberty,’ reprinted in Robert Goodin and Philip Pettit (eds.), *Contemporary Political Philosophy: An Anthology*. Oxford: Blackwell Publishing, p. 393; see also Berlin. 1997. ‘Freedom and determinism,’ in *The Proper Study of Mankind*. London: Vintage books; Berlin. 2008. ‘Introduction,’ in Henry Hardy (ed.), *Liberty*. Oxford: Oxford University Press.

⁶⁶ See for instance David Miller. 1983. ‘Constraints on freedom,’ *Ethics* 94(1): 66–86; Hillel Steiner. 1994. *An Essay on Rights*. Oxford: Blackwell; Felix E. Oppenheim. 1981. *Political Concepts: A Reconstruction*. Oxford: Blackwell. For a recent historical overview and critique, see Efraim Podoksik and Yiftah Elazar. In press. ‘How did negative liberty become a liberal ideal?’ *Journal of Political Ideologies*.

⁶⁷ Berlin, ‘Freedom and determinism,’ pp. 112–3.

A standard objection to freedom as non-interference is that not all instances of interference are equally troubling. Indeed, perhaps some types of interference may have nothing to do with freedom at all. By installing an extra traffic light on a street, the instances of interference would increase since cars would be stopped more often. However, according to Charles Taylor, this does not mean that people are less free after the traffic light is installed. The question should not be understood as a trade-off between freedom and child protection or road safety. Instead, ‘we are reluctant to speak here of a loss of liberty at all.’⁶⁸

The worry that some interferences have nothing to do with freedom can be easily avoided in the present context since my argument does not in any way presuppose a view about the true nature of freedom. If we focus only on non-interference – not non-interference as freedom – Taylor’s insight is consistent with the view outlined here. In fact, it may even be compatible with Berlin’s own views about freedom proper. Berlin believes that trivial interferences are also limiting freedom, but they are not given the same weight as fundamental ones.⁶⁹ Contrary to what is sometimes argued, Berlin allows for weighting freedoms differently:

The extent of my freedom seems to depend on (a) how many possibilities are open to me...; (b) how easy or difficult each of these possibilities is to actualize; (c) how important in my plan of life, given my character and circumstances, these possibilities are when compared with each other; (d) how far they are closed and opened by deliberate human acts; (e) what value not merely the agent, but the general sentiment of the society in which he lives, puts on the various possibilities.⁷⁰

The basic premise of the asymmetric view is in line with this claim: trivial instances of interference cannot be given the same weight as non-trivial ones. And, conversely, it is possible

⁶⁸ Charles Taylor. 2006. ‘What’s wrong with negative freedom?’ in Ian Carter, Mathew Kramer, and Hillel Steiner (eds.), *Freedom: A Philosophical Anthology*. Oxford: Blackwell Publishing, p. 155.

⁶⁹ I also think that Berlin would have a rather straightforward response. ‘Every law seems to me to curtail *some* liberty, although it may be a means to increasing another. Whether it increases the total sum of attainable liberty will of course depend on the particular situation.’ Isaiah Berlin. 1969. *Four Essays on Liberty*. Oxford: Oxford University Press, p. xlix n. 1. Jeremy Waldron makes a similar point in Jeremy Waldron. 1991. ‘Homelessness and the issue of freedom,’ *UCLA Law Review* 39: 295–324, p. 307. I leave this aside because it does not matter for my purposes.

⁷⁰ Berlin, *Four Essays on Liberty*, p. 130.

to identify a set of cases that are uncontroversially ‘non-trivial’. To remain faithful to the ideals of public reason liberalism, this set cannot be moralised or drawn from any one conception of the good. Luckily, there are resources available within Berlin’s framework to draw up the boundaries. Take Berlin’s (c): non-trivial freedoms are those that have special importance for people’s life plans. Everyone will want to live their lives in a certain way. In order to pursue a life plan, whatever it is, we must be free to make certain choices. Some of these choices are crucial in order to pursue a given life plan, they are *paradigmatically fundamental choices* (PFCs). The set of PFCs include things covered by standard liberal freedoms such as freedom of the person, conscience, and belief,⁷¹ and it includes choices necessary for life plans in the ordinary sense of the world, such as forming a family, having fulfilling interests, and a meaningful occupation.

7.2.2 PARADIGMATICALLY FUNDAMENTAL CHOICES

To reiterate, whatever life plan we have, there is a corresponding set of choices that we need to be able to make to pursue it. If the ability to make these choices is essential for the life plan, our freedom to make them needs to be unconstrained for the life plan to be available. For instance, if we want to live a Christian life, we need to be free to go to the church, if we want to have a large family, we need to be free to have many children, and so on. Given that everyone has an interest in developing and following their own life plan, we should expect a strong justification for limiting a person’s freedom to pursue their chosen way of life. There is a presumption in favour of being free to make PFCs ourselves. Correspondingly, it seems equally plausible that the justificatory demands for the person defending their own PFCs are less strict. A higher threshold is required for allowing Adriene to interfere with Bo’s PFC than for Bo

⁷¹ See for instance Jürgen Habermas. 1995. ‘Reconciliation through the public use of reason: Remarks on John Rawls’s Political Liberalism,’ *The Journal of Philosophy* 92(3); 109–31, p. 127.

stopping Adriene from doing so. If Bo's life plan is made unavailable, this will be costly for him. What the asymmetric view ensures is that he does not have to bear the additional burden of offering public reasons.

But not all life plans are equally important. A life plan that includes the PFC to drive against the direction of the traffic or murdering people does not have equal value as, say, being free to make choices necessary for forming a family. Not for moralised or perfectionist reasons, however. These 'imposing' life plans make other peoples' life plans difficult, or impossible, to pursue, and there is no presumption in favour of being free to pursue PFCs that do so. The benefit for the person wanting to pursue it is outweighed by the cost for the person whose life plan is imposed upon. Since the central idea is that we should be free to make choices for our life plans ourselves, life plans that make other ways of life impossible, or significantly more difficult, can thus be disregarded.⁷²

The presumption in favour of non-interference in paradigmatic cases implies that we should be as free as possible to make PFCs ourselves. This does not mean that interferences are always wrong. The claim is weaker. An interference with a non-imposing PFC will be costly for those who would have wanted to pursue it. Thus, it needs to be justified. The opposition to the interference does not have the same justificatory demands.

There is a specific class of rules that always interfere with PFCs. Suppose that under conditions of no rule it was possible to make the PFC and that the rule makes it *impossible*, or *significantly more difficult* to do so. These rules I call *invasive laws*. Examples include things like one-child policies, prohibiting the building of temples, banning certain types of clothing, and restricting women's access to the workforce.

⁷² It might be objected that this clause comes with counterintuitive results in cases of competition. For instance, if my life plan is to become the world's greatest chess player, world champion Magnus Carlsen – who also has this life plan – makes it impossible for me to pursue it, because he is much better at chess. In response, I think these sorts of issues only arise if we think of life plans in too fine-grained a way. The relevant life plan, in this case, should be whether we are allowed to play chess, not whether we can pursue and achieve this goal within the plan.

Some might object that societies adhering to political liberalism would never implement invasive laws. Any plausible balance of public reasons, they might say, would decisively come down against such legislation, and so the question of how we should deal with these cases would never arise. Or, within the framework defended in this thesis, such legislation would always violate civic equality.

In response, however, it is important to note that not all invasive laws would be unjustified or unjust, or violations of civic equality, and consequently they could be implemented or defended in political liberal states. While there is an overlap between invasive laws and laws infringing on rights, it is not necessary for a law to restrict a right to be invasive. Some people's preferred ways of life might require them being free to pursue PFCs such as using drugs, going fox hunting, or marrying several partners. It is far from clear that these activities are typically captured by our systems of rights, that banning the activities are sufficiently grave violations of civic equality to make them illegitimate, or that political liberalism necessarily would come down in favour of allowing them.⁷³ Still, laws restricting these choices are on my definition invasive.

From this, it is possible to distinguish two positions within a single debate. It would be morally unacceptable not to have public reasons in favour of invasive laws, but morally permissible to give only non-public reasons against them. In the former instance, the requirements are strict, in the latter, they are only baseline requirements (cognitively undemanding things such as being prepared to take one's opponents seriously).

In many areas of politics and public policy, rules are made that do not interfere with PFCs to a significant extent. In these cases, public-reason-giving requirements remain symmetrical because of the importance of ensuring the principle of liberal collective self-legislation being met.

⁷³ Peter de Marneffe. 1990. 'Liberalism, liberty, and neutrality,' *Philosophy & Public Affairs* 19(3): 253–274, pp. 259–60.

7.2.3 ENACTING AND REMOVING LAWS

There is a further distinction to be made. Imagine an invasive law *L*, a law that would interfere in paradigmatic cases if it were enacted and implemented. It is possible to examine the law at two times, *T*₁ and *T*₂. At *T*₁, *L* is not in place. At *T*₂, *L* is in place. Depending on whether we are at *T*₁ or *T*₂, there are two possible bills in relation to the law:

*T*₁, *Enact*: It is possible to propose a bill that enacts *L*.

*T*₂, *Remove*: It is possible to propose a bill that removes *L*.

Only one outcome of *remove* and *enact* respectively interferes in paradigmatic cases. If *remove* were passed at *T*₂, peoples' options would increase. If not, they would still be restricted. Conversely, the opposite is true for *enact* at *T*₁. On the standard symmetric view of public reason, this would not matter for the distribution of public-reason-giving-requirements. They would be strict for everyone:

	T₁ Enact invasive law	T₂ Remove invasive law
Against	Strict	Strict
For	Strict	Strict

The main difference between symmetric public reason views and the asymmetric view I am proposing here is the rejection of this claim. Instead of assigning the requirements symmetrically, they would be distributed in the following way:

	T₁ Enact invasive law	T₂ Remove invasive law
Against	Baseline	Strict
For	Strict	Baseline

Those advocating the positions that oppose the paradigmatic-case interference would be under baseline duties such as taking their opponents seriously. Their opponents would be under strict duties.

The asymmetric view is consistent with what arguably is the standard justification of public reason: we want to avoid being coerced based on reasons that we do not accept the normative relevance of.⁷⁴ Not enacting an invasive law would not be coercive. And removing an invasive law would not be coercive. So, on the standard view, what reasons do we have for demanding only a certain kind of justification for not interfering with someone else? Standard versions of public reason, therefore, seem to have strong reasons internal to their theoretical framework for accepting the asymmetric view, even if they have yet to consider this possibility. It is therefore puzzling that asymmetric requirements among political liberals so far are missing from the literature.

⁷⁴ For an overview, and an argument in favour of a particular interpretation of the coercion model, see Baldwin Wong. In press. 'Public reason and structural coercion: In defense of the coercion account as the ground of public reason,' *Social Theory and Practice*.

However, I have not pursued the standard justification for political liberalism. Rather, I have appealed to the value of civic equality. On this view, coercion is not what triggers public-reason requirements. The fact of coercion cannot, on my view, do any heavy lifting on its own.

In the remainder of this chapter, I will argue that regardless of what our basis for public reason is, it would be preferable to have an asymmetric view. The reason is that it would ensure that public reason views are less costly. The view will be applied to the question of European burqa bans to illustrate this.

7.3 BURQA BANS AS INVASIVE LAWS

To consider the asymmetric view against the burqa ban backdrop, we first need to establish that wearing the niqab is a PFC and that a ban against doing so, restricting this choice, would thus be ‘invasive’.

The choice to wear the niqab is a PFC if it is essential for one or several life plans. That is, if it is a choice that we need to be able to freely make in order to pursue the life plans. Empirical evidence suggests that this is true. Wearers describe it as an important part of their ‘lifestyle’. They typically see it as a fundamental part of their identity, culture, or religion.⁷⁵ Hence, if the choice to wear the niqab is a PFC, a law against doing so would be invasive. Under conditions of no law, it would be possible to make the PFC, when the law is introduced it is no longer possible. Someone deciding to wear the niqab despite the law will be interfered with. Over the French burqa ban’s first five years 1 623 police stops were made, with 1 546 fines given out.⁷⁶

⁷⁵ Kate Østergaard, Margit Warburg, Birgitte Johansen. 2014. ‘Niqabis in Denmark: When politicians ask for a qualitative and quantitative profile of a very small and elusive subculture,’ in Eva Brems (ed.), *The Experience of Face Veil Wearers in Europe and the Law*, Cambridge: Cambridge University Press; see also Faegheh Shirazi and Smeeta Mishra. 2010. ‘Young Muslim women on the face veil (niqab): A tool of resistance in Europe but rejected in the United States,’ *International Journal of Cultural Studies* 13(1): 43–62.

⁷⁶ Ben McPartland. 2015. ‘Burqa ban five years on – ‘We created a monster’.’ *The Local France*. 12 Oct. Available from: <http://www.thelocal.fr>.

A possible worry is that the empirical research is flawed, that women are forced to wear the niqab. If so, the PFC to wear the niqab is not essential since it is not made freely. Then, a ban against the niqab, it could be argued, would increase the number of choices available to some women. While the empirical studies are so far underwhelmingly few and the sample sizes are small, the current best evidence suggests that European women are – in fact – freely and willingly choosing to wear the niqab. In her qualitative studies, Eva Brems has found that ‘there is no evidence, in either France or Belgium, of pressure from husbands or relatives to wear a face veil; while there is recorded pressure from husbands and relatives to not wear a face veil.’⁷⁷ Wearers generally do not accept the argument that the niqab represents an unequal gender structure or oppression. A typical answer is ‘I totally refute the argument which claims that wearing the niqab is a submission to man.’⁷⁸ Studies from Denmark, England, and the Netherlands draw similar conclusions.⁷⁹

I want to reiterate that we currently do not know enough to give a conclusive answer to this question. Nevertheless, even if it were true that many women are forced to wear the niqab, it is not necessarily the case that it would change the evaluation. First, the *potential* PFC of wearing a niqab is limited, someone waking up one day convinced that she genuinely would want to wear the niqab is no longer able to do so. Hence, this should at least be given some weight, and the potentially increased freedom of some niqab wearers would at least have to be balanced against the increased interference with the potential PFCs of those not currently wearing the niqab and the interference with those who wear it freely.

⁷⁷ Eva Brems. 2014. ‘Face veil bans in the European Court of Human Rights: The importance of empirical finding,’ *Journal of Law and Policy* 22(2): 517–551, p. 545.

⁷⁸ Naima Bouteldja. 2014. ‘France vs England’, in *The Experience of Face Veil Wearers in Europe and the Law*.

⁷⁹ A considerable proportion of the women are born in ‘Western’ families and have converted to Islam as adults. The studies indicate that women critically reflect on their choice to wear niqabs. In one study, ‘all interviewees describe their decision as a well-considered and free decision’, Eva Brems, Yaiza Janssens, Kim Lecoyer, Saïla Ouald Chaïb, Victoria Vandersteen, and Jogchum Vrielink. 2014. ‘The Belgian “Burqa Ban” and insider realities,’ in *The Experience of Face Veil Wearers in Europe and the Law*, p. 81, and in another ‘none of [the women] use explanations such as “we are used to it” or “it is tradition”’. Rather, ‘the women pointed out that it was only after careful consideration ... that they chose to veil their face,’ Østergaard et al., “Niqabis in Denmark”, p. 60. See also Irene Zempi. 2016. “It’s a part of me, I feel naked without it”: Choice, agency and identity for Muslim women who wear the niqab,’ *Ethnic and Racial Studies* 39 (10): 1738–1754; Annelies Moors. 2014. ‘Face-veiling in the Netherlands: Public debates and women’s narratives’, in *The Experience of Face Veil Wearers in Europe and the Law*.

More importantly, since it has been argued, but not proven, that people are forced to wear the niqab, empirical proof could generate sound public reasons in favour of a ban. Allowing non-public reasoning against the ban would ensure that those who *are* freely choosing to wear the niqab could still use religious reasoning when opposing the ban. This seems generalisable so that if many people are forced to Φ , there are strong public reasons for making it illegal, and we should not be as worried if a few people use non-public reasoning to defend Φ -ing.

Having established that bans against wearing niqabs are invasive, I will show how the asymmetric view would change the costliness of public reason.

7.4 COSTS OF SYMMETRIC VIEWS OF PUBLIC REASON

7.4.1 EUROPEAN NIQAB WEARERS

Let us begin with the following stylised case:

Niqab wearer. Aisha has freely chosen to wear the niqab. To her, being free to make this choice is an integral part of her life plan. It is essential for her religious commitments and her cultural identity. The citizenry in Aisha's country debates a ban against niqabs. Aisha is opposed to the law. She believes that a ban would make the legislation of their country incompatible with religious truths, since for her, wearing the niqab is a religious obligation. She is unwilling to comply with the norms of public reason. In public, the only justification she wants to use for defending her practice is non-public.

Not exempting Aisha from public-reason-giving requirements would come with *exclusion* and *agential* costs, discussed in turn.

7.4.2 THE EXCLUSION COST

In passing, Rawls – the most notable proponent of the symmetric view – discusses cases where public reason arguments defeat religious views. As an example, he argues that a Roman Catholic might oppose a pro-abortion law but still recognise ‘the right as belonging to legitimate law enacted in accordance with legitimate political institutions and public reason.’⁸⁰ The case should not worry us, Rawls claims, since Catholics ‘need not themselves exercise the right to abortion.’⁸¹ While this is true for abortion laws, it is not for any regulation going against someone’s religious ideals. Rawls fails to address the inevitable follow-up question: what about laws where citizens do need to alter their way of life to oblige with them?

Again, an opponent might press that such laws would not be permissible in the political liberal state. I have difficulty seeing why not. It is possible to imagine justifications for bans against covering the face that meet the demands of public reason.⁸² The final version of the French law, after initially being explicitly targeted at Muslim niqab wearers, did not rely on comprehensive claims or references to the niqab. Instead, it merely stated that no one could ‘wear clothing intended to conceal their face in public.’⁸³ The justification was altered, now the ban was (among other things) said to protect peace and security, and the conditions necessary for living together.⁸⁴ At least security would on many views be accepted as an uncontroversial primary good and a public reason. The value of security is normatively relevant for all (sufficiently idealised) citizens, regardless if the set of public reasons is delineated by what are shared or convergence accessible values.⁸⁵

⁸⁰ Rawls, ‘The Idea of Public Reason Revisited,’ pp. 798–9.

⁸¹ Ibid.

⁸² For some examples of reasons that might plausibly be described as public, see Christian Joppke and John Torpey. 2013. *Legal Integration of Islam: A Transatlantic Comparison*. Harvard University Press, p. 24

⁸³ LOI n° 2010–1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l’espace public (1), article 1. My translation from ‘[n]ul ne peut, dans l’espace public, porter une tenue destinée à dissimuler son visage.’

⁸⁴ Gerhard Van der Schyff and Adriaan Overbeek. 2011. ‘Exercising religious freedom in the public space: A comparative and European Convention analysis of general burqa bans,’ *European Constitutional Law Review* 7(3): 424–452, p. 426.

⁸⁵ For a similar point, in a different context see Cécile Laborde. In press. ‘Reply to Quong, Patten, Miller and Waldron,’ *Criminal Law and Philosophy*, p. 5.

Why are symmetric public reason requirements imposing an exclusion cost on Aisha? Suppose that she would want to make the following argument: (i) the best interpretation of Islam says that women should cover the face, (ii) the laws of our society should be compatible with the best interpretation of Islam; therefore, (iii) we should legally permit covering the face in public.⁸⁶ Neither (i) nor (ii) are reasons that all sufficiently idealised citizens could be expected to endorse or share, and they are not convergence accessible. Hence, on the symmetric view of public reason, Aisha would not be morally permitted to participate in the political deliberation in the public forum, unless she was prepared to change her argument. This is the exclusion cost.⁸⁷

Even if public-reason-giving requirements are not legally enforced, they hold power over individuals' behaviour. Recall Vallier's argument from section 6.4.1 that moral rules could still be strictly enforced in the sense that violators are met with strong disapproval, leading individuals to refrain from acting as they otherwise would.⁸⁸ To assume otherwise would make it difficult to see the relevance of discussing moral duties at all. The exclusion that citizens face is thus about having their views not taken seriously by their fellow citizens and being excluded from the set of people that are listened to when legislation is crafted.

Adherents to the symmetric view probably would bite the bullet here. They might say that since Aisha is unwilling to provide public reasons for her practice, she should not be morally allowed to defend it in public. Instead, she should leave the defending of the freedom to wear the niqab to others, who are willing to give public reasons against the ban. In the remote possibility where no one can give public reasons, opponents of the asymmetric view

⁸⁶ I borrow this way of framing an argument based on non-public reasons from a similarly structured argument on prohibiting same-sex marriage, in Ara Peter Astourian. 2017. *A New Defense of Public Reason*. Doctoral thesis, University of Southern California, p. 1.

⁸⁷ Cécile Laborde discusses similar kinds of concerns in relation to religious exemptions. The relationship between the view presented here and exemptions from general laws would be an interesting area for further research. Laborde. 2019. 'Intelligibility, moral loss and injustice,' *Journal of Applied Philosophy* 36(5): 727–730.

⁸⁸ These kinds of concerns are common among liberals, as Kevin Vallier puts it, John Stuart Mill 'is far from alone in worrying about the interference legitimized by widely recognized moral rules....' Vallier, 'Public justification versus public deliberation,' p. 145.

would be happy to have found a case where public reason is conclusive. The niqab should be banned. However, if so, it would be banned, without taking the voices of those defending the practice into account. In other words, the strategy potentially comes with massive costs of exclusion. If this is an unwanted implication, we have tentative reasons for accepting an asymmetric view of public reason.

7.4.3 THE AGENTIAL COST

The agential cost of public reason is the cost that individuals bear when they are involved in public reason giving. While there could be several agential costs, I will focus on the standard dualism critique of public reason. The idea is that religious citizens having to engage in public reasoning are subject to a specific harm: their identities are threatened. Citizens of faith cannot deliberate as their full selves.⁸⁹ The thought is that public reason theories fail to recognise how central to one's identity religion often is.⁹⁰

The asymmetric view would ensure that this cost is eliminated in paradigmatic cases.⁹¹ When certain, central, practices are at stake, citizens can debate as their full selves, and their identities are therefore better protected. The asymmetric view does not, however, eliminate all agential costs of public reason. Religious citizens would still have to split themselves when trying to impose legislation on someone else's preferred way of life. People of other religions, or Muslims with different theological interpretations, may have to split themselves in the niqab debate when trying to prevent people from wearing the niqab. Perhaps Dan sincerely believes

⁸⁹ Andrew Murphy. 1998. 'Rawls and the shrinking liberty of conscience,' *The Review of Politics*, 60(2): 269–76.

⁹⁰ In a particularly forceful version of this argument, Michael Perry says that to 'bracket' religious convictions is to 'annihilate' essential 'aspects of one's very self.' Michael Perry. 1988. *Morality, Politics, and Law: A Bicentennial Essay*. New York: Oxford University Press, pp. 181–2; see also Nicholas Wolterstorff. 1997. 'The role of religion in decision and discussion of political issues,' in Robert Audi and Nicholas Wolterstorff (eds.), *Religion in the Public Square: The Place of Religious Convictions in Political Debate*. Rowman & Littlefield, p. 105.

⁹¹ An argument similar to this is mentioned in Gerald Gaus. 2009. 'The place of religious belief in public reason liberalism,' in Maria Dimova-Cookson and Peter Stirk (eds.), *Multiculturalism and Moral Conflict*. New York: Routledge, p. 31.

that the main reason for banning niqabs is that it is *not* God's will to wear them – in fact, it is a disgrace to God.

This instance of the agential cost should not be too worrying for two reasons. First, virtually all accounts of political liberalism share this cost, and we would have to provide a significantly different account to avoid it. Second, it would most likely be costlier for Aisha to have to 'split' herself when she is defending her choice to wear the niqab than it would be for Dan trying to stop her from continuing to do so. Aisha's life plans are threatened, Dan's are not. Of course, we may see Dan's life plan as 'living in a moral community that shares a commitment to the same substantive ideals as himself'. On this reading, the choice to stop someone from wearing the niqab could be understood as a PFC. However, this PFC would not meet the test of non-imposition – the only way of achieving it would be to seriously interfere with other people's ways of life, given reasonable pluralism. This corresponds to how Dan, if he were to succeed in justifying a law against niqabs with non-public reasons, would create a new, and different, cost – the law would violate Aisha's status as a civic equal, because she would be subject to a law justified with reasons that are not convergence accessible to her.⁹²

It might be argued that the asymmetric view is imposing small violations of civic equality in cases where the symmetric understanding of public reason does not. The asymmetric view lets those who oppose an invasive law 'disrespect' those who argue in favour of it, by giving them non-public reasons.

This is incorrect, however, because I am not concerned with the 'disrespect' between individual citizens. Indeed, I do not consider it disrespectful to sincerely offer non-public reasons.⁹³ The reason I have for thinking that public reason requirements are important for individual citizens is the instrumental benefits discussed in chapter 6.

⁹² As I argued in chapter 5. See also Charles Larmore. 1999. 'The moral basis of political liberalism,' *The Journal of Philosophy* 96(12): 599–625; Martha Nussbaum. 2011. 'Perfectionist liberalism and political liberalism,' *Philosophy & Public Affairs* 39(1): 3–45, p. 35.

⁹³ Those who want to incorporate the asymmetric view into a view of public reason that does see such things as disrespectful would have to balance this cost against other costs. I think such balancing would come down decisively

Legislators are still not permitted to appeal to only non-public reasons. Here, the importance of ensuring civic equality in the moment of justification of law is more important than allowing individual legislators to reason however they see fit. As I argued in chapter 3, legislators should be viewed as representatives of the state, as part of a thicker group agent, not as individual citizens. The relevant consideration is not whether it is costly for them to offer public reasons. It would be wrong for public officials to only appeal to non-public reasons when crafting legislation, even if that legislation opposes invasive laws.

7.5 SOME FURTHER CONSIDERATIONS

7.5.1 A SOLUTION WITHOUT A PROBLEM?

It might be objected that in all cases where the asymmetric view applies, there will always be public reasons available to the opponent of the invasive law. If a law burdens an individual by making her unable to exercise a freedom essential for her conception of the good, her wanting to avoid this burden would be a plausible public reason. Thus, she might say (a) this law prevents me from Φ -ing (and Φ -ing is required by my non-public commitments), and (b) this means that the law restricts this liberal right or that liberal freedom. If we incorporate the asymmetric view, it is permissible to appeal only to (a), but a critic might argue that the cost involved in making the statement compatible with the standard view by adding (b) is not

in favour of letting Aisha appeal to whatever reasons she wants to. Viewing the giving of non-public reasons against the burqa ban as equally disrespectful as coercive disrespect would not track the intuition that it is worse to be disrespected in cases where we have greater substantive objections, when more is at stake for us. For those arguing in favour of a ban, the main thing at stake is having to live in a society where others wear niqabs. While the debate on the nature of coercion is beside the point for my purposes, let me offer some tentative objections to a view where the enforcement of an invasive law would be on par (coercively) with the non-enforcement of it. Could we say that someone is coerced if she cannot successfully enact a burqa ban? If not, we should have reasons for assigning a minimal weight to the value of being 'respected' in this sense when imposing invasive legislation. We must balance the small value of not being disrespected when imposing or upholding restrictions of other people's freedom to live their lives as they see fit against the greater exclusion and agential costs that getting rid of this 'disrespect' would entail. In this trade-off, I hope to have made clear that the pros of the asymmetric view outweigh the potential cons. And, importantly, this seems to be perfectly compatible with the standard justification for public reason liberalism. I say more about this in Kugelberg, 'Opposing laws with religious reasons.'

necessarily that great. Hence, the objection goes, if there are always public reasons available, and the cost of appealing to them is not substantial, it is not clear what the advantage of the asymmetric view would be.

There are two things to say in response. The first is to reiterate the implausibility of demanding a certain kind of reason in response from someone who is coerced into changing the way she lives. In such cases, I believe with Stanley Benn that the burden of proof surely must be on the person interfering, not on the person being interfered with.⁹⁴ Hence, even if it could be shown that it rarely is costly for someone to translate their argument into public reasons, there are grounds for not putting the same justificatory requirements on a person defending her (non-imposing) practice as a person trying to stop her from pursuing it. From this, it is difficult to see why we would be in a normative position where we can accept only justifications of a certain quality when trying to stop someone from following their life plan.

In the same spirit, as Andrew Mason highlights, when legislation threatens one's way of life it may be worthwhile to allow people to appeal to whatever reasons they see fit. As he puts it in relation to bans on headscarves in schools:

consider two ways in which citizens might try to defend this right. First, they might give a religious reason, by arguing that not wearing a headscarf in class would offend Allah. Second, they might give a public reason argument... Why should we regard the giving of reasons of the first kind as a display of unreasonableness?⁹⁵

⁹⁴ Stanley Benn. 1988. *A Theory of Freedom*. New York: Cambridge University Press, p. 87. Similarly, we can take quite literally John Stuart Mill's idea that 'the burden of proof is supposed to be with those who are against liberty; who contend for any restriction or prohibition.' A generous understanding of this would not only accept that the burden of proof is with the interferer, but also hold that it is (in principle) possible to prove that an interference is justified, also for other reasons than those provided by Mill. John Stuart Mill. 1859/1991. 'On liberty,' in John Gray (ed.), *On Liberty and Other Essays*. New York: Oxford University Press, p. 472.

⁹⁵ Andrew Mason. 2012. *Living Together as Equals: The Demands of Citizenship*. Oxford: Oxford University Press, p. 159.

Moreover, and more importantly, there are perfectionist arguments that are not easily accommodated in the public reason framework. If not, it seems as if the whole point of making public reason seems to be undermined. This objection assumes that it is easy to change non-public arguments to public ones because it presupposes that the original argument is already closely mapped on public reason. But for argument such as Betty's – 'the laws of our society should be compatible with the best interpretation of Islam' – this is not the case.

Finally, if these kinds of rights-based arguments are always available, we should welcome that. Because it would mean that there are public-reason arguments available for public officials to appeal to in the legislative process. There is space for public officials to provide public reasons to supplement the permissible non-public reason giving of individual citizens.

7.5.2 OTHER PARADIGMATICALLY FUNDAMENTAL CHOICES

We might also think of other kinds of cases, where citizens are interfered with to secure the rights and liberties of other citizens. When the legality of the French ban on face veil was upheld in the European Court of Human Rights, the Court accepted the government's argument that banning covering the face was necessary to secure the rights of other citizens.⁹⁶ This seems implausible in the niqab case, but it is clearly possible to imagine invasive-looking laws that undoubtedly protect the rights and freedoms of others. Should the requirements really be asymmetric in *those* cases?

In response, it is important to note that behaviours that are direct threats to the rights of other citizens are covered by the non-imposing requirement. In one sense, a law against murder is 'invasive' because it prevents those who would want to pursue a murderous lifestyle from doing so. But since that way of life imposes on other people's ways of life, the murderer, defending her lifestyle in public, would need to try to find public reasons to make her case.

⁹⁶ Sune Lægaard. 2015. 'Burqa ban, freedom of religion and "living together,"' *Human Rights Review* 16(3): 203–219.

However, some PFCs are not as straightforward, those where there is reasonable disagreement over whether they are imposing or not, or those where the life plans only increase the risk of rights-violations. For instance, a case typically invoked in debates over religious exemptions is Sikhs being exempted from bans against carrying knives.⁹⁷ The Sikh is not directly imposing on someone else's way of life simply by carrying the kirpan, but perhaps it could be argued that it gives him the opportunity to do so. While I cannot give a full picture of how to deal with borderline cases here, I ultimately believe that whether they should be seen as imposing or not is an empirical matter, and distributing the requirements is something that would need to be done through a deliberative process. If we can determine that the best evidence shows that allowing Sikhs to wear ceremonial knives would plausibly lead to rights-violations of other citizens, then there is a case to be made that Sikhs defending the practice would need to supplement their non-public reasons with public ones. If the best evidence does not show this, they do not have to give public reasons when defending the practice. It is also important to note that the fact that the risk might be increased is by itself not sufficient to make the requirements symmetric. Liberal states allow all kinds of behaviours that impose risks on others (driving cars, flying airplanes over cities, and so on) without much cause for concern.

We might also worry that the asymmetric view is too concerned with non-interference. For most people, the argument could go, what is important is not being free from interference, but having access to some good(s) or having the capacity (or capability) to pursue some (set of) desire(s). Take the following case, for example:

Bus line: Emma lives in a society committed to the broad view of public reason that has incorporated the asymmetric view. She lives in a desolate part of the country, she does not own a car, and most of the facilities necessary for her PFCs (the church, the sports centre) are in a city far from where she lives. The only way for her to get to the city is with a publicly funded bus line. Now, there is a proposal that the line is too costly and should be removed.

⁹⁷ E.g. Peter Jones. 2017. 'Religious exemptions and distributive justice,' in Cécile Laborde and Aurélia Bardon (eds.), *Religion in Liberal Political Philosophy*. Oxford: Oxford University Press, p. 167.

My broad asymmetric view of public reason does not relieve Emma from public-reason-giving requirements. However, if the cuts were implemented, she would not be able to pursue her PFCs. The objection, then, is that the asymmetric view arbitrarily privileges a certain baseline, one without interference. Thus, the critique would mirror traditional points from the debate on the nature of freedom.

The objection misses the mark. First, I do not suggest that those arguing in favour of cutting funding for the bus line would be exempted from the public-reason-giving requirements either. The asymmetric view does not extend beyond invasive laws, and the funding of the bus line does not directly interfere with specific life plans. Further, I do not claim that non-interference is the only thing of value for people – having access to the bus line clearly is valuable to Emma. I also do not argue that it would be unjustified to continue operating the bus line. What the asymmetric view entails is only that Emma must give public reasons, just like everyone else, when arguing in favour of the bus line. If a law is not invasive, the requirements are symmetrical, just as on the traditional, symmetric, view. She either succeeds, and the line continues, or she does not. Public funds have been drawn from individual citizens. They must be allocated to the bus line rather than any other public project. There is a clear opportunity cost to spending the money on Emma's bus line. In short, the money could be used to fund another bus line going past Geri's house. It is not clear why we should privilege Emma over Geri.

Even if we believe that there are reasons for privileging the status quo, it does not ground sufficient reasons for extending the asymmetric requirements to *Bus line*. Suppose that the government needs to balance its budget and that this requires removing funding from one of many initiatives. One initiative is Emma's bus line, another is, say, a bus line going past Melanie's house. Other initiatives are just as important for the life plans of others. If the government decides not to cut the funding for the bus line, it has to cut the funding for something else. Invasive laws do not have the same structure. Laws making ballet or football

illegal would effectively remove these PFCs without creating other opportunities. This, I believe, make enough of a moral difference to justify an asymmetry for invasive laws but not in *Bus line*-type cases.

7.5.3 FOX HUNTING

It might be objected, further, that not all PFCs are uncontroversial. Many people seem to find the niqab degrading or offensive, and the same is true for the choices necessary for other life plans. Why, then, should someone engaging in an objectionable way of life not be required to defend it with public reasons? Take, for instance, someone who believes that a valuable life is one where she can go fox hunting. The practice is widely believed by opponents to be both cruel and immoral. However, the fox hunters themselves see it as a fundamental part of their way of life. Proponents of fox hunting describe how it is ‘a vital thread in the fabric of rural society’, how it makes a ‘social contribution to the lives of rural communities,’ and how many retired people see it as their ‘chief leisure activity’.⁹⁸

Assuming that fox hunting is non-imposing,⁹⁹ we have reason to believe that the practice is a PFC. And if it is a PFC, a law making it illegal would be invasive. Proponents of fox hunting seem to view it so, Roger Scruton argues that, for people in rural communities, a ban would be ‘an assault on their way of life’.¹⁰⁰ Indeed, he (perhaps overstatedly) says that to ‘criminalise [fox hunting] would be to introduce legislation as illiberal as the laws which once deprived Jews and Catholics of political rights, or the laws which outlawed homosexuality’.¹⁰¹

⁹⁸ Roger Scruton. 2008. ‘Fox-hunting: The modern case,’ Written submission to the Committee of Inquiry into Hunting, available from: The National Archives, <http://webarchive.nationalarchives.gov.uk/20080818111214/http://www.defra.gov.uk/rural/hunting/inquiry/evidence/scruton.htm>; MFHA: *Social impact of foxhunting on rural communities*. Available from: http://www.mfha.org.uk/index.php?option=com_content&task=view&id=62&Itemid=58.

⁹⁹ This, of course, disregards how it imposes a burden on the fox.

¹⁰⁰ Scruton, ‘Fox-hunting.’

¹⁰¹ Ibid.

With the asymmetric view, fox hunters would be allowed to use non-public arguments when defending their practice. For instance, they might say that it is vital to engage in fox hunting to live a flourishing life,¹⁰² and so it should be permissible. Is this plausible? Why should we assign any value to a way of life that many people find repulsive?

One way of answering this objection is by noting that the asymmetric view does not come with any judgements of the value of the PFCs it covers. It does not imply that we, ‘you and me’, need to endorse or appreciate fox hunting. Further, it remains silent on the question of whether fox hunting should be legal or not. On the contrary, if there are sound public reasons for making it illegal, and a ban is enacted and implemented using proper democratic procedures, nothing is stopping us from making it illegal. The principle of liberal collective self-legislation demands that citizens should be free to make such choices.

The asymmetric view, contrary to Scruton, does not rely on the argument that we have a fundamental right to engage in fox hunting. The only assumption is that the freedom to hunt foxes is valuable for those who do so. In the deliberation around this practice, introducing asymmetric requirements does not give a veto to the fox hunters; it merely allows them to use non-public reasons.

Further, it would not be in line with broader public reason liberal commitments to allow judgements on the value of different ways of life into the theory. While as private persons we may find some ways of life undesirable, these objections should not be bootstrapped into our theory of public reason. Doing so would open the door to an objectionable form of perfectionism.

Should the consequence that fox hunters are allowed to reason non-publicly lead us to give up the asymmetric view? I believe that it should not. Rather, we should acknowledge that this practice is a central part of what gives their lives value, and if we believe that we have

¹⁰² Assuming that they construct the argument in a way such that it is not convergence accessible, it is not a public reason.

sound public reasons for stopping them from pursuing it, we should allow them to oppose us with whatever reasons they see fit.

A possible objection is that it could be wrong to impose unequal justificatory burdens on two parties in a single debate, that the asymmetry is unfair because it allows non-public reasoning from some but not from others. If this is true, it would be worrying for the asymmetric view. This cost would then have to be balanced against the benefits of the view. However, I believe that the asymmetry is not an injustice, or an instance of unfairness, since it is not arbitrary. It is a result and a reflection of the asymmetric relationship that already exists between a person interfering and the person she interferes with. If the interference is successful, the person who is exempted from the public-reason-giving requirements will have to bear a significant burden. If the interference fails, the person interfering does not have to bear any (or a minimal) burden. The asymmetric distribution of duties is thus not unfair; it reflects what is at stake for the two parties. Further, since everyone has an interest in protecting their PFCs, regardless of what they are, they can recognise that when (if) their PFC is at stake they, too, will be exempted.

It is more difficult to avoid the weaker conclusion that the asymmetric view violates some criterion of reciprocity, the idea that somebody who wants to engage in liberal democratic politics ought to accept the ground rules on which that politics is based: ‘if you do not want non-public reasons used against you, you should exercise self-restraint yourself.’ However, since most political rules are not invasive, most public deliberation will be reciprocal. The argument from reciprocity only succeeds if we believe that citizens will expect reciprocity also when proposing invasive laws. Provided that they are aware that their public reason regime is asymmetric, they can predict that they should not expect public reasons from their opponents in these limited instances. If we are reciprocal outside the realm of invasive laws, and if we can reasonably predict when we should not expect reciprocity, most of this cost may be avoidable.

A final worry is that the asymmetric view might undermine the argument from chapter 6 about how public reasoning can lead to single-peaked preferences. If some participants will occasionally not use public reasons, perhaps this will make it more difficult to order alternatives on a shared scale. Hence, the problems of satisfying the principle of liberal collective self-legislation re-emerges.

In response, I do not believe that this would often be the case. Invasive laws are typically binary – they either restrict an action or they do not. In binary choices, there cannot be cyclical preferences, and majority rule decision-making lets the group arrive at a decision that satisfies the principle of liberal collective self-legislation. I grant that there will be instances where the choice is not binary. We could, for instance, imagine a debate around burqa bans that considered three options: a full ban, a partial ban, and no ban. Even still, in cases like this, there is a perfectly natural way of constructing a shared scale: from the smallest limitation to the greatest. Recognising this does not turn on everyone appreciating the underlying reasons for why this judgement is made.

7.6 CONCLUSION

I have argued that political liberalism traditionally understood lacks the theoretical resources for distinguishing between a person trying to change someone else's life plans from the person whose life plan is changed. This is objectionable since there should be a presumption in favour of non-interference in paradigmatic cases. To mitigate this, I have defended an asymmetric view of political liberalism. By discussing it in relation to European burqa bans, I have shown that it avoids significant costs, while remaining faithful to the ideals of public reason liberalism.

CONCLUDING REMARKS

This thesis has provided an account of what makes the employment of state power permissible. It has synthesised democratic theory and public reason liberalism, and by doing so it has provided a theory of legitimacy that can be readily applied in real-world liberal democracies.

I have called my account a democratic form of political liberalism. Against this, it might be asked whether the theory that I have outlined really should be described as such. Specifically, does my theory warrant inclusion in the broader family of public reason liberalism? Political liberals such as John Rawls and Jonathan Quong give intricate explanations about the relationship between the comprehensive commitments of individuals and their views about justice, about the role of securing a multi-level overlapping consensus and stability for the right reasons, and about the natural duty of justice. Gerald Gaus grounds public reason in moral psychology and our reactive attitudes and tries to show how freedom and authority can be reconciled while realising justice. What these theories do, albeit in different ways, is to provide a coherent response to the question of how to secure a legitimate *and just* social order.

The view presented here, on the other hand, denies that public reason can secure the legitimacy of law by itself, and it recognises that the set of legitimate laws is much broader than the set of just ones. A legitimate order is a complex state of affairs that can be traced to secure democratic processes and to laws that do not violate citizens' status as civic equals. Drawing on Cécile Laborde's work, I argued that the justificatory demands of public reason are but one important consideration in determining whether a law is legitimate or not. Establishing whether a law is just is, I believe, an entirely different question again.

Some readers might worry that, in pursuing this strategy, the view defended here loses something fundamentally important about public justification. The concern is that for all I have said about the public justification principle, the convergence accessible standard of public reason I have defended cannot ensure that it is met.

In response, it is important to note again that the mere fact that a law is justified with convergence accessible reasons does not make it the case that it has full justification. This requires, in turn, that the other components of legitimacy are met. The law must be democratically made, and it cannot have consequences that violate civic equality. However, this is one of my theory's strengths. Views that tie public justification only to a thick public reason standard risk conflating a just state with a legitimate one. My account lets us readily see that many ways of organising society are legitimate, even when they are not fully just. On most philosophical views of legitimacy, quite a lot follows from the fact of illegitimacy. It would therefore be disconcerting if our theory pointed out seemingly uncontroversial exercises of state power as illegitimate.

If these structural differences from standard accounts of public reason liberalism make my view too dissimilar to warrant inclusion in the family, then I would be prepared to accept that conclusion. After all, what I have tried to provide is a democratic account of public reason. Whether it also is a form of public reason liberalism in the strict sense is, I think, beside the point. What matters is that states should only employ their power in a way that is compatible with every citizen's status as a civic equal.

Let me end by rehearsing what I take to be the most important contributions that I have made. I will situate them in the wider literature on democratic legitimacy and public reason liberalism and point to some avenues for further research.

The first thing I have shown is that the most influential theories in the contemporary public reason liberalism literature have not paid enough attention to ideas from democratic theory. I did so by providing an overview of different ways of understanding the relationship between liberalism and democracy. I formalised my findings into a principle of liberal collective self-legislation, which served as a desideratum for determining the legitimate scope of state power (chapter 1). I went on to argue that the two most prominent versions of political liberalism could not ensure that it was met. Jonathan Quong's version did not leave enough

room for democratic decision-making and John Rawls's version had not engaged enough with concerns from social choice theory (chapter 2). Justificatory liberalism failed too; Gerald Gaus's version could not uphold the values of political autonomy, the expressive power of law, and justification to citizens without collapsing into an unjustified form of perfectionism (chapter 3). These findings are important in themselves. Many people who are sympathetic to public reason liberalism are also committed democrats. If my arguments are sound, and it is the case that the standard accounts have difficulties realising the ideals of both democratic theory and of liberalism, then that is a significant weakness of these views. I believe that this weakness means that we must change our understanding of how public reason liberalism should work.

In Part two, I provided a positive theory of what a public reason liberalism (if that is what it should be called) should look like in order to take the concerns raised in the first part seriously. In a sense, this political liberalism is quite different to the standard accounts. But I hope to have shown that it is both plausible and in line with commitments that both public reason liberals and democratic theorists hold.

A key feature of the account was my new standard for what counts as a public reason: the convergence accessibility standard (chapter 4). On this view, a reason is public if it is accessible to all moderately idealised citizens in light of standards that they hold themselves. I argued that we, equipped with this standard, allow enough room for democratic decision-making and that we allow the right amount of perfectionism in politics. I also showed that there are good reasons, from the point of view of democratic theory, to list public reason alongside our other criteria for legitimacy (chapter 5).

I then argued that my account – paired with a duty for individual citizens to give public reasons and a broad view of public reason's scope – could mitigate the fundamental social choice problems that I argued applied to Rawls's public reason proceduralism (chapter 6).

This latter finding is important. Even if I do not pursue that project in the thesis, it would be possible to frame the mitigation of the social choice problems as an argument directed

towards the wider debate in social choice theory. Public reason proceduralisms are not the only theories susceptible to similar problems, and there is a rich literature on possible escape-routes from Arrow's impossibility theorem and similar social choice results. Public reasoning beyond the basic structure has in this thesis been suggested as an entirely new one and, as such, it applies more generally also to many other theories of democratic decision-making.

The fact that public reason could mitigate social choice problems so that the principle of liberal collective self-legislation was satisfied provided me with a novel, instrumental, defence of public-reason-giving requirements for individual citizens. Since it is instrumental, it is not susceptible to arguments about how it is not disrespectful to offer non-public reasons that one genuinely believes to be true. The duty to give public reasons is grounded in the instrumental benefits of doing so. I argued that the duty is defeasible. Specifically, it should be assigned asymmetrically when citizens are opposing what I called invasive laws, laws that made pursuing certain life-plans impossible (chapter 7).

Equipped with the civic equality justification for liberalism and democracy, it would be possible to construct a full theory of legitimate state action. This is an important avenue for further research. There are also important questions remaining about how, precisely, the public sphere should be structured to ensure that debate among citizens can realise the goods of public reason. This issue is especially pressing in light of rapid technological changes and the rise of the digital public sphere.

In the future, more can also be said about the relationship between justice and the view of legitimacy provided here. There are all sorts of applied issues to consider, for instance about the role of religious exemptions in the framework, how economic justice can be secured, how gender and racial justice can be realised within political liberalism, and so on.

While answering these substantive and fundamentally important questions has been beyond the scope of this thesis, let me close by suggesting that the provided framework could aid us in thinking about them. By demarcating the considerations that could be appealed to

when legislation is crafted, it is possible to set the terms for how the state can permissibly justify policies in these, and other, areas. Moreover, and as I have argued, the only legitimate solutions are those that do not themselves violate civic equality.

It is my hope that the arguments of this thesis can prove useful for further theorising about the role of democracy in liberal thought, and about the role of liberalism in democracy. There are also political upshots – what I have provided here can be understood as a set of resources for critically evaluating the actions of real-world liberal democracies. When states justify legislation with inaccessible reasons, they fail to treat their citizens as the civic equals they are.

BIBLIOGRAPHY

- Agar, Michael and Heather Schacht Reisinger .2001. 'Open marginality: Heroin epidemics in different groups,' *Journal of Drug Issues* 31(3): 729–746.
- Amighetti, Sara and Siba Harb. 2019. 'On who matters: extending the scope of luck egalitarianism to groups,' *Critical Review of International Social and Political Philosophy* 22(3): 301–317.
- Anderson, Elizabeth. 1999. 'What is the point of equality?' *Ethics* 109 (2): 287–337.
- Anderson, Elizabeth. 2006. 'The epistemology of democracy,' *Episteme: A Journal of Social Epistemology* 3(1): 8–22.
- Arlen, Gordon and Enzo Rossi. In press. 'Must realists be pessimists about democracy? Responding to epistemic and oligarchic challenges,' *Moral Philosophy and Politics*.
- Arlen, Gordon. 2019. 'Aristotle and the problem of oligarchic harm: Insights for democracy,' *European Journal of Political Theory* 18: 393–414.
- Arneson, Richard J. 2004. 'Democracy is not intrinsically just', in Keith Dowding, Robert E Goodin, and Carole Pateman (eds.), *Justice and Democracy: Essays for Brian Barry*. Cambridge: Cambridge University Press.
- Arrow, Kenneth. 1963. *Social Choice and Individual Values*. New York: Wiley.
- Astourian, Ara Peter. 2017. *A New Defense of Public Reason*. Doctoral thesis, University of Southern California.
- Audi, Robert. 2005. 'Moral foundations of liberal democracy, Secular reasons, and liberal neutrality toward the good,' *Notre Dame Journal of Law, Ethics & Public Policy* 19(1): 197–218.
- Badano, Gabriele and Matteo Bonotti. 2019. 'Rescuing public reason liberalism's accessibility requirement,' *Law and Philosophy* 39: 35–65.
- Bardon, Aurélia. 2018. 'Two misunderstandings about public justification and religious reasons,' *Law and Philosophy* 37: 639–669
- Bardon, Aurélia. 2020. 'Is epistemic accessibility enough? Same-sex marriage, tradition, and the Bible,' *Critical Review of International Social and Political Philosophy*, 23(1): 21–35.
- Barry, Brian. 1995. *Justice as Impartiality*. Oxford: Oxford University Press.
- Bell, Derek. 2002. 'How can political liberals be environmentalists?' *Political Studies*, 50(4): 703–724.
- Benn, Stanley. 1988. *A Theory of Freedom*. New York: Cambridge University Press.
- Benoit, William L. and Glenn J. Hansen. 2001. 'Presidential debate questions and the public agenda,' *Communication Quarterly* 49(2): 130–141.
- Benoit, William L., Glenn J. Hansen and Rebecca M. Verser. 2003. 'A meta-analysis of the effects of viewing U.S. presidential debates,' *Communication Monographs* 70(4): 335–350.

- Berlin, Isaiah. 1969. *Four Essays on Liberty*. Oxford: Oxford University Press.
- Berlin, Isaiah. 1997. 'Freedom and determinism,' in *The Proper Study of Mankind*. London: Vintage books.
- Berlin, Isaiah. 2006. 'Two concepts of liberty,' reprinted in Robert Goodin and Philip Pettit (eds.), *Contemporary Political Philosophy: An Anthology*. Oxford: Blackwell Publishing.
- Berlin, Isaiah. 2008. 'Introduction,' in Henry Hardy (ed.), *Liberty*. Oxford: Oxford University Press.
- Bernat Bennet, Paula. 2002. 'Emily Dickinson and her American women poet peers,' in Wendy Martin (ed.), *The Cambridge Companion to Emily Dickinson*. Cambridge: Cambridge University Press.
- Billingham, Paul and Anthony Taylor. In press. 'A framework for analyzing public reason theories,' *European Journal of Political Theory*.
- Billingham, Paul. 2015. *Justification to All: Liberalism, Legitimacy, and Theology*. Doctoral thesis, University of Oxford.
- Billingham, Paul. 2016. 'Convergence justifications within political liberalism: A defence,' *Res Publica* 22(2): 135–153.
- Billingham, Paul. 2016. 'Does political community require public reason? On Lister's defence of political liberalism,' *Politics, Philosophy & Economics* 15(1): 20–41.
- Billingham, Paul. 2017. 'Can my religion influence my conception of justice? Political liberalism and the role of comprehensive doctrines,' *Critical Review of International Social and Political Philosophy* 20(4): 403–424.
- Billingham, Paul. 2017. 'Liberal perfectionism and Quong's internal conception of political liberalism,' *Social Theory and Practice* 43(1): 79–106.
- Billingham, Paul. Unpublished manuscript. 'Procedural democracy and civic friendship: Reply to Leland and van Wietmarschen.'
- Black, Duncan. 1948. 'On the rationale of group decision-making,' *Journal of Political Economy* 56: 23–34.
- Boettcher, James W. 2012. 'The moral status of public reason,' *The Journal of Political Philosophy* 20: 156–177.
- Boettcher, James W. 2015. 'Against the asymmetric convergence model of public justification,' *Ethical Theory and Moral Practice* 18 (1): 191–208.
- Boettcher, James W. 2019. 'Deliberative democracy, diversity, and restraint,' *Res Publica* 26: 215–235.
- Bohman, James and Henry S. Richardson. 2009. 'Liberalism, deliberative democracy, and "reasons that all can accept,"' *The Journal of Political Philosophy* 17(3): 253–274.
- Bohman, James. 1997. *Public Deliberation: Pluralism, Complexity and Democracy*. Cambridge: MIT Press.

- Bonadeo, Alfredo. 1969. 'Machiavelli on civic equality and republican government,' *Romance Notes* 11(1): 160–66.
- Bonotti, Matteo. 2017. *Partisanship and Political Liberalism in Diverse Societies*. New York: Oxford University Press.
- Bouteldja, Naima. 2014. 'France vs England', in Eva Brems (ed.), *The Experience of Face Veil Wearers in Europe and the Law*, Cambridge: Cambridge University Press.
- Bovens, Luc and Wlodek Rabinowicz. 2006. 'Democratic answers to complex questions – an epistemic perspective,' *Synthese* 150(1): 131–153.
- Brems, Eva, Yaiza Janssens, Kim Lecoyer, Saïla Ouald Chaib, Victoria Vandersteen, and Jogchum Vrielink. 2014. 'The Belgian "Burqa Ban" and insider realities,' in Eva Brems (ed.), *The Experience of Face Veil Wearers in Europe and the Law*, Cambridge: Cambridge University Press.
- Brems, Eva. 2014. 'Face veil bans in the European Court of Human Rights: The importance of empirical finding,' *Journal of Law and Policy* 22(2): 517–551, p. 545.
- Callaghan, Karen and Frauke Schnell. 2001. 'Assessing the democratic debate: How the news media frame elite policy discourse,' *Political communication* 18(2): 183–213.
- Caplovitz, David. 1976. 'The working addict,' *Journal of Psychedelic Drugs* 8(4): 313–316.
- Casillas, Christopher J., Peter K. Enns, and Patrick C. Wohlfarth. 2011. 'How public opinion constrains the US Supreme Court,' *American Journal of Political Science* 55(1) 74–88.
- Chambers, Clare. 2020. 'Respect, religion, and feminism,' *Journal of Applied Philosophy* 37(5): 863–872.
- Chan, Joseph. 2000. 'Legitimacy, unanimity, and perfectionism,' *Philosophy & Public Affairs* 29(1): 5–42.
- Chaplin, Jonathan. 2012. 'Law, religion and public reasoning,' *Oxford Journal of Law and Religion* 1(2): 319–337.
- Chignell, Andrew and Derk Pereboom. 2020. 'Natural theology and natural religion,' in Edward N. Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Fall 2020 Edition). Available from: <https://plato.stanford.edu/archives/fall2020/entries/natural-theology/>
- Christiano, Thomas. 1996. *The Rule of the Many: Fundamental Issues in Democratic Theory*. Boulder, CO: Westview Press.
- Christiano, Thomas. 2008. *The Constitution of Equality: Democratic Authority and Its Limits*. Oxford: Oxford University Press.
- Chung, Hun and Brian Kogelmann. In press. 'Diversity and rights: A social choice-theoretic analysis of the possibility of public reason,' *Synthese*.
- Chung, Hun and John Duggan. 2020. 'A formal theory of democratic deliberation,' *American Political Science Review* 114(1): 14–35.

- Cohen, G. A. 1997. 'Where the action is: On the site of distributive justice,' *Philosophy & Public Affairs* 26: 3–30.
- Cohen, Joshua. 2007. 'Deliberative democracy,' in Shawn W. Rosenberg (ed.), *Deliberation, Participation and Democracy: Can the People Govern?* London: Palgrave Macmillan.
- D'Agostino, Fred. 1996. *Free Public Reason: Making it Up as We Go*. Oxford: Oxford University Press.
- D'Agostino, Fred. 2013. 'The orders of public reason,' *Analytic Philosophy* 54: 129–155.
- Daniels, Norman. 1983. 'Health care needs and distributive justice,' in Ronald Bayer, Arthur L. Caplan, and Norman Daniels (eds.), *In Search of Equity*. The Hastings Center Series in Ethics. Springer, Boston, MA.
- De Marneffe, Peter. 1990. 'Liberalism, liberty, and neutrality,' *Philosophy & Public Affairs* 19(3): 253–274.
- Dietrich, Franz and Christian List. 2007. 'Arrow's theorem in judgment aggregation,' *Social Choice and Welfare* 29(1): 19–33.
- Dietrich, Franz and Christian List. 2007. 'Strategy-proof judgment aggregation,' *Economics & Philosophy* 23(3): 269–300.
- Draus, Paul J., Juliette Roddy and Mark Greenwald. 2010. 'I always kept a job: Income generation, heroin use and economic uncertainty in 21st century Detroit,' *Journal of Drug Issues* 40(4): 841–869.
- Dryzek, John and Christian List. 2003. 'Social choice theory and deliberative democracy: A reconciliation,' *British Journal of Political Science* 33: 1–28.
- Dryzek, John. 2000. *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. Oxford: Oxford University Press.
- Dworkin, Ronald. 1996. *Freedom's Law: The Moral Reading of the American Constitution*. Oxford: Oxford University Press.
- Eberle, Christopher. 2002. *Religious Conviction in Liberal Politics*. New York: Cambridge University Press.
- Edenberg Elizabeth. 2018. 'Growing up sexist: Challenges to Rawlsian stability,' *Law and Philosophy*, 37(6): 577–612.
- Elster, Jon. 2002. 'The market and the forum: Three varieties of political theory,' in Thomas Christiano (ed.), *Philosophy and Democracy*. Oxford: Oxford University Press.
- Enoch, David. 2013. 'The disorder of public reason,' *Ethics* 124 (1): 141–176.
- Enoch, David. 2015. 'Against public reason,' in David Sobel, Steven Wall and Peter Vallentyne (eds.), *Oxford Studies in Political Philosophy*, Volume 1. Oxford: Oxford University Press.
- Feinberg, Joel. 1970. 'The expressive function of punishment,' in his *Doing and Deserving*, Princeton, N. J.: Princeton University Press.
- Finlayson, James Gordon. 2019. *The Habermas-Rawls Debate*. Columbia University Press.

- Forrester, Katrina. 2019. *In the Shadow of Justice: Postwar Liberalism and the Remaking of Political Philosophy*. Princeton University Press.
- Fowler, Timothy and Zofia Stemplowska. 2015. 'The asymmetry objection rides again: On the nature and significance of justificatory disagreement,' *Journal of Applied Philosophy* 32: 133–146.
- Franken, Leni. 2016. *Liberal Neutrality and State Support for Religion*. Zürich: Springer.
- Frankfurt, Harry G. 1971. 'Freedom of the will and the concept of a person,' *The Journal of Philosophy* 68(1): 5–20.
- Galston, William. 1982. 'Moral personality and liberal theory: John Rawls's Dewey Lectures,' *Political Theory* 10(4): 492–519.
- Garthwaite, Craig and Timothy J. Moore. 2013. 'Can celebrity endorsements affect political outcomes? Evidence from the 2008 US Democratic presidential primary,' *The Journal of Law, Economics, and Organization* 29(2): 355–384.
- Gaus, Gerald and Kevin Vallier. 2009. 'The roles of religious conviction in a publicly justified polity: The implications of convergence, asymmetry, and political institutions,' *Philosophy & Social Criticism* 35(1): 51–76.
- Gaus, Gerald. 1996. *Justificatory Liberalism: An Essay on Epistemology and Political Theory*. Oxford: Oxford University Press.
- Gaus, Gerald. 2008. 'The (severe) limits of deliberative democracy as the basis for political choice,' *Theoria* 55(117): 26–53.
- Gaus, Gerald. 2009. 'The place of religious belief in public reason liberalism,' in Maria Dimova-Cookson and Peter Stirk (eds.), *Multiculturalism and Moral Conflict*. New York: Routledge.
- Gaus, Gerald. 2011. *The Order of Public Reason*. Cambridge: Cambridge University Press.
- Gaus, Gerald. 2015. 'On dissing public reason: A reply to Enoch,' *Ethics* 125(4): 1078–1095.
- Gaus, Gerald. 2015. 'Public reason liberalism,' in Steven Wall (ed.), *The Cambridge Companion to Liberalism*, Cambridge: Cambridge University Press.
- Gehrlein, William and Dominique Lepelley. 2011. *Voting Paradoxes and Group Coherence. The Condorcet Efficiency of Voting Rules*. Heidelberg: Springer.
- Gehrlein, William. 1983. 'Condorcet's paradox,' *Theory and Decision* 15: 161–197.
- Georgieva, Mihaela. 2015. 'Stability and congruence in political liberalism: The promise of an ideal of civic friendship,' *Political Studies* 63(2): 481–494.
- Goodin, Robert and Kai Spiekermann. 2018. *An Epistemic Theory of Democracy*. Oxford University Press.
- Gould, Carol. 1988. *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economics and Society*. New York: Cambridge University Press.

- Graham, Jesse, Jonathan Haidt, and Brian A. Nosek. 2009. 'Liberals and conservatives rely on different sets of moral foundations,' *Journal of personality and social psychology* 96(5): pp. 1029–1046.
- Green, Philip. 1985. *Retrieving Democracy: In Search of Civic Equality*. New Jersey: Rowman & Littlefield.
- Greenawalt, Kent. 1995. *Private Consciences and Public Reasons*. New York: Oxford University Press.
- Gutmann, Amy. 1987. *Democratic Education*. Princeton: Princeton University Press.
- Gutmann, Amy. 2002. 'Rawls on the relationship between liberalism and democracy,' in Samuel Freeman (ed.), *The Cambridge Companion to Rawls*. Cambridge: Cambridge University Press.
- Habermas, Jürgen. 'Reconciliation through the public use of reason: remarks on John Rawls's political liberalism,' *The journal of philosophy* 92(3): 109–131.
- Habermas, Jürgen. 1994. 'Human rights and popular sovereignty: The liberal and republican versions,' *Ratio Juris* 7(1): 1–13.
- Habermas, Jürgen. 1995. 'On the internal relation between the rule of law and democracy,' *European Journal of Philosophy* 3(1): 12–20.
- Habermas, Jürgen. 1996, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge, MA: MIT Press.
- Habermas, Jürgen. 2001. 'The postnational constellation and the future of democracy,' in Max Pensky (ed.), *The Postnational Constellation: Political Essays*. Cambridge, MA: MIT Press.
- Habermas, Jürgen. 2006. 'Religion in the public sphere,' *European Journal of Philosophy* 14(1): 1–25.
- Hadfield, Gillian K. and Barry R. Weingast. 2012. 'What is law? A Coordination model of the characteristics of legal order,' *Journal of Legal Analysis* 4(2): 471–514.
- Hager, Anselm and Hanno Hilbig. In press. 'Does public opinion affect political speech?' *American Journal of Political Science*.
- Hartley, Christie and Lori Watson. 2020. 'On equal citizenship and public reason: Reply to critics,' *Journal of Applied Philosophy* 37(5): 881–894.
- Hartley, Christie. 2018. 'Political liberalism and children,' *Philosophical Studies* 175: 1095–1112.
- Hershovitz, Scott. 2003. 'Legitimacy, democracy, and Razian authority,' *Legal Theory* 9: 201–220.
- Hertzberg, Benjamin R. 2018. 'Convergence's democracy problem: A critique of Kogelmann and Stich,' *American Political Science Review* 112(2): 423–427.
- Ho, Sally. 2018. 'AP Exclusive: Billionaires fuel US charter schools movement,' *AP News*. Available from: <https://apnews.com/article/92dc914dd97c487a9b9aa4b006909a8c>.
- Husak, Doug and Peter de Marneffe. 2005. *The Legalization of Drugs*. Cambridge: Cambridge University Press.

- Jones, Peter. 2017. 'Religious exemptions and distributive justice,' in Cécile Laborde and Aurélia Bardon (eds.), *Religion in Liberal Political Philosophy*. Oxford: Oxford University Press.
- Joppke, Christian and John Torpey. 2013. *Legal Integration of Islam: A Transatlantic Comparison*. Harvard University Press.
- Kalyvas, Andreas. 2005. 'Popular sovereignty, democracy, and the constituent power,' *Constellations* 12: 223–244.
- Kettell, Steven. 2019. 'How, when, and why do religious actors use public reason? The case of assisted dying in Britain,' *Politics and Religion* 12(2): 385–408.
- Klosko, George. 2000. *Democratic Procedures and Liberal Consensus*. Oxford: Oxford University Press.
- Kogelmann, Brian and Stephen G. W. Stich. 2016. 'When public reason fails us: Convergence discourse as blood oath,' *American Political Science Review*, 110(4), 717–730.
- Kogelmann, Brian. 2017. 'Aggregating out of indeterminacy: Social choice theory to the rescue,' *Politics Philosophy & Economics* 16(2): 210–232.
- Kogelmann, Brian. 2019. 'Public reason's chaos theorem,' *Episteme* 16: 200–219.
- Kolodny, Niko. 2014. 'Rule over none I: What justifies democracy,' *Philosophy & public affairs* 42(3): 195–229.
- Kolodny, Niko. 2014. Rule Over None II: Social equality and the justification of democracy, *Philosophy & public affairs* 42 (4): 287–336.
- Kornhauser, Lewis A. and Lawrence G. Sager. 1986. 'Unpacking the court,' *Yale Law Journal* 96: 82–117.
- Kugelberg, Henrik D. In press. 'Can local comparative judgements justify moderate perfectionism?' *Philosophia*.
- Kugelberg, Henrik D. 2020. 'In the shadow of justice: postwar liberalism and the remaking of political philosophy,' *Jurisprudence* 11(2): 325–34.
- Kugelberg, Henrik D. 2021. 'Opposing Laws with Religious Reasons,' *Journal of Social Philosophy* 52(1): 131–151.
- Kugelberg, Henrik D. In press. 'Civic equality as a democratic basis for public reason,' *Critical Review of International Social and Political Philosophy*
- Kugelberg, Henrik D. In press. 'Social choice problems with public reason proceduralism,' *Economics & Philosophy*.
- Kymlicka, Will. 2003. 'Multicultural states and intercultural citizens,' *Theory and Research in Education* 1(2): 147–169.
- Laborde, Cécile and Sune Lægaard. 2019. 'Liberal nationalism and symbolic religious establishment,' in Gina Gustavsson and David Miller (eds.), *Liberal Nationalism and Its Critics: Normative and Empirical Questions*. Oxford: Oxford University Press.

- Laborde, Cécile. 2017. *Liberalism's Religion*. Cambridge: Harvard University Press.
- Laborde, Cécile. 2019. 'Intelligibility, moral loss and injustice,' *Journal of Applied Philosophy* 36(5): 727–730.
- Laborde, Cécile. 2020. 'Can religious establishment be liberal enough?' *Studies in Christian Ethics*, 33(2): 215–223.
- Laborde, Cécile. 2020. 'Three cheers for liberal modesty,' *Critical Review of International Social and Political Philosophy*, 23(1): 119–135.
- Laborde, Cécile. In press. 'Reply to Quong, Patten, Miller and Waldron,' *Criminal Law and Philosophy*.
- Lægaard, Sune. 2015. 'Burqa ban, freedom of religion and "living together,"' *Human Rights Review* 16(3): 203–219.
- Lægaard, Sune. 2019. 'Inclusion or exclusion of religion: What does secularism require?' in Jonathan Seglow and Andrew Shorten (eds.), *Religion and Political Theory: Secularism, Accommodation and The New Challenges of Religious Diversity*. London: Rowman & Littlefield Publishers.
- Lægaard, Sune. 2020. 'Laborde's religion,' *Critical Review of International Social and Political Philosophy* 23(1): pp. 9–20.
- Landemore, Hélène. 2013. *Democratic Reason*. Princeton: Princeton University Press.
- Larmore, Charles. 1996. *The Morals of Modernity*. New York: Cambridge University Press
- Larmore, Charles. 1999. 'The moral basis of political liberalism,' *The Journal of Philosophy* 96: 599–625.
- Laumann Jørgensen, Simon. 2015. 'Recognition, education, and civic equality: Uncovering the normative ideals of the welfare state,' in Jonas Jakobsen and Odin Lysaker (eds.), *Recognition and Freedom: Axel Honneth's Political Thought*. Leiden: Brill.
- Laycock, Joseph P. 2020. *Speak of the Devil*. Oxford: Oxford University Press.
- Leland, R. J. 2019. 'Civic friendship, public reason,' *Philosophy & Public Affairs*, 47(1): 72–103.
- Leland, R. J. and Han van Wietmarschen. 2012. 'Reasonableness, intellectual modesty, and reciprocity in political justification,' *Ethics* 122(4): 721–747.
- Leland, R. J. and Han van Wietmarschen. 2017. 'Political Liberalism and political community,' *Journal of Moral Philosophy* 14(2): 142–167.
- Lepelly, Dominique, Patrick Pierron, and Fabrice Valognes. 2000. 'Scoring rules, Condorcet efficiency, and social homogeneity,' *Theory and Decision* 49: 175–196.
- Lepoutre, Maxime. 2019. 'Can more speech counter ignorant speech,' *Journal of Ethics and Social Philosophy* 16: 155–191.
- Lepoutre, Maxime. In press. 'Hate speech laws: expressive power is not the answer,' *Legal Theory*.

- List, Christian and Philip Pettit. 2002. 'Aggregating Sets of Judgments: An Impossibility Result,' *Economics & Philosophy* 18(1): 89–110.
- List, Christian, Robert C. Luskin, James S. Fishkin and Iain McLean. 2013. 'Deliberation, single-peakedness, and the possibility of meaningful democracy: Evidence from deliberative polls,' *Journal of Politics* 75: 80–95.
- List, Christian. 2001. 'Some remarks on the probability of cycles,' Appendix to Christian List and Robert Goodin, 'Epistemic democracy: Generalizing the condorcet jury theorem,' *Journal of Political Philosophy* 9(3): 277–306.
- List, Christian. 2003. 'A possibility theorem on aggregation over multiple interconnected propositions,' *Mathematical Social Sciences* 45(1): 1–13.
- List, Christian. 2006. 'The discursive dilemma and public reason,' *Ethics* 116(2): 362–402.
- List, Christian. 2007. 'Deliberation and agreement,' in Shawn W. Rosenberg (ed.), *Deliberation, Participation and Democracy: Can the People Govern?* London: Palgrave Macmillan.
- List, Christian. 2011. 'The logical space of democracy,' *Philosophy & public affairs* 39(3): 262–297.
- Lister, Andrew. 2010. 'Public justification and the limits of state action,' *Politics, Philosophy & Economics* 9(2): 151–175.
- Lister, Andrew. 2013. *Public Reason and Political Community*. London: Bloomsbury.
- Lister, Andrew. 2014. 'Public reason and perfectionism: Comments on Quong's Liberalism Without Perfection,' *Philosophy and Society* 25(1): 12–34
- Macedo, Stephen. Unpublished manuscript. 'Why public reason? Citizens' reasons and the constitution of the public sphere.' August 23, 2010). Available at SSRN: <https://ssrn.com/abstract=1664085>
- Mang, Franz. 2013. 'Liberal neutrality and moderate perfectionism,' *Res Publica* 19(4): 297–315.
- Marshall, T. H. 1977. *Class, Citizenship, and Social Development*. Chicago: University of Chicago Press.
- Mason, Andrew. 2012. *Living Together as Equals: The Demands of Citizenship*. Oxford: Oxford University Press.
- McAdams, Richard H. 2015. *The Expressive Powers of Law: Theories and Limits*. Harvard University Press.
- McLean, Iain. 2003. 'The reasonableness of independence: A conversation from Condorcet and Borda to Arrow and Saari,' *Nuffield College Working Paper* 2003–W6, University of Oxford.
- McPartland, Ben. 2015. 'Burqa ban five years on – 'We created a monster''. *The Local France*. 12 Oct. Available from: <http://www.thelocal.fr>.
- MFHA: *Social impact of foxhunting on rural communities*. Available from: http://www.mfha.org.uk/index.php?option=com_content&task=view&id=62&Itemid=58.

- Mill, John Stuart. 1859/1998. 'On liberty,' in John Gray (ed.), *On Liberty and Other Essays*. Oxford: Oxford University Press.
- Mill, John Stuart. 1861/2010. *Considerations on Representative Government*. Cambridge: Cambridge University Press.
- Miller, David. 1983. 'Constraints on freedom,' *Ethics* 94(1): 66–86.
- Miller, David. 1992. 'Deliberative democracy and social choice,' *Political Studies* 40: 54–67.
- Moors, Annelies. 2014. 'Face-veiling in the Netherlands: Public debates and women's narratives,' in Eva Brems (ed.), *The Experience of Face Veil Wearers in Europe and the Law*, Cambridge: Cambridge University Press.
- Murphy, Andrew. 1998. 'Rawls and the shrinking liberty of conscience,' *The Review of Politics*, 60(2): 269–76.
- Näsström, Sofia. 2011. 'The challenge of the all-affected principle,' *Political Studies*, 59(1): 116–134.
- Neufeld, Blain. 2019. 'Shared intentions, public reason, and political autonomy,' *Canadian Journal of Philosophy* 49(6): 776–804.
- Nisbettaand, Gwendelyn and Stephanie Schartel Dunn. In press. 'Reputation matters: parasocial attachment, narrative engagement, and the 2018 Taylor Swift political endorsement,' *Atlantic Journal of Communication*.
- Norris, Pippa and Ronald Inglehart. 2019. *Cultural backlash: Trump, Brexit, and Authoritarian Populism*. Cambridge: Cambridge University Press.
- Nussbaum, Martha. 2011. 'Perfectionist liberalism and political liberalism,' *Philosophy & Public Affairs* 39 (1): 3–45.
- Ober, Josiah. 2013. 'Democracy's wisdom: An Aristotelian middle way for collective judgment,' *American Political Science Review* 107(1): 104–122.
- Olekalns, Nilss and Peter Bardsley. 1996. 'Rational addiction to caffeine: An analysis of coffee consumption,' *Journal of Political Economy* 104(5): 1100–1104.
- Oppenheim, Felix E. 1981. *Political Concepts: A Reconstruction*. Oxford: Blackwell
- Østergaard, Kate, Margit Warburg, Birgitte Johansen. 2014. 'Niqabis in Denmark: When politicians ask for a qualitative and quantitative profile of a very small and elusive subculture,' in Eva Brems (ed.), *The Experience of Face Veil Wearers in Europe and the Law*, Cambridge: Cambridge University Press.
- Øverland, Esben and Christian Barry. 2011. 'Do democratic societies have a right to do wrong?' *Journal of Social Philosophy* 42 (2): 111–31.
- Paley, William. 1829. *Natural Theology: or, Evidences of the Existence and Attributes of the Deity, Collected from the Appearances of Nature*. Boston, MA: Lincoln and Edmands.
- Pallikkathayil, Japa. 2016. 'Neither perfectionism nor political liberalism,' *Philosophy & Public Affairs* 44(3): 171–196.

- Pallikkathayil, Japa. 2017. 'Resisting Rawlsian political liberalism,' *Philosophy & Public Affairs* 45(4): 413–426.
- Parfit, Derek. 2011. *On What Matters*, Volume 1. New York: Oxford University Press.
- Patty, John W. and Elizabeth Maggie Penn. 2014. *Social Choice and Legitimacy: The Possibility of Impossibilities*. Cambridge University Press.
- Perry, Michael. 1988. *Morality, Politics, and Law: A Bicentennial Essay*. New York: Oxford University Press.
- Peter, Fabienne. 2001. 'Health equity and social justice,' *Journal of Applied Philosophy* 18(2): 159–170.
- Peter, Fabienne. 2008. *Democratic Legitimacy*. New York: Routledge.
- Peter, Fabienne. 2020. 'Political legitimacy under epistemic constraints: Why public reasons matter,' in Jack Knight and Melissa Schwartzberg (eds.), *NOMOS LXI: Political Legitimacy*. New York: NYU Press.
- Pettit, Philip. 2001. 'Deliberative democracy and the discursive dilemma,' *Philosophical Issues* 11: 268–299.
- Pettit, Philip. 2012. *On the People's Terms: A Republican Theory and Model of Democracy*. Cambridge University Press.
- Pierce, Todd G. 1999. 'Gen-X junkie: Ethnographic research with young white heroin users in Washington, DC,' *Substance use & misuse* 34(14): 2095–2114.
- Pigozzi, Gabriella. 2006. 'Belief merging and the discursive dilemma: an argument-based account to paradoxes of judgment aggregation,' *Synthese* 152: 285–298.
- Podoksik, Efraim and Yiftah Elazar. In press. 'How did negative liberty become a liberal ideal?' *Journal of Political Ideologies*.
- Primoratz, Igor. 1989. 'Punishment as language,' *Philosophy* 64: 187–205.
- Quong, Jonathan. 2004. 'The scope of public reason,' *Political Studies* 52(2): 233–250.
- Quong, Jonathan. 2011. *Liberalism Without Perfection*. Oxford: Oxford University Press.
- Quong, Jonathan. 2013. 'On the idea of public reason,' in Jon Mandle and David Reidy (eds.), *The Blackwell Companion to Rawls*. Oxford: Wiley-Blackwell.
- Quong, Jonathan. 2014. 'What is the point of public reason?' *Philosophical Studies* 170(3): 545–553.
- Quong, Jonathan. 2018. 'Public reason,' *The Stanford Encyclopedia of Philosophy* (Spring 2018 Edition), Edward N. Zalta (ed.), Available from: <https://plato.stanford.edu/archives/spr2018/entries/public-reason/>.
- Quong, Jonathan. 2019. 'In defense of functionalism,' in Jack Knight and Melissa Schwartzberg (eds.), *Political Legitimacy: NOMOS LXI*. New York: New York University Press.
- Quong, Jonathan. 2021. 'On Laborde's liberalism,' *Criminal Law and Philosophy* 15: 47–59.

- Rawls, John. 1985. 'Justice as fairness: Political not metaphysical,' *Philosophy & public affairs* 14(3): 223–251.
- Rawls, John. 1987. 'The idea of an overlapping consensus,' *Oxford Journal of Legal Studies* 7(1): 1–25.
- Rawls, John. 1993/2005. *Political Liberalism* (expanded edition). New York: Columbia University Press
- Rawls, John. 1995. 'Political liberalism: Reply to Habermas,' *The Journal of Philosophy* 92(3): 132–80.
- Rawls, John. 1997. 'The idea of public reason revisited,' *The University of Chicago Law Review* 64 (3):765–807.
- Rawls, John. 1999. *The Law of Peoples*. Cambridge, MA: Harvard University Press.
- Rawls, John. 2001. *Justice as Fairness: A Restatement*, Erin Kelly (ed.). Cambridge, MA: Harvard University Press.
- Rawls, John. 2008. *Lectures on the History of Political Philosophy*, Samuel Freeman (ed.). Cambridge, MA: Harvard University Press.
- Raz, Joseph. 1984. *The Morality of Freedom*. Oxford: Oxford University Press.
- Riker, William. 1982. *Liberalism Against Populism*. Long Grove: Waveland Press.
- Riker, William. 2003. 'Social choice theory and constitutional democracy,' in Thomas Christiano (ed.), *Philosophy and Democracy*. Oxford: Oxford University Press.
- Risse, Mathias. 2001. 'Arrow's theorem, indeterminacy, and multiplicity reconsidered,' *Ethics* 111: 706–734.
- Robbins, Thomas and Dick Anthony. 2016. *In Gods We Trust: New Patterns of Religious Pluralism in America*. 2nd ed. New York: Routledge.
- Rodrik, Dani. 2018. 'Populism and the economics of globalization,' *Journal of International Business Policy* 1(1–2): pp. 12–33.
- Romeijn, Jeroen. 2020. 'Do political parties listen to the(ir) public? Public opinion–party linkage on specific policy issues,' *American Political Science Review* 26(4): 426–436.
- Rosenblatt, Helena. 2018. *The Lost History of Liberalism: From Ancient Rome to the Twenty-first Century*. Princeton: Princeton University Press.
- Rossi, Enzo. 2019. 'The twilight of the liberal social contract? On the reception of Rawlsian Political Liberalism,' in Kelly Becker and Iain Thomson (eds.), *The Cambridge History of Philosophy, 1945–2015*. Cambridge: Cambridge University Press.
- Rostbøll, Christian F. 2017. 'Democratic respect and compromise,' *Critical Review of International Social and Political Philosophy* 20(5): 619–635.
- Rottinghaus, Brandon. 2008. 'Presidential leadership on foreign policy, opinion polling, and the possible limits of "crafted talk",' *Political Communication* 25(2): 138–57.

- Rummens, Stefan. 2006. 'Debate: The co-originality of private and public autonomy in deliberative democracy,' *Journal of Political Philosophy* 14(4): 469–481.
- Sandven, Hallvard. 2020. 'Systemic domination, social institutions and the coalition problem,' *Politics, Philosophy & Economics* 19(4): 382–402.
- Satz, Debra. 2007. 'Equality, adequacy and education for citizenship,' *Ethics* 117(4): 623–648.
- Satz, Debra. 2008. 'Equality, adequacy, and educational policy,' *Education Finance and Policy*, 3(4): 424–443.
- Saunders, Joe. 2020. 'Dark advertising and the democratic process,' in Kevin Macnish and Jai Galliot (eds.), *Big Data and Democracy*. Edinburgh University Press.
- Scanlon, T. M. 'Reasons: A puzzling duality?' in R. Jay Wallace, Philip Pettit, Samuel Scheffler, and Michael Smith (eds.), *Reason and Value: Themes from the Moral Philosophy of Joseph Raz*. Oxford: Oxford University Press.
- Scanlon, T. M. 1998. *What We Owe To Each Other*. Cambridge: Harvard University Press.
- Scanlon, T. M. 2003. 'Rawls on justification,' in Samuel Freeman (ed.), *The Cambridge Companion to Rawls*. Cambridge: Cambridge University Press.
- Schouten, Gina. 2019. *Liberalism, Neutrality, and the Gendered Division of Labor*. Oxford: Oxford University Press.
- Schwartzman, Micah. 2011. 'The Sincerity of public reason,' *The Journal of Political Philosophy* 19(4): 375–398.
- Scruton, Roger. 2008. 'Fox-hunting: The modern case,' Written submission to the Committee of Inquiry into Hunting. Available from: The National Archives, <http://webarchive.nationalarchives.gov.uk/20080818111214/http://www.defra.gov.uk/rural/hunting/inquiry/evidence/scruton.htm>.
- Sen, Amartya. 1980. 'Equality of what?' in Sterling McMurrin (ed.), *Tanner Lectures on Human Values*, Vol. 1. Cambridge: Cambridge University Press.
- Sen, Amartya. 1982. *Choice, Welfare and Measurement*. Oxford: Blackwell.
- Sen, Amartya. 1999. *Development as Freedom*. New York: Knopf.
- Shirazi, Faegheh and Smeeta Mishra. 2010. 'Young Muslim women on the face veil (niqab): A tool of resistance in Europe but rejected in the United States,' *International Journal of Cultural Studies* 13(1): 43–62.
- Shklar, Judith N. 1989. 'The liberalism of fear,' in Nancy L. Rosenblum (ed.), *Liberalism and the Moral Life*. Cambridge, MA: Harvard University Press.
- Sigwart, Hans-Jörg. 2013. 'The logic of legitimacy: Ethics in political realism,' *The Review of Politics* 75(3): 407–432.
- Skorupski, John. 2017. 'Rawls, liberalism, and democracy,' *Ethics* 128(1): 173–198.

- Smith, Steven D. 2010. *The Disenchantment of Secular Discourse*. Cambridge, MA: Harvard University Press.
- Stark, Cynthia A. 2020. 'Political liberalism and male supremacy,' *Journal of Applied Philosophy* 37(5): 873–880.
- Stears, Marc and Mathew Humphrey. 2012. 'Public reason and political action: Justifying citizen behaviour in actually-existing democracies,' *The Review of Politics* 74(2): 285–306.
- Steiner, Hillel. 1994. *An Essay on Rights*. Oxford: Blackwell.
- Stemplowska, Zofia and Adam Swift. 2018. 'Dethroning democratic legitimacy.' In David Sobel, Peter Vallentyne, and Steven Wall (eds.), *Oxford Studies in Political Philosophy*, Volume 4. Oxford: Oxford University Press.
- Stevenson, Hayley. 2016. 'The wisdom of the many in global governance: An epistemic-democratic defense of diversity and inclusion,' *International Studies Quarterly* 60(3): 400–412.
- Stout, Jeffrey. 2004. *Democracy and Tradition*. Princeton, NJ: Princeton University Press.
- Tahzib, Collis. 2019. 'Perfectionism: Political not metaphysical,' *Philosophy & Public Affairs* 47(2): 144–178.
- Tahzib, Collis. In press. 'Do the reactive attitudes justify public reason?' *European Journal of Political Theory*.
- Tännsjö, Torbjörn. 2007. 'Narrow Hedonism,' *Journal of Happiness Studies* 8(1): 79–98.
- Taylor, Anthony. 2018. 'Public justification and the reactive attitudes,' *Politics, Philosophy & Economics* 17(1): 97–113.
- Taylor, Charles. 2006. 'What's wrong with negative freedom?' in Ian Carter, Mathew Kramer, and Hillel Steiner (eds.), *Freedom: A Philosophical Anthology*. Oxford: Blackwell Publishing.
- Valentini, Laura and Christian List. 2020. 'What normative facts should political theory be about? Philosophy of science meets political liberalism,' in David Sobel, Steven Wall and Peter Vallentyne (eds.), *Oxford Studies in Political Philosophy*, Volume 6. Oxford: Oxford University Press.
- Valentini, Laura. 2012. 'Assessing the global order: justice, legitimacy, or political justice?' *Critical Review of International Social and Political Philosophy* 15(5): 593–612.
- Valentini, Laura. 2013. 'Justice, disagreement, and democracy,' *British Journal of Political Science* 43(1): 177–99.
- Vallier, Kevin and Ryan Muldoon. In press. 'In public reason, diversity trumps coherence,' *Journal of Political Philosophy*.
- Vallier, Kevin. 2011, 'Against public reason liberalism's accessibility requirement,' *Journal of Moral Philosophy* 8(3): 366–389; R. J. Leland. 2019.
- Vallier, Kevin. 2014. *Liberal Politics and Public Faith: Beyond Separation*. New York: Routledge.

- Vallier, Kevin. 2015. 'Public justification versus public deliberation: the case for divorce,' *Canadian Journal of Philosophy* 45(2): 139–158.
- Vallier, Kevin. 2016. 'In defence of intelligible reasons in public justification,' *The Philosophical Quarterly* 66(264): 596–616.
- Vallier, Kevin. 2016. 'In defense of the asymmetric convergence model of public justification: A reply to Boettcher,' *Ethical Theory and Moral Practice* 19: 255–266.
- Vallier, Kevin. 2017. 'On Jonathan Quong's sectarian political liberalism,' *Criminal Law and Philosophy* 11(1): 175–194.
- Vallier, Kevin. 2018. 'Public justification,' *The Stanford Encyclopedia of Philosophy* (Spring 2018 Edition), Edward N. Zalta (ed.). Available from: <https://plato.stanford.edu/archives/spr2018/entries/justification-public/>.
- Vallier, Kevin. 2018. 'The duties of political officials in a minimally secular state,' *Journal of Applied Philosophy* 36 (5): 695–701.
- Vallier, Kevin. 2020. 'In defense of idealization in public reason,' *Erkenntnis* 85: 1109–1128.
- Van der Schyff, Gerhard and Adriaan Overbeeke. 2011. 'Exercising religious freedom in the public space: A comparative and European Convention analysis of general burqa bans,' *European Constitutional Law Review* 7(3): 424–452.
- Van Schoelandt, Chad and Gerald Gaus. 2019. 'John Rawls's Political Liberalism,' in Kelly Becker and Iain Thomson (eds.), *The Cambridge History of Philosophy, 1945–2015*. Cambridge: Cambridge University Press.
- Véliz, Carissa. 2020. *Privacy is Power: Why and how You Should Take Back Control of Your Data*. London: Random House.
- Vickrey, William. 1960. Utility, strategy, and social decision rules. *Quarterly Journal of Economics* 74: 507–535.
- Viehoff, Daniel. 2014. 'Democratic equality and political authority,' *Philosophy & Public Affairs* 42 (4): 337–75.
- Voinea, Cristina. 2015. 'A realist critique of moralism in politics: The autonomy of Bernard Williams's basic legitimation demand,' *Public Reason* 7 (1–2): 81–92.
- Waldron, Jeremy. 1987. 'Theoretical foundations of liberalism,' *The Philosophical Quarterly* 37(147): 127–150.
- Waldron, Jeremy. 1991. 'Homelessness and the issue of freedom,' *UCLA Law Review* 39: 295–324.
- Waldron, Jeremy. 2002. *God, Locke, and Equality: Christian Foundations in Locke's Political Thought*. Cambridge University Press.
- Wall, Steven. 2002. 'Is public justification self-defeating?' *American Philosophical Quarterly* 39(4) 385–394.

- Warburg, Margit, Birgitte Schepelern Johansen and Kate Østergaard. 2013. 'Counting niqabs and burqas in Denmark: Methodological aspects of quantifying rare and elusive religious sub-cultures,' *Journal of Contemporary Religion* 28(1): 33–48.
- Watson, Lori and Christie Hartley. 2018. *Equal Citizenship and Public Reason: A Feminist Political Liberalism*. Oxford University Press.
- Weintraub, Ruth. 2011. 'A solution to the discursive dilemma,' *Philosophical Studies* 152(2): 181–188.
- Weithman, Paul. 2017. 'Autonomy and Disagreement about Justice in Political Liberalism,' *Ethics* 128(1): 95–122.
- Wilkins-Laflamme, Sarah. 2016. 'The remaining core: a fresh look at religiosity trends in Great Britain,' *The British Journal of Sociology*, 67(4): 632–654.
- Williams, Bernard. 2005. *In the Beginning Was the Deed: Realism and Moralism in Political Argument*, Geoffrey Hawthorn (ed.). Oxford: Princeton University Press.
- Winters, Jeffrey A. 2011. *Oligarchy*. Cambridge: Cambridge University Press.
- Wolff, Jonathan. 1998. 'Fairness, respect, and the egalitarian ethos,' *Philosophy & public affairs* 27(2): 97–122.
- Wolff, Jonathan. 2001. 'John Rawls: Liberal democracy restated,' *Croatian Journal of Philosophy* 1(3): 347–361.
- Wolterstorff, Nicholas. 1997. 'The role of religion in decision and discussion of political issues,' in Robert Audi and Nicholas Wolterstorff (eds.), *Religion in the Public Square: The Place of Religious Convictions in Political Debate*. Rowman & Littlefield.
- Wolterstorff, Nicholas. 2012. 'Liberal democracy as equal political voice,' in Terence Cuneo (ed), *Understanding Liberal Democracy: Essays in Political Philosophy*. Oxford: Oxford University Press.
- Wolterstorff, Nicholas. 2012. 'The paradoxical role of coercion in the theory of political liberalism,' in Terence Cuneo (ed.), *Understanding Liberal Democracy*. Oxford: Oxford University Press.
- Wong, Baldwin. In press. 'Public reason and structural coercion: In defense of the coercion account as the ground of public reason,' *Social Theory and Practice*.
- Young, Iris Marion. 1990/2011. *Justice and the Politics of Difference*. Oxford: Princeton University Press.
- Young, Iris Marion. 2011. *Responsibility for Justice*. Oxford: Oxford University Press.
- Zempi, Irene. 2016. "It's a part of me, I feel naked without it": Choice, agency and identity for Muslim women who wear the niqab,' *Ethnic and Racial Studies* 39 (10): 1738–1754.
- Zinberg, Norman E. 1984. *Drug, Set, and Setting: The basis for Controlled Intoxicant Use*. New Haven, Connecticut: Yale University Press.