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A perfectionist original position?

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ABSTRACT

In *A Perfectionist Theory of Justice*, Collis Tahzib offers an original reconciliation of perfectionism and contractualism. While ingenious, this reconciliation is unstable. I raise some questions about whether the perfectionist original position can firmly secure equal basic liberties.

KEYWORDS Contractualism; perfectionism; John Rawls; Collis Tahzib; original position; equal basic liberties

In his tightly argued book, Collis Tahzib offers an original reconciliation of perfectionism and contractualism. Perfectionism refers to a family of first-order defences of the permissibility of state promotion of the good life. Contractualism is a second-order method of political theory that asks what persons would agree upon under suitably idealized conditions. The most influential contractualist device is John Rawls's 'Original Position' (OP) whereby idealized parties agree to fair terms of cooperation set out by a conception of liberal justice. Crucially, the parties are imagined to be under a 'veil of ignorance' about their specific moral, religious and cultural ideals and worldviews. Not knowing what their specific conceptions of the good will be, and wanting to protect their capacity to form and revise them, the parties bind themselves to terms of justice that are not biased towards, and are maximally inclusive of, all such (reasonable) conceptions.

Rawls's OP vividly modelled the thought that contractualism and perfectionism are incompatible. Subsequently, contractualist political theorists turned to develop sophisticated anti-perfectionist theories (such as theories of public reason). Perfectionist theorists, for their part, eschewed contractualist approaches, opting to argue more directly for the first-order plausibility of their substantive theories. Instead of speculating about what it would be reasonable for idealized persons to accept, they advocate what they deem to be the correct and true view.

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In a bold break with this trend of contemporary political philosophy, Tahzib argues, on the contrary, that it is possible, even desirable, to ground a perfectionist theory of justice on contractualist premises. His ingenious move is to amend the Rawlsian OP, such that the parties are imagined to desire and know something about the good: they share a thin account of human flourishing. When set against a distinctive view of society – society viewed as fair striving for human flourishing between free and equal persons – the perfectionist OP delivers an amended set of principles: Rawlsian justice *plus* perfection.

In this brief comment, I raise some questions about the coherence of the perfectionist OP. I ask whether it is able to deliver justice as well as perfection: whether it can do all the normative work that the Rawlsian OP was designed to do. I suggest that the perfectionist OP is, on reflection, not robust enough to ground the equal basic liberties that form part of Rawls's first principle of justice. I first reconstruct Tahzib's argument, before raising some issues. My aim is not to throw doubts on the desirability of a perfectionist theory of justice as such – I believe Tahzib's is an exceptionally compelling articulation. It is, rather, to ask whether the OP is an apt heuristic device to model its intuitions.

I.

In *A Perfectionist Theory of Justice*, Tahzib (2022, p. 122), avails himself of the contractualist OP as a valuable heuristic device for keeping track of all our intuitions and specifying an objective standpoint for reasoning about justice. He notes that Rawls's OP is constructed out of a distinctive view of society, seen as a fair cooperative venture between free and equal persons. Yet this is not the only plausible view of society. In Chapter 3, Tahzib puts forward an alternative, perfectionist view of society as fair striving for human flourishing between free and equal citizens.

With this view of society operating in the background, how should we specify the OP? How do we design a suitably abstract counter-factual situation that (i) keeps track of Rawls's main intuitions about justice while (ii) showing fidelity to perfectionist ideals? The chief Rawlsian intuition that Tahzib tracks (in Chapter 4) is that, as people profoundly disagree about the truth of comprehensive doctrines (such as Christianity or Millian liberalism), the parties in the OP must be assumed to be ignorant of the specific ideals they might endorse once the veil of ignorance is lifted. As Rawls argued in *Theory of Justice*, 'to acknowledge any such standard would be, in effect, to accept a principle that might lead to a lesser religious or other liberty, if not to a loss of freedom altogether to advance many of one's spiritual ends' (Rawls, 1971, pp. 327–328). What the parties share is simply a thin conception of the good (they want more rather than fewer primary all-purpose goods) and general knowledge of some facts about society. Rawls then suggests that,

once the parties are specified in this way, they would select the three principles of (i) equal basic liberties, (ii) fair opportunity and (iii) the difference principle, over alternative schemes setting out utilitarian or perfectionist principles.

Tahzib, however, points out that while the Rawlsian OP rules out extreme forms of perfectionism – those associated, for example, with comprehensive religious views or with the Nietzschean pursuit of human excellence – it is less clear that it would rule out more moderate perfectionist ideals. To model this, Tahzib (2022, p. 102) offers a different specification of the parties in the OP, one in line with the perfectionist view of society. He stipulates that the parties (i) want to flourish to a greater rather than lesser degree and (ii) know that not all ways of life realise the same level of flourishing. The new specifications are still abstract: they have limited moral content, so the parties would not commit themselves to living by any *specific* way of life. Yet they can be assumed to converge on general perfectionist judgements. To motivate the thought, Tahzib suggests that it would be difficult, for example, to deny that the life of the drug addict or that of the person committed to the worthless pursuit of counting blades of grass, exhibits any significant degree of flourishing. To be sure, such considerations are not empirical generalizations but rather normative constructions (Tahzib, 2022, p. 108). Yet they are not arbitrary: just like Rawls's stipulations, they are derived from the view of society that the OP is set against.

Once the veil of ignorance is drawn in this way, it is plausible to think that the parties would be less averse to endorsing moderate principles of perfectionist justice. As Tahzib (2022, p. 111) puts it, 'if you want to flourish to a greater rather than lesser degree . . . you would be very fearful of ending up in the way of life that realizes a low degree of flourishing.' Once the first two principles of justice are secured, Tahzib argues, the parties may engage in intuitionist reasoning to encourage the promotion by the state of good lives and its discouragement of bad lives – even if that entails fewer income supplements for the (economically) worst-off. The parties would then select slightly different principles to the Rawlsian ones: namely (i) equal basic liberties, (ii) fair opportunity and (iii) trade-offs between further equality and human flourishing.

Tahzib's strategy, therefore, is to *supplement* the first two Rawlsian principles with an added principle of perfection. He postulates that the lexical priority of equal basic liberty is as firmly grounded in the perfectionist OP as it was in the Rawlsian OP. The 'real work' of the OP, he claims, only begins once the first two principles are taken as given (Tahzib, 2022, p. 98). However, I am not persuaded that he has motivated this claim sufficiently. The worry I shall articulate is that the new specification of the parties is bound to have a knock-on effect on the strength of their commitment to equal basic liberty. If this is correct, then Tahzib is not entitled to claim to have *supplemented*

Rawlsian justice with Tahzibian perfection. Instead, Rawlsian justice – more specifically, the principle of equal basic liberty – will have been *replaced* by an alternative, perfectionist theory of the permissible limitation of some basic liberties in the name of human flourishing.

To see this how this might happen, imagine a religious cult committed to an abject way of life. Its members preach blind subordination to their leader as their unique tenet of faith and are led to commit suicide as proof of total dedication to the wisdom of their leader. (An egregious, real-life example of such a cult is Marshall Applewhite's Heaven's Gate, whose members voluntarily committed mass suicide in 1997.) Few would deny that the lives of members of cults such as these are as devoid of flourishing as that of the drug addict or the counter of blades of grass. Such judgement is not grounded in any comprehensive or sectarian conception of the good. It does not appeal to any extreme form of perfectionism that would dictate the terms of the uniquely flourishing spiritual life. In line with Tahzib's explication of the point of the perfectionist veil of ignorance, we would expect that parties in the perfectionist OP would be 'very fearful of ending up in the way of life that realizes a low degree of flourishing', such as that promoted by such cults. Because they would want to insure against this worst-case scenario, they might seek to limit the ability of such cults to proselytise freely, to assemble in public places, or to claim rights of religious freedom. Such policies, it should be noted, are not fanciful. European countries such as France, Germany, Belgium and Switzerland, for example, drastically limit the basic liberties of 'dangerous' sects and cults.

Crucially, such restrictive provisions are usually not defended by appeal to ideals of justice, such as the protection of the rights and liberties of others (including vulnerable persons such as children). More commonly, they are grounded in distinctively perfectionist (and paternalist) considerations, such as the claim that membership of such cults is bad *for their members themselves*. Just as a Rawlsian state can legitimately seek to contain the spread of unreasonable doctrines – say, doctrines that violate the rights and freedom of others, that engage in hate speech, or that constrain children's opportunities for self-determination – similarly, a perfectionist state might legitimately seek to contain the spread of what *it* considers as unreasonable doctrines – doctrines that are incompatible with any recognizable conception of decent human flourishing. Therefore, it looks as though limitation of the basic liberties of some people could be justified at the bar of perfectionist justice itself. Basic liberty would be limited, not by another basic liberty as in Rawls's 'fully adequate scheme' of equal liberties, but by appeal to another value: human flourishing. It is, at least, not implausible to suggest that such provisions could be incorporated in the theory of justice selected in the Tahzibian OP.

II.

Tahzib, at several points in his book, vehemently denies that the perfectionist theory of justice would in any way weaken the protection of equal basic liberties. Yet his reassurances on this front seem *ad hoc*, in the sense that they do not flow from the construction of the OP itself. In what follows, I turn to examine three arguments that he puts forward.

First, Tahzib (2022, p. 115) concedes that the perfectionist state might limit *ordinary* liberties (say, through the levelling of taxes to fund the arts and culture) but he is adamant that it would protect *basic* liberties. As the basic liberties commonly include freedom of religion, freedom of speech and freedom of association, the perfectionist state would be committed not to restrict the basic liberties of dangerous cults. Yet it is unclear that the Tahzibian OP has the resources to draw the distinction between ordinary and basic liberty. Rawls, for his part, provided a key justification, which retrospectively explicated the design of his OP and its attendant specification of the parties. The Rawlsian parties are assumed to be ignorant about their substantive conceptions of the good, not because they are indifferent about the good, but because they have a higher-order interest in 'forming, revising, and rationally pursuing such a conception over a complete life' (Rawls, 2001, p. 112). This is one of the fundamental 'moral powers' that Rawls attributes to parties. He goes on to say that a liberty is basic if it is necessary to the provision of 'the social conditions essential for the adequate development and the full and informed exercise of [people's] two moral powers' (Rawls, 2001, p. 112). Freedom of religion is one of the basic liberties because it is necessary to protect our interest in forming, revising and pursuing our conception of the good. In the Rawlsian OP, then, ignorance about the good serves to model our higher-order interest in choosing and revising *our own* conception of the good – an interest that is protected through basic liberties such as freedom of religion, belief, speech and association.

What is unclear is whether Tahzib's altered specification of the parties can generate an equivalent commitment to the protection of this moral power (Tahzib does not say anything about this). In general, it is difficult to see how the parties could *both* give primacy to this higher-order interest *and* seek to live more, rather than less, flourishing lives. This is because the two interests – the interest in living the life one prefers to live and the interest in flourishing – might well conflict. Tahzib's OP, in effect, only tracks half of the Rawlsian intuitions that motivated the veil of ignorance. It (negatively) tracks the parties' wariness of living under an alien, comprehensive conception of the good. Yet it does not (positively) track the parties' higher-order interest in living by a conception of the good that is *theirs* (even if it is not a flourishing one). In the absence of a secure grounding for that interest, it is not clear that perfectionist justice can justify the full scheme of equal basic liberties.

Second, Tahzib (2022, p. 115) insists that freedom of religion would be specially protected in the perfectionist state because religious convictions are

subjected to reasonable disagreement. Because people reasonably disagree about religion, the basic religious freedoms of even dangerous cults would be secured. Yet we may wonder whether Tahzib's OP has the internal resources to cordon off religious beliefs in this way. In Rawlsian writings, such as Jonathan Quong's, religious disagreement is explicated as a paradigm of *foundational* disagreement about the *good*. It is disagreement that goes 'all the way down', by contrast to disagreement about the right and justice, which is merely *justificatory*. This is how Quong justifies his internal conception of the relevant constituency of justification of liberal principles: reasonable persons, by construction, only appeal to the right, not the good (Quong, 2011). Tahzib's is internal in the same sense: it is only addressed to citizens who are assumed to share specific commitments (such as those imputed to the parties in the perfectionist OP). But as those commitments specifically involve a desire to avoid bad (non-flourishing) ways of life, Tahzib can rule out restrictions on religious liberty only by *fiat*. The appeal to reasonable disagreement will not do: as he himself insists, there is no general asymmetry between the controversiality of non-perfectionist and perfectionist judgements (Tahzib, 2022, pp. 116–120). Judgements that some religious commitments are abject might, on the perfectionist view, be reasonable.

Third, Tahzib protests that his favoured perfectionist proposals would not threaten basic equal liberty because they merely involve public support for already widely accepted policies promoting moral, intellectual and artistic excellence (such as educational broadcasting and funding for the arts and culture). To be sure, Tahzib's account of human flourishing in Chapter 5 is meant to be only illustrative and 'provisional'. He seeks to separate 'the general question of whether the state should promote human flourishing' from 'the question of what human flourishing consists in'. Still, his more detailed proposals are designed to put to rest the worry that perfectionist policies would bear illiberal tendencies.

The problem, however, is that the abstract construction of the OP cannot by itself ground this reassurance. The perfectionist OP models the 'general question' of whether the state should promote human flourishing. Yet it is pitched at such a high level of generality that it is unclear whether the parties in the perfectionist OP have enough information (and the right kind of information) to be able to select *any* conception of justice. The parties simply agree that the state will promote whatever the best conception of human flourishing is found to be (after a broader process of ethical enquiry). But then what is the OP for, if it does not motivate the selection of the values that the state will promote? Here, it looks as though the contract is merely a blank cheque: its central provisions are to be specified *after* the parties have signed up to it. To be sure, the Rawlsian OP also leaves various details to be filled at later stages of a four-stage sequence. Yet the two

principles of justice are determinate enough to rule out several scenarios. The Tahzibian OP, by contrast, leaves the key question of the full determination of the content of human flourishing open to the deep disagreements that are bound to appear at later stages. Once again, we cannot exclude the possibility that some religious liberties will be restricted, once the veil of ignorance has been lifted, and the parties find that the (reasonable) conception of the good they endorse falls short of the agreed standards of human flourishing.

In answer to a related charge, Tahzib (2022, pp. 229–231) insists that the selected principles of perfectionist justice must appeal to excellences that have 'broad and enduring appeal' within liberal-democratic societies. However, as this stipulation is introduced later in the argument, and independently of the construct of the OP, it considerably reduces the heuristic appeal of the latter. Rawls's OP may be 'merely heuristic', as Tahzib claims, but its heuristic value inheres in the assumptions that Rawls baked into it: the importance of the second moral power, the reasonable nature of disagreement about religion and the good, and so forth. Absent these assumptions, the ability of the perfectionist OP to protect equal basic liberties, and to motivate agreement upon a determinate conception of justice, is less secure.

My aim has not been to defend Rawlsian contractualism. As Tahzib himself recognises, his framework inevitably inherits some of the weaknesses of Rawls's. What I have tried to suggest is that perfectionist contractualism may come burdened with additional, unseen disabilities. The specification of the parties offered by Tahzib departs from some grounding assumptions of Rawls's OP, such that the compatibility of perfectionist justice with liberal principles of justice, in particular the protection of equal basic liberties, is stipulated, rather than properly motivated. It may well be the case, of course, that perfectionist restrictions on basic liberties are in fact justifiable (as in the case of dangerous sects). It may well be, alternatively, that a non-perfectionist Rawlsian framework could also justify such restrictions. What I have merely sought to show is that Tahzib's stipulation of unrestricted equal liberty sits uneasily with his own perfectionism. As a result, the ingenious construct of the perfectionist OP looks somewhat unstable.

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