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# Reconceiving Public Reason

Neutrality, Civility, and the Self-Defeat Objection



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### **Abstract**

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How should we live together? The question is at the heart of social ethics and it is an as urgent political question as ever. In this thesis, one particularly attractive reply to this central issue is analysed—John Rawls’s theory of public reason, and three different objections that have been put against it. Rawls’s theory is an approach to democratic decision-making. According to it, the exercise of political power should be neutral. Secondly, the exercise of political power should restrict the reasons that have justificatory force in political decision-making procedures to reasons that do not rely on any particular worldview. Finally, the exercise of political power is legitimate only if it is in accordance with terms of cooperation that all reasonable and rational persons can accept.

The objections each target one of these components. Cécile Laborde has challenged the conception of neutrality espoused by egalitarian liberals generally. Egalitarian liberal understandings of neutrality do not take sufficient account of all relevant dimensions of our worldviews and often confuse neutral policies with what conforms to the status quo. Jeffrey Stout, in turn, targets the constraints on public discourse and argues that imposing such constraints is unfair to religious citizens because it distributes the burdens of cooperation to their disadvantage. Finally, Steven Wall argues that the requirement that the legitimate exercise of political power be acceptable to citizens ends up defeating itself.

These arguments are tested and I consider the alternative approaches that are presented by each of the three critics. I propose that neutrality should be rejected, as equality better captures the end pursued by demanding neutral treatment of different worldviews. I then go on to revise the constraints that Rawls impose. Although many of Stout’s arguments are persuasive, Rawls’s constraints on political discourse are introduced for very good reasons. Finally, I argue that Wall’s self-defeat argument fails and that Rawls’s principle of legitimacy need not be revised, but is defensible in its current form.

*Keywords:* John Rawls, Jeffrey Stout, Cécile Laborde, Steven Wall, public reason, social cooperation, neutrality, civility, political legitimacy

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*To Cecilia and Ester*



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Johan Elfström  
Krylbo, January 2024

# Introduction

How can we live together? Looking at the political reality of today, this seems a particularly difficult question. From oppressive policies to armed conflicts, there seems to be no end to what we justify in the name of national or economic interest or mere claims to power. But even if we look past such cruelties, and past the recent loss of trust in liberal and democratic institutions and a parallel increase in authoritarian sentiments, even in states that have previously been considered consolidated democracies, this question is a very real one. Citizens of modern societies are divided by a plurality of worldviews: by different interpretations of the world, different conceptions of what is good and of what is right, and different ideas about the proper relation between the two. These kinds of differences are a permanent source of conflict that permeates our political relations. Without them politics would not even exist—or if it would, it would be reduced to exegetics. Certainly, conflict is not the only characteristic of politics. Politics done right display a concern to harmonize these divergent interests, to try to move people closer to one another and reap the goods that the consequent stability yields. There sometimes seems to be a tendency to seek to choose either conflict or stability, but I believe this to be a mistake. It is difficult to imagine politics without conflict. At the very least, if there were no conflicts there would not exist any *need* for politics. But pure conflict without any attempt at cooperation is not politics either.

Luckily there is no need to settle for a definition of politics or the political domain that reduces the phenomenon to one or the other: conflict or cooperation. We might even imagine that these features can be organized in very different ways. In some political systems cooperation will play a larger role than conflict, and in others it will be the other way around. But how *should* these aspects of the political be organized? Indeed, how *should* we live together? One suggestion is that conflicts be settled, society organized, power exercised, and decisions made in ways acceptable to all. This proposal lies at the roots of liberal political

thought, in the contractarian views developed by thinkers like John Locke and Immanuel Kant, and is visible primarily as a constraint on the legitimate exercise of coercive power.<sup>1</sup> I find it an attractive proposal. When some disagreement on, say, how to address a pressing social problem must be settled, I cannot see that there is a fairer way of regulating social cooperation between members of a political society. There are, however, problems with this suggestion, and this thesis brings up three of them that all touch the moral centre of liberalism.

In this study, I will approach these issues from the particular point of view of a strain of egalitarian liberalism labelled *political liberalism*. This approach to politics is particularly political because, in one way or another, it seeks to limit its content to what is necessary for a conception of political morality—specifically, for a conception of social cooperation among the members of a political society.<sup>2</sup> As a conception of the relationship between politics and the way a person might look at the world, political liberalism’s ambition is to make liberalism “a strictly political doctrine and not a ‘general philosophy of man’”,<sup>3</sup> thus retreating from liberalism’s more comprehensive claims in order to be better suited as the object of a consensus between persons with different such comprehensive commitments. In the terms of the American political philosopher John Rawls, one of the pioneers of this attempt to sever political philosophy from comprehensive commitments, a political conception of justice should be *freestanding*. Political philosophy should not say much about what is right or good but merely lay out a conception of what the terms of cooperation for a political society should be. Of course, as persons are divided by a plurality of worldviews, they are no more likely to agree to particular principles guiding cooperation than they are to particular conceptions of human goods or to human virtues. But some things could be done to narrow these disagreements, and perhaps to say something about what terms those persons should consent to—or if not precisely what terms, then, at least what is characteristic

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<sup>1</sup> According to Charles Larmore (*What Is Political Philosophy*. Princeton University Press, Princeton, NJ, 2020, p. 4), the turn towards justice is very much instantiated by John Rawls and his *A Theory of Justice*.

<sup>2</sup> Larmore, op. cit., p. 12; Rawls, John: *Justice as Fairness: A Restatement*. Belknap Press, Cambridge, Mass, 2001, pp. 40-41; Quong, Jonathan: *Liberalism Without Perfection*. Oxford University Press, Oxford, 2011, pp. 2-3.

<sup>3</sup> Larmore, Charles: “Political Liberalism”, *Political Theory*, Vol. 18. No. 3. Aug 1990, p. 345.

about the terms of cooperation that citizens could and, indeed, should accept.

The idea of public reason is a central part of Rawls's political liberalism. This idea is a theory about democratic decision-making. As Rawls put it, a society's reason is its way of making plans, organizing those plans into a realizable scheme, and selecting means considered appropriate for its realization. When these decision-making procedures are firmly grounded in the citizenry and distributed equally between citizens, the society's reason is a *public reason*.<sup>4</sup> Public reason theories, even those not tied to political liberalism, tend to be committed to an idea of idealized unanimous assent. In many accounts, this commitment also generates constraints on the reasons that can be adduced in deliberative processes as a means of achieving such assent. Not only should the terms of cooperation, the constitution, and, sometimes, particular legal rules all be acceptable, but also they must be justified by reasons that can be recognized as reasons—as speaking in favour of a particular decision—by all parties.<sup>5</sup> Rawls calls these two components of public reason “the liberal principle of legitimacy” and “the duty of civility”, respectively. The two of them then suggest a third component: a commitment to state neutrality. The state should never justify its decisions by presupposing the truth of a particular worldview; nor should the state seek to favour a particular worldview with its decisions.

## Purpose and Problems

The problem that this thesis addresses is that there are strong reasons to doubt that the three components as they are generally understood make for a plausible theory of public reason. Neutrality often turns out to be the status quo in disguise. The duty of civility, besides being a good example of the problem neutrality faces—how neutrality to secular liberals seems to be both secular and liberal—distributes the burdens of cooperation unjustifiably unequally. Finally, the idealizing move that gives content to the principle of reasonable acceptability do not seem to work, at best providing a poor understanding of what it is reasonable for persons to accept and at worst turning on itself, rendering the principle self-defeating.

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<sup>4</sup> Rawls, John: *Political Liberalism*. Columbia University Press, New York, 2005.

<sup>5</sup> Rawls, *Justice as Fairness: A Restatement*, p. 27.

Given this problem, the purpose of this study is threefold. First, I seek an answer to the following question: *how should one understand Rawls's theory of public reason and its relation to political liberalism?* To see whether the objections are right, it is necessary to have a good understanding of the position that is being criticized. The second purpose of the study is to analyse three objections to public reason, thus understood. To each of the three components—neutrality, the duty of civility, and the liberal principle of legitimacy—I shall put one of the objections presented very briefly above. I will focus on three particular arguments from three different critics which I will reconstruct in dialogue with Rawls and the surrounding literature on the subject so as to make it as strong as possible. I will ask: *how should one understand the challenges that the critics pose against Rawls's understanding of public reason?* Thirdly, and finally, I seek to answer the question: *how could a plausible theory of public reason be formulated?* Most straightforwardly, this means that I shall revise the components in light of the objections that I have scrutinized. I shall also have to reconsider the way in which the theory's components fit together. In my analyses I focus on this fit, trying to show how the components relate to the rationale that is set by an overarching value of cooperation that involves both a conception of society and persons involved in cooperation.

## Political Liberalism and the Idea of Public Reason

What is it that makes a theory of public reason a theory about public reason, rather than, say, some conception of deliberative democracy, or some other conception of democracy that assigns deliberation a significant theoretical position? Plausibly, it is the invocation of idealized consent as a necessary condition for the legitimate exercise of political power, such that in one way or another, to be legitimate, the exercise of political power must be acceptable to all reasonable persons. There is great variance among public reason theories, and it is impossible to formulate a principle that captures this plurality. Yet as the British philosophers Paul Billingham and Anthony Taylor have argued, the endorsement of such a principle is a necessary condition for counting as a conception of public reason.<sup>6</sup> This requires much elaboration. Following

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<sup>6</sup> Billingham, Paul & Taylor, Anthony: "A Framework for Analysing Public Reason Theories", *European Journal of Political Theory*, Vol. 21. No. 4. October 2022, p. 671.

Billingham and Taylor's lead, a commitment to a principle of reasonable acceptability first requires an idealizing move. It is not *all* persons that should find a particular arrangement acceptable, but all *reasonable* persons. Next, it must be explained what it is that reasonable persons should be able to accept for the exercise of political power to be legitimate: is it constitutional essentials or ordinary laws and their applications? The rationale of the idealization must then also be explained. What this means is that there must be reasons for making a particular idealizing move, as well as for focusing on particular decisions (about constitutional essentials or ordinary laws), such that the idealization and the focus of the agreement make sense and can be justified. Finally, the question is what the implications are in terms of content—which laws, or decisions, or constitutional essentials can be reasonably accepted?<sup>7</sup>

This is fair enough, I think. There is, however, one point I would like to add. According to this framework, public reason is simply a conception of political legitimacy suggesting that the legitimate exercise of political power requires that all reasonable persons can accept it. In keeping with Rawls and the British political philosopher Jonathan Quong, however, the idea of public reason is a conception of democratic decision-making that *includes* a conception of legitimacy relying on reasonable acceptability, but is not equal to it. This means, at the very least, that the state has a duty to show that its decisions can meet this requirement, but it could also involve duties for individual citizens participating in democratic processes as well. As Quong points out:

The idea of public reason entails a particular version of *democratic deliberation* where citizens and public officials only support political decisions when they sincerely believe that those decisions can be justified by considerations that each person can reasonably endorse in their capacity as a free and equal citizen, that is, that they only support laws that can be justified by appeal to *public reasons*.<sup>8</sup>

Quong endorses a very particular conception of the bounds of public reason, according to which both citizens and public officials are included. Rawls extended it primarily to the latter group, and to ordinary citizens only in special cases. Others, such as the American philosophers Gerald Gaus and Kevin Vallier, seem to consider public reasoning primarily a question of deliberation among citizens (as opposed, to

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<sup>7</sup> Billingham & Taylor, *op. cit.*, p. 673-678.

<sup>8</sup> Quong, *Liberalism Without Perfection*, p. 256.

Rawls's view of public reason being about formal democratic processes).<sup>9</sup> It will not do to say that the four points of elaboration brought up Billingham and Taylor pertain merely to the conceptions of political legitimacy often associated with public reason theories. The rationale that justifies and explains the idealizing move must encompass the characterization of the deliberative procedures as well. Still, it does not seem to be sufficient to simply add a fifth point of elaboration regarding deliberative procedures, as that would not emphasize them enough. Deliberation is just as central to public reason theories as is the idea of reasonable acceptability.

First, rather than being a question of explaining a particular idealization, what must be explained is what makes a reason *public*. There is an ambiguity here in the term "reason", as it could denote the capacity to reason as well as considerations that persons adduce in their deliberations to substantiate a particular claim. In the quote above, Quong uses public reason in the latter sense, but looking no further than to Rawls, we see that both the capacity to reason and the considerations by which we reason—the reasons—can be public. I, too, focus on both. The idea of public reason draws on actual processes of democratic deliberation and abstracts and idealizes from these a conception of how things should be. So, a conception of the conditions for fair democratic deliberation is required, and this implies imposing some constraints on the reasons according to which the outcomes of the democratic procedures as well as the procedures themselves must be justifiable.

The second point of elaboration remains much the same, only the question is no longer what reasonable people should be agreeing about, but rather on what matters public reasoning is required in order to make legitimate decisions about them. Also at issue is who can be engaged in public reasoning: only public officials, or all citizens? Any further aspects of the bounds of public reason should be similarly explicated. The third point regards public reason's rationale and need not be reconsidered. What is important is that the connection between different points is explained and related to the rationale of public reason and thereby justified. This, of course, may be done in a variety of ways. Public reason is plausibly understood as part of a conception of liberalism (not necessarily *political* liberalism) and should appeal to the commitments of that

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<sup>9</sup> Gaus, Gerald & Vallier, Kevin, "The Roles of Religious Conviction in a Publicly Justified Polity", *Philosophy and Social Criticism*, Vol. 35. Nos. 1-2, p. 65-67.



view. Finally, one must say something about the outcome of one's conception of public reason. Perhaps one cannot say very much about the specific laws that would be legitimately enforced, because a conception of deliberation should not yield a determinate outcome, but something should be said about the implications of one's view. What are its benefits over other theories? What are its drawbacks or costs? The three components that I focus on—neutrality, the duty of civility, and the principle of liberal legitimacy—are all parts of the first point of elaboration, but the components, the objections, and my response to these objections concern all four different points in different ways. In particular, they relate to central themes of the overarching framework that is political liberalism.

Political liberalism should be understood as an approach to the place of our worldviews in political decision-making procedures. It is a way to answer the question of how we can coordinate our activities together although separated by our different ends and commitments. Although many theories of political liberalism exist, political liberals take, I must say, quite similar approaches to this question: our activities should be coordinated in terms of social cooperation.<sup>10</sup> Of course, this political liberal answer differs in substantive content from thinker to thinker. For Rawls, justice is the central question. Social cooperation should be organized by principles of justice acting as terms of cooperation. Charles Larmore, another American philosopher and early proponent of political liberalism, thinks that political legitimacy has priority over justice. On his view, reasonable pluralism about justice is just as pervasive as reasonable pluralism about the good, and thus, some other concept is required about which there is less controversy. Political legitimacy is his proposal, because the need for enforceable rules to settle social conflicts is a non-moral one. It is a need that arises independently of and prior to questions of justice.<sup>11</sup>

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<sup>10</sup> See, for instance, Larmore, *What Is Political Philosophy?*; Quong, *Liberalism Without Perfection*, and Rawls, *Political Liberalism*.

<sup>11</sup> Larmore, *What Is Political Philosophy?*, pp. 105-110; Rawls, *Justice as Fairness: A Restatement*, p. 9. This focus on justice is most clear in *A Theory of Justice*, where one of Rawls's guiding intuitions is that "justice is the first virtue of social institutions" (p. 3).

## Public Reason: Its Three Components

Theories of public reason, it seems to me, often come with at least three central components. A commitment to neutrality is motivated (and sometimes even implied) by, on the one hand, constraints on political deliberations, and, on the other, a conception of political legitimacy. These three components make up, as I have already suggested, an answer to the first point of elaboration: what makes public reason public. Here, I take a brief look at each component and the objection directed at it.

Conceptions of neutrality, first, are often distinguished by their focus. Either the exercise of power is neutral with regard to its justification, or the exercise of political power is neutral with regard to the aim that it seeks to realize—it does not seek to favour any particular conception of the good or any particular worldview. These two conceptions of neutrality are often termed *neutrality of justification* and *neutrality of aim*, respectively. These conceptions, particularly the former, are the conceptions of neutrality that are most often encountered in liberal philosophy. A third conception, *neutrality of effect*, requires that policies and principles not affect citizens' pursuits and their realizability differently. This conception is generally considered to be problematic because many otherwise justified policies might have different kinds of outcomes for different groups. A commitment to freedom of religion might have the effect that the dominant religion loses members to other groups, but that outcome should not speak against a principle of religious freedom. A final conception of neutrality is referred to as *neutrality of treatment*. On this view, the state's exercise of political power is neutral as long as it is equally accommodating of different social groups. That any assistance or hindrance it offers to one group of persons is extended to other groups as well in relevant ways.<sup>12</sup>

In considering the neutrality component, another point to be discussed is its domain—that is, the range of things that the state must treat neutrally. It is most commonly thought that the state must be neutral

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<sup>12</sup> What distinguishes neutrality of treatment from neutrality of effect is that according to the first view, neutrality means that a policy can be neutral even if it intentionally affects two groups very differently. What is important is that they are, in the end, equally burdened. Neutrality of treatment then differs from neutrality of aim in that it can *intentionally* burden or favour certain groups or views to level the playing field, so to speak.

with regard to conceptions of the good human life. Thus, with a conception of neutrality as neutrality of aim, the state exercises its power neutrally if and only if it does not aim to favour or disadvantage any particular conception of the good. Neutrality of justification, in turn, requires of the state that its justification does not involve a judgement about such a conception's value, and in the neutrality of treatment interpretation, the exercise of political power is neutral if and only if any benefits and hindrances that result from it are extended to all (permissible) conceptions of the good. As of late, this focus on conceptions of the good has been a point of conflict. Why does it matter that questions about the good can be reasonably contested and thereby warrant neutrality from the state, when matters of the right and of justice, too, are reasonably contestable, but here, the state *can* take a position? As Larmore suggests, the state should not be neutral with regards to morality, but only to matters of the good.<sup>13</sup> The difficulties with explaining and justifying the asymmetric treatment between the good and the right has opened up the domain of neutrality to conceptions of justice as well.<sup>14</sup>

This leads us to the second component—the duty of civility. It is common to require citizens in official roles directly related to the exercise of political power to reason from an existing consensus regarding the principles of justice. The assumption of reasonable pluralism about justice, however, seems to imply that there can be no agreement on principles of justice to guide public reasoning. This problem with the duty of civility goes well beyond that of neutrality and reasonable disagreements about justice. There is a problem with the way that the bounds of public reason are drawn: the exclusion of comprehensive reasons from the purview of democratic deliberation unfairly burdens religious citizens.

This objection, which I analyse in this study, is aimed directly at Rawls's conception of public reason. But as I have noted, public reason

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<sup>13</sup> Larmore, "Political Liberalism", p. 341.

<sup>14</sup> Quong has suggested that this asymmetric treatment is justified because disagreements about the good are often foundational and go all the way down, to the point that there is no longer any common ground, whereas disagreements about justice rarely goes this far. Of course, disagreements about justice *can* go that far. But the point is not whether we are dealing with matters of the right or the good, or of justice. The central issue is whether or not the disagreement is foundational or merely justificatory (Laborde, Cécile: *Liberalism's Religion*. Harvard University Press, Cambridge, Mass, 2018, pp. 92ff; Quong, *Liberalism Without Perfection*, pp. 204ff). I shall engage with this issue in chapter two.

can be construed in many different ways. A central question here concerns the interpretation of social cooperation and our view of the cooperating parties. Thus, the issue here is partly about the proper bounds of public reason. Does public reason only apply to the most fundamental of questions, all political discussion, or something in between? Does it apply only to state officials, or does public reason impose its constraints on everyone? Another issue is the strength of these constraints. In some theories, most famously Rawls's, the idea is that the reasons admissible in public reason must be derived from a consensus on principles of justice, thus requiring reasons to be *shared*. A much weaker criterion requires only that those admissible reasons be *intelligible* to everyone, so that all are on board and can follow the discussion and what is being agreed to. A middle way requires reasons to be *accessible* instead, meaning that everyone must be able to engage with a reason *as a reason*, but does not require that public reasons be derived from a consensus in the Rawlsian sense.

The last objection that I deal with in this thesis concerns the principle of liberal legitimacy. The argument against the principle states that its requirement of acceptability invokes a *reconciliatory rationale* such that whatever conditions the ideal of reasonable acceptability invokes must necessarily be met by this principle itself. How can anyone be reconciled to the exercise of political power by a principle they do not endorse? The most obvious question here is about the role of this acceptability requirement—is it actually a plausible condition for the legitimate exercise of political power? Another question concerns the appropriate kind of idealization—what does it mean for something to be *reasonable*, persons, principles, or worldviews, for the kind of agreement that is entered into? Some argue that reasonable persons have certain moral-political commitments, such that they endorse particular values, they might be particularly ethical, or they might excel at reasoning. Finally, one must also ask at what levels one finds that which reasonable persons should be able to accept: is it constitutional principles or principles of justice, or perhaps the whole spectrum of principles that should be acceptable to reasonable persons to be proper?

## Material

This thesis considers three critics of political liberalism that in different ways problematize the idea of public reason. The French political philosopher Cécile Laborde focuses on political liberalism's claims to neutrality; Jeffrey Stout, an American philosopher and religious studies scholar, challenges political liberalism's constraints on public discussion; and the American political philosopher Steven Wall targets the idea of reasonable acceptability as incorporated in Rawls's liberal principle of legitimacy. I have selected works in political philosophy, social ethics, and political theory that provide a novel and interesting approach to contemporary discussions in these fields. Importantly, each scholar poses a significant challenge, either directly or indirectly, to at least one different aspect of political liberalism that bears on its commitment to acceptability. Laborde does this by focusing on neutrality; Stout enters the religion in politics debate; Wall challenges the acceptability requirement directly. It is also important that each develops their own alternative approach, as this not only provides material for my interpretation of these critics but also helps propel my own constructive effort.

As for choosing Rawls's works as my point of departure, I find political liberalism a very attractive approach in political philosophy, and, although not without its problems, Rawls remains the most prominent proponent of this view to this day. To give an accounting of his view, I turn primarily to his last book, *Justice as Fairness: A Restatement*, and the preceding *Political Liberalism*, which marks Rawls's so-called "political turn." In both books, Rawls develops his theory of justice as fairness, first presented in *A Theory of Justice*. This theory proposes two principles of justice for organizing the basic institutional structure of political societies. According to the first principle, all persons are entitled to a fully adequate system of equal basic liberties. According to the second principle, then, social and economic inequalities are to be distributed such that they are attached to offices and positions open to all, and that they are to the greatest benefit to the least advantaged. Rawls' political turn did not change these claims much. The significant differences lie in how the claims are justified. In *A Theory of Justice*, Rawls began with a set of intuitive judgements about justice and sought to see whether these could be appropriately specified and organized into a coherent theory of justice. Following *Political Liberalism*, the basis was no longer intuitive judgements but rather political values—ideas about how to organize society that have become part of political and legal

practice and have influenced our worldviews such that citizens of many different views can endorse them. As *Political Liberalism* is a collection of lectures based on articles written across a span of years, it does not present a clear picture of Rawls's intentions. To do so is the explicit aim of *Justice as Fairness: A Restatement*.<sup>15</sup>

Turning to Cécile Laborde, my primary material is Laborde's book *Liberalism's Religion*, published in 2018. Here, Laborde develops a "liberal egalitarian theory of religion and the state", arguing that egalitarian liberals' fear of religious establishment and resistance to legal exemptions for religious practices are wrongheaded. It is not only that religion is no special case and thus raises no special claims compared to secular worldviews, but also that one can make no coherent argument for keeping religious claims outside of politics, except for a small sphere that must always remain secular. Laborde begins by reconstructing the liberal egalitarian approach to religion, one characterized by the motto that religion is not special compared to other kinds of worldviews. Those aspects of religion that are protection-worthy are so not because they are religious but because they correspond to salient human interests. She then goes on to examine how prominent liberal philosophers have dealt with such interests when they run contrary to seemingly legitimate legal rules. Do they allow exemptions, and if so, on what grounds? Another issue is how the question of neutrality has been understood—what kinds of concerns are raised? From these analyses, Laborde develops her own approach. She argues that one cannot reduce religion to one dimension, such as a conception of the good life. There are many ways in which religion and secular worldviews engage with the liberal state and it is only along these dimensions that the state must be neutral. In Laborde's earlier book, *Critical Republicanism: The Hijab Controversy and Political Philosophy*, with which I also engage, she analyses and responds to two prominent strains of republicanism and their respective responses to the French hijab ban: one "official" and another that she calls "tolerant". Laborde rejects both these strains, instead developing one of her own which she calls a critical republicanism, aspiring to take seriously the complexity of the idea of state neutrality given institutional arrangements and historical developments of actual states.

In the third chapter, I engage primarily with Jeffrey Stout's book *Democracy and Tradition*. Stout's aim in this book is to counter a recent

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<sup>15</sup> Rawls, *Justice as Fairness: A Restatement*, p. xv.

enmity towards democracy carried by a group of philosophers he calls “the new traditionalists”. These philosophers argue that democracy is hostile to community and tradition and thus gnaws at the bonds holding society together. Stout wants to show that this enmity is misguided. He explains that the criticism of democracy often conflates democracy with *liberal* democracy, or even a Rawlsian understanding of democracy and so sets out to elaborate a different view. Finding Rawlsian liberalism to start from the top, with abstract moral principles, Stout wants to begin at the bottom, with the people. The pluralism of democratic societies must be acknowledged, of course, but it should be dealt with not by diluting the vocabulary of moral and political discourse through a retreat to common ground, but rather by saturating the public in the speech of traditions. Stout’s earlier book *Ethics After Babel* is also central for this dissertation. In this book, Stout’s subject is the terrifying face of moral disagreement, in particular the idea of there being something like *the* language of morals, rather than a plurality of moral languages. In particular, he wants to embrace pluralism without abandoning the notion of truth in ethics—to accommodate pluralism but not relativism. Here, Stout lays much of the groundwork for the arguments in *Democracy and Tradition*. In particular, he develops the epistemic contextualism that lets him argue that justification is contextual, that different traditions develop their own patterns of reasoning without abandoning truth.

Steven Wall’s argument is presented in most detail in his article “Is Public Justification Self-Defeating”, where he considers the “public justification principle”, a reconstruction of the category of conceptions of political legitimacy to which Rawls’s principle belongs. The article provides a necessary condition for the legitimate exercise of political power: to be legitimate, the exercise of political power must be justified in a way that can be understood by all subjected to it and be reasonably accepted by those to whom it is addressed. It is the latter point that matters to Wall’s argument, because it invokes a reconciliatory rationale. By demanding that coercive laws be reasonably acceptable, political liberalism hopes to bring citizens together and make sure that, under ideal circumstances at least, persons will be inclined to comply with the terms of the agreement. Given the reconciliatory rationale invoked by the political liberal conception of legitimacy, the public justification principle, too, must be given a reasonably acceptable justification. Wall contends, however, that no such justification exists. The strongest and

most popular path, Wall explains, suggests that the principle is justified by appeal to a conception of respect or fairness implicit in the political culture of democratic societies. Wall is not convinced by this argument as there are many ways to understand these values and not all of them are compatible with the ideal of public justification. Thus the principle, it seems, cannot be given a reasonably acceptable justification.

Wall returns to this problem in his article “The Pure Theory of Public Justification”. Here too, he argues that the public justification principle cannot be given a reasonably acceptable justification. The reasons he gives are similar; the novelty of this article is that he proposes a view of his own. It is certainly not undesirable, he says, that citizens be able to accept the exercise of coercive power; however, legitimacy does not depend on it. What matters is that political power is exercised in accordance with the demands of justice. To argue his point, Wall begins with the idea of the reasonable person. For Rawls and others, reasonable persons are committed to a Kantian-influenced idea of respect. Generally, the argument goes, this idea of respect is part of the political culture of democratic societies. But this seems wrong and is one of the causes for the self-defeat problem. The strategy does not provide a reasonably acceptable justification. Instead, reasonable persons should be taken to be competent reasoners that know how to appropriately respond to evidence. In Wall’s view, public justification is not a requirement of political legitimacy, but an aspirational ideal. It is important that political arrangements can be justified by sound moral reasons and that they can be so in public, echoing the requirement that they can be understood by others. But to *require* that all persons have reasons of their own to accept those moral reasons is to go too far.

## Method and Research Question

The purpose of this study, as I have said, is threefold. The first purpose is to clarify Rawls’s theory of public reason and its relation to the overarching framework of his political liberalism. The central task here is one of presentation: to provide a plausible interpretation of Rawls’s theory of public reason. To do so, I first briefly present Rawls’s theory of justice and his “political turn”. From there, I can focus on Rawls’s political liberalism and its idea of public reason. In addition to focusing on public reason as part of a political liberalism, I am concerned with



three components of public reason in particular: neutrality; the constraints that public reason place on public reasoning; and the idea of reasonable acceptability as part of a theory of political legitimacy. My analysis seeks to answer a question grounded in the four points of elaboration that I presented above: the ways in which public reason is public, its bounds, its rationale, and its implications. The question is: *how do the three components relate to the overarching rationale of social cooperation between free and equal persons?*

The second purpose is to analyse three objections to these components of public reason. Each objection focuses on one component. In testing the arguments against Rawls's idea of public reason, I pose two questions: (i) *how relevant are the arguments* and (ii) *how strong are the arguments?* My analysis and presentation of the arguments are structured around the four points of elaboration—which point or points are targeted by each argument? Of course, as the components elaborate on the relation between public reason and the idea of social cooperation, all the arguments suggest that, in one way or another, Rawls's public reason is not as public as it should be. As my questions suggest, to evaluate the arguments I invoke two evaluative criteria: *relevancy* and *strength*.

Relevancy gives two conditions: first, the argument is relevant only if it concerns Rawls's idea of public reason (rather some other theory of public reason); and secondly, the argument is relevant only if it concerns my particular interpretation of Rawls's theory of public reason. The reason that relevancy becomes an important criterion is twofold. First, many critiques of public reason are blanket rejections that do not distinguish between different conceptions of public reason, although these different views might be quite different. These blanket critiques often fail to consider important nuances and therefore may miss their mark. Second, since there are many interpretations of Rawls's conception of public reason, including my own, for a critique to be relevant it is of course important that it has bearing on my particular interpretation, assuming that this interpretation is reasonable in the first place.

The second criterion, “strength”, is understood in terms of the plausibility of the arguments' premises. Relevancy, of course, affects the strength of an argument. Given the assumption that each objection is supposed to concern Rawls' conception of public reason, (although not necessarily only his conception of public reason), it is not a strong argument against Rawls's view if the argument turns out to be irrelevant

to this view. A high degree of relevancy, however, does not imply that the argument is strong. I can offer no general criteria by which to tell strong arguments and plausible premises from their opposites, at least when these arguments appeal to matters that are extra-theoretical from the point of view of political liberalism. This has partly to do with the scope of the thesis, but it has also and primarily to do with the scope of political liberalism. Political liberalism does not strive beyond reasonableness: it must be acceptable to all, yet those who assent to its principles need not believe that it is true, nor must it consist of the principles that they are most strongly committed to. Thus, from my political liberal perspective, the strength of an argument for or against one of the components of public reason stands in positive correlation to the extent that it shows that a conception of one of the components is or is not reasonably acceptable. I shall provide some fixed points regarding this idea of reasonable acceptability, but I cannot establish anything more substantive at this early stage. What reasonable acceptability means—indeed, what *the reasonable* means—must be determined in the course of the thesis.

This leads me to the third and final purpose: to inquire into how a plausible theory of public reason could be formulated. This purpose suggests a thoroughly constructive enterprise that involves discussing various interpretations of the idea of public reason and the arguments against it. From this engagement with Rawls and his critics, I shall try to provide a revised theory of public reason, focusing on the three first points of elaboration. For instance, how could one make public reason more public (the first point of elaboration)? How can one make public reason better explicate the idea of social cooperation (the third point of elaboration)? And how can one draw the bounds of public reason to make it more conducive to both ends just mentioned (the second point of elaboration)? Along the way, I will be considering other theories of public reason, and I will also consider what the three critics propose as an alternative to Rawls's theory, or at least the parts of it they challenge.

## Comprehensive Doctrines and Political Conceptions

To carry out my analyses and evaluations I need some theoretical tools. In the two sections that follow, I try to lay out some ground by which

the different perspectives can be compared and explain how one can begin to give content to *the reasonable*, which is the primary evaluative concept in political liberalism. In the first of these two sections, I begin to say something about how one should understand the relation between persons' political commitments and the more comprehensive ones that characterize the many approaches to the world we humans live in. In the next section, I begin to lay out a political conception of persons and society, as well as the idea of the reasonable.

Now, political liberalism, I have said, is an approach to the relation between politics and the many ways in which persons look at the world, seeking to answer the question of how to handle this plurality, it being a necessary feature of democratic societies. In the material of this thesis, we will encounter many ways of theorizing these perspectives. To begin with Rawls, he expects persons to hold a comprehensive doctrine—a more or less coherent view that encompasses a wide range of ideas about what is valuable and worthwhile, what is right and good, and so on. Rawls suggests that a conception of the world is

[...] comprehensive when it includes conceptions of what is of value in human life, and ideals of personal character, as well as ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole. A conception is fully comprehensive if it covers all recognized values and virtues within one rather precisely articulated system; whereas a conception is only partially comprehensive when it comprises a number of, but by no means all, nonpolitical values and virtues and is rather loosely articulated.<sup>16</sup>

One can, I believe, all while remaining within the Rawlsian framework, contrast comprehensive doctrines with tradition. It seems that Rawls sometimes does this himself. Liberalism is a tradition, as is Christianity, and Islam, and Buddhism. Liberalism (or Buddhism or Christianity) itself is not a comprehensive conception, because there are many interpretations of liberalism that articulate the recognized values and virtues differently, although presupposing some family resemblance to identify these different views as liberal. Comprehensive conceptions are, one might argue, individual interpretations of traditions (although with the expectation of some philosophical rigour). Now, according to this account, we only understand the term “tradition” by

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<sup>16</sup> Rawls, *Political Liberalism*, p. 13.

analogy. Stout, however, gives it a more theoretical elaboration. According to Stout, a tradition is “a discursive practice considered in the dimension of history”<sup>17</sup>: that is, I figure, a way of talking and thinking about a matter—in this case, the world and how to understand it—that has developed and endured through time.<sup>18</sup>

It is unclear what exactly this understanding of tradition implies for the views that the concept of tradition denotes. What does it mean to be a way of talking and thinking about a matter? Is it an appeal to rules of inferences? Perhaps at some level, but this does not much help to distinguish between traditions. Is it perhaps a question of endorsing particular beliefs? Again, to some extent this must be the case. One could suppose that Christians share a belief in Jesus as the son of God and the saviour of humanity. Protestants disagree with Catholics about some key commitments, such as the relation between scripture and tradition, faith and grace.<sup>19</sup> This is a better way of distinguishing between traditions, but it does not help us understand what it means for a tradition to be a way of talking and thinking about something. A tradition, in this sense, is best understood not simply as the sum of the commitments—even particularly central commitments—held by its adherents, but also as the patterns of reasoning that form around them, the sources that are relied on, and central concepts.<sup>20</sup>

I do not expect all persons to have a comprehensive doctrine in Rawls’s sense. I find it too demanding. Persons will not generally have reflected as thoroughly on the issues pertaining to the conditions of and for their existence as the idea of a comprehensive doctrine requires. Indeed, in this sense the idea of a partially comprehensive doctrine might be a workable one, but it is only intelligible in light of the idea of a fully comprehensive doctrine, an idea that I have said that I will not rely on. A worldview, on the contrary, does not presuppose any particularly extensive depth or sophistication, but can be very rudimentary, focusing on what is immediately important to its holder. Equally, it can be very sophisticated and philosophically well-articulated, resembling a fully

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<sup>17</sup> Stout, Jeffrey: *Democracy and Tradition*. Princeton University Press, Princeton, NJ, 2004, p. 135.

<sup>18</sup> Stout, *Democracy and Tradition*, p. 279.

<sup>19</sup> It is not that Protestantism and Catholicism are comprehensive views in a Christian tradition; they are traditions themselves. Martin Luther, however, had a comprehensive view that became a tradition when enough people got on the train, so to speak.

<sup>20</sup> I follow Teresa Callewaert here to some extent (*Theologies Speak of Justice*. Acta Universitatis Upsaliensis, Uppsala, 2017, pp. 335ff, in particular p. 339).

comprehensive doctrine. This concept of a worldview is that which I will use. Now, I nonetheless call some commitments comprehensive, meaning that they go well beyond the political values of a political conception of justice. As such, speaking about a person's interpretation of the world and their approach to their life in it, I speak of their *worldview*. A person's worldview is distinguished by the attitudes, both cognitive and affective, that particularly shape how this person makes sense of and structures new experiences.

It is common to conflate Rawls's comprehensive doctrines with conceptions of the good. Indeed, Rawls himself does not clearly distinguish between the two but often treats them as interchangeable. While this conflation is common, it is also, I believe a mistake. As I see it, and as I believe Rawls sees it in those cases where he does make a distinction between the two, comprehensive doctrines *are* not conceptions of the good, but they *include* such conceptions. What is good in human life is something that a comprehensive doctrine, and indeed a worldview, must say something about, but it cannot be *equal* to such a conception. It is not only comprehensive doctrines, worldviews, that include conceptions of the good; political conceptions of justice too, must have such a conception, although a *political* one.<sup>21</sup> There are many things that are good from a political point of view; however, as part of a political conception, and contrary to many comprehensive views, these things are not thought to be good *in themselves*. Now, to say that political goods are not good in themselves does not mean that they are only instrumentally good. Political goods are goods that are part of the political culture and are not obviously at odds with any particular tradition.

If matters of good and justice are related in this way, it is important not to conflate ideas of justice with ideas of the right. Ideas about what is right, just like ideas of what is good, are part of our worldviews and are often comprehensive. They concern the conduct of individual persons in many different spheres of their life. What is right is related in different ways to the good, depending on the worldview in question. In deontological views, the right is generally thought to be prior to the good such that no good could be pursued unless compatible with the right; by contrast, in teleological conceptions, the right is often equated with the good, in particular the highest good. Conceptions of political justice can, of course, also be comprehensive. Yet political justice cannot be equal to the right because, as I have noted, such a conception

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<sup>21</sup> Rawls, *Justice as Fairness: A Restatement*, p. 140ff.

often includes both ideas of what is good and ideas of what is right and some idea about how they are related. In a political conception of justice, conceptions of what is right and what is good are limited to concerns about the organization of a society as understood from the political point of view.

## Society, Citizens, and Reason

I now turn to the central evaluative apparatus of the thesis, of beginning to lay out the idea of the reasonable and what I call *the political point of view*. Following Rawls and Larmore, the idea is not to say how persons and society *are*: the aim is not to engage in a study of psychology, sociology, or economics. Rather, the aim is to say how persons and society should be understood, given a particular conception of politics. In the case of political liberalism, this means an understanding of democratic politics as social cooperation. What is required is, first, an abstraction to certain structural features of societies and persons who are particularly important from the point of view of democratic politics, and second, to idealize from these into an account of how it looks when everything works as it should, so to speak. These idealizations determine the rationale of the theory, with which other aspects of the theory must be in accordance. I begin with the conception of society. First, one must select the features that should be a part of these abstractions. These features provide a philosophical (as opposed to, say, a sociological or macro-economic) conception of society. What this means is that although a philosophical conception of society cannot be entirely incompatible with society as understood in other fields that study it, one must choose to emphasize those features that are particularly philosophically important.

First, I want to make mention of the culture of a society, its *political culture* in particular, as a structural feature. Although institutional structure has a pervasive impact on citizens' lives and their political judgements, its shape depends on those judgements and their general political outlook, and it is ultimately this culture that feeds political philosophy with ideas, with problems to solve, and with ways to approach these problems. Similarly, it is in this culture that one finds the conceptions of the persons that inhabit society, of society itself, and the principles that regulate its basic structure. It is in this culture that one finds the

material with which to draw boundaries between the state and other associations; between the personal and the political; between the right, the good, and justice. Political liberalism is highly dependent on this culture as it draws on it for its content: the political culture is the product of the many political struggles in a society and their resolutions; it is the product, also, of the many worldviews and traditions that characterize society and of their theoretical battles. This means, of course, that the political culture is not homogenous but rather is populated by a great variety of worldviews, of concepts and interpretations of these concepts, and of notions about what is right and what is not.

Then, of course, society is a group of individuals who, in order to resolve and to avoid conflict, must coordinate their behaviour. This is of particular philosophical interest because it is of central normative concern. The question of how to coordinate our behaviour, and what specific aspects of our behaviour to coordinate, lies very close to the question of how to treat one another. Which, if any, of the claims that persons raise against one another are actually coercively enforceable? The political culture of a society provides many ways to coordinate behaviour and many ideas about how to draw the boundaries between the political and public domain on the one hand and the personal domain on the other. So, as a final and third feature of society, one must choose some criterion by which to select those conceptions that one will be working with. What I am looking for is something to indicate that the principles by which the behaviour of persons is coordinated, coordinate their behaviour well—some criterion by which to tell whether these principles are the right principles for the task and that ties the different features together. For Rawls, this criterion is made up of conditions for a well-ordered society. I shall use the same term, although at this point I consider its content to be undecided. Different political conceptions will rely on different ideas of what a well-ordered society is.

I start with these structural features as abstract ideas found in the political culture that I will elaborate into more specific conceptions.<sup>22</sup> Following political liberals such as Rawls, Quong, and Larmore, I consider the political culture to be characterized by a plurality of reasonable worldviews and society to be a system of social cooperation.<sup>23</sup> First,

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<sup>22</sup> In this sense, I follow Rawls's methodology to a great extent (*Justice as Fairness: A Restatement*, p. 5).

<sup>23</sup> Larmore, *What Is Political Philosophy*, pp. 34-39; Rawls, *Justice as Fairness: A Restatement*, p. 5ff.

looking at the political culture, there is no conception of the good or of justice that all citizens will consider the best way, or the most just way, to organize the basic structure of their society. Yet, in order to find principles that all citizens nonetheless can accept (if not prefer), one does best to turn to the political culture and begin with ideas found there, following recognized procedures to give these ideas more specific content.<sup>24</sup> Secondly, the idea, found in the political culture, that society is a system of social cooperation suggests that the behaviour of persons should be coordinated cooperatively: that is, all citizens should share equally in the exercise of political power and, as such, this system of cooperation is well-ordered when all members can accept its terms.

Turning again to the political culture, one finds there many different ideas about which aspects and capacities of human persons should be emphasized as their defining traits. As the German political philosopher Rainer Forst has argued, persons have been understood in several ways throughout the history of philosophy:

[...] as beings that are endowed with reason (*animale rationale*) and equipped with the unique capacity for language (*zoon logon echon*), that are also finite and limited, “flawed beings,” and last but not least as social (*animal sociale*) and political beings (*zoon politikon*).<sup>25</sup>

Forst himself argues that the human being should be understood as a *justificatory being*, which is all five of these conceptions combined. It is an attractive conception that I shall not stray too far from. One must assume that humans are social beings because it is as such that we have the necessary capacities for living together with others. It is as contingent and vulnerable that we, as social beings, are objects of moral concern, and as endowed with reason that we can shoulder the responsibilities associated with this status. It is through language that we raise and justify moral (and other) claims against one another, and it is through

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<sup>24</sup> This is Rawls’s idea of a reflective equilibrium (*Justice as Fairness: A Restatement*, pp. 29ff). It is also how Callewaert argues that one works within a tradition and its limits in order to transcend them (*Theologies Speak of Justice*, pp. 340ff.) and make one’s preferred tradition better and more just. Callewaert gives plenty of examples Muslim and Christian thinkers—liberal, liberationist, and traditionalist—who begin in their own different particular tradition and social circumstances and developing conceptions of justice that transcend those traditions in different ways. In these cases, there are no appeals to a particular political culture, but the general approach to working within the bounds of a tradition has very interesting similarities to Rawls’s reflective equilibrium.

<sup>25</sup> Forst, Rainer: *The Right to Justification: Elements of a Constructivist Theory of Justice*. Columbia University Press, New York, 2012, p. 1



politics that such claims are negotiated when it is required that they be conclusively settled. Nonetheless, the idea of human beings as justificatory beings reaches well beyond the political domain. Not in terms of the capacities that it claims that humans have, for I shall rely on much the same assumptions, but in terms of settling that human beings are justificatory beings and grounding everything in this assumption. Forst claims that it is the practice of justifying our actions and commitments and requiring that others' claims and commitments be justified to us that makes morality—individual, social, and political—possible which is absolutely central to our very humanity. Morality in its different spheres is a “justificatory order”.<sup>26</sup>

Instead, just like I approached the conception of society, I begin from these philosophically significant features of persons that are part of our political culture and abstract from them a conception of persons. This conception is a political conception because it addresses how a fair system of social cooperation must view its members. It is not a general philosophical anthropology. It does not consider *everything* that is philosophically relevant, only that which is philosophically relevant from the point of view of politics.

It is presupposed that human beings are social beings in the sense that we have certain social capacities that makes it possible for us to live together. Human interaction, including morality, depends on our being able to respond emotionally to one another's behaviour, and on an ability to interpret each other's emotional responses. Often noted is our capacity to feel guilt and to assign blame, and to feel indignation on behalf of ourselves or others who are suffering some offence.<sup>27</sup> That humans generally have these capacities is what being social animals means. In turn, human rationality—being rational animals—is often equated with our capacity for means-ends reasoning: given a particular end, we have the capacity to figure out the appropriate means to get there. This sense, however, is much too restrictive to be plausible. One might stipulate “rationality” as denoting this particular aspect of our reason, but it must not by any means be understood as the limit of the cognitive side to our practical rationality. For surely, as our ability to understand and care about the many behavioural expectations that we

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<sup>26</sup> Forst, op. cit., p. 1.

<sup>27</sup> Strawson, Peter F: *Freedom and Resentment and Other Essays*. Methuen, London, 1974, p. 14-15, ; Gaus, Gerald: *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World*. Cambridge University Press, New York, 2011. See chapter four, “Emotion and Reason in Social Morality”.

meet as we go about our lives relies in part on affective processes but is also tightly intertwined with our intellectual powers.

Conceptions of persons often has a central role to play in political philosophies. Authoritarian or even totalitarian philosophies have drawn on very negative conceptions of persons' cooperative abilities, such that too much leeway in human judgement leads to humanity's destruction. It is better to surrender oneself to the leviathan.<sup>28</sup> In a *political* conception, this anthropology must, of course, have some relation to a tradition and worldview as part of a particular political culture, but from the political point of view, the reasons to adopt a particular conception of persons have to do with that conception's relation to the problem of social coordination and the conditions for a well-ordered society. I shall consider Rawls's own conception of persons in the next chapter. At this point I simply wish to explain the particular procedure for developing a political conception of justice.

Finally, I turn to the idea of the reasonable: the normative centre of the political point of view. Here too I can only provide a brief sketch at this point. It is, however, an idea I will return to throughout the book. A political conception of justice cannot raise claims to truth—truth claims imply making claims that go well beyond the basic structure of one's society, and such claims are too comprehensive—and so some idea is required that can provide a similar sense of objectivity. Rather than truth, therefore, a political conception of justice aspires to *political reasonableness*. In political liberalism, many things can acquire the status of reasonableness. Persons can be reasonable, principles and rules can be reasonable, and so too can comprehensive worldviews and the claims they consist of. The idea of reasonable persons has acquired a special status as the central evaluative device. The assumption is that reasonable persons have specific reasonable commitments,<sup>29</sup> so whoever has such commitments is reasonable, and by stipulation, whatever is compatible with those commitments is also reasonable. I shall take a slightly different tack.

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<sup>28</sup> The philosophy of Thomas Hobbes is, of course, the obvious example, but there are many others. Consider for instance Grenholm, Carl-Henric: *Kritisk politisk etik. Om moralens betydelse inom politiken*. Uppsala 2024 (Forthcoming). It is clear from Grenholm's analyses of a wide range of philosophers: from the cynicism of Carl Schmitt to the (to his mind) naïve conception of persons endorsed by liberals like Rawls, that the way we conceive of persons has a very central role to play in political philosophy.

<sup>29</sup> Nussbaum, Martha: "Perfectionist Liberalism and Political Liberalism", *Philosophy and Public Affairs*, Vol. 39. No. 1. 2011, p. 33.

The politically reasonable specifies a point of view from which to evaluate conceptions of justice, the exercise of political power, comprehensive views, and anything else that is politically relevant. This point of view is *constructed* from determinate conceptions of society and persons that bring with them particular aspects that must be taken into consideration. Whatever turns out to be reasonable depends on these ideas of society and of persons. One has specified persons and their powers in a reasonable way if that conception is coherent with the conception of society and its well-orderedness. Similarly, the conception of society is reasonable if it stands in a similar relation to the conception of persons and society's well-orderedness. A conception of the well-ordered society is reasonable if it is coherent with the conception of society and the conception of persons. Moving down a level, comprehensive views are reasonable to the extent that they could be endorsed by persons specified in accordance with the political conception of persons proposed here and that they are not incompatible with the conception of society and its well-orderedness. Political virtues and obligations of persons are reasonable for these reasons too, as are particular principles of justice. Moving down a level further, the exercise of political power, the political conduct of persons, etc. are evaluated according to the previous level: whether they are in accordance with the principles of justice and so on.

## Previous Research

This thesis connects with many different fields of philosophical inquiry. First of all, there is much contemporary discussion regarding the plausibility and structure of political liberalism. Looking more closely, the idea of public reason has produced its share of philosophical literature as well. Each component of public reason that I will focus on has also been discussed, both in relation to public reason and independently of it. Here I provide a brief outline of the discussions taking place on these topics.

First, I engage with a discussion about the proper relation between worldviews and politics, where the view known as political liberalism champions the thesis that political power should not be exercised for comprehensive reasons. John Rawls is the frontman for this line of liberal thought, but it has attracted other great names in philosophy as well.

In addition to political liberalism, there are two contrasting views. Perfectionists think that the state should endeavour to pursue human excellence or flourishing. In liberal philosophy, the account of human excellence that should guide political action is centred around autonomy. The aim of the exercise of political power is to help citizens make autonomous decisions. Central contemporary figures include Joseph Raz and Thomas Hurka. The second strand of liberal thought is a kind of middle way between political and perfectionist liberalism, often dubbed comprehensive liberalism. Although the state should not seek to promote some particular ideal of human flourishing, it need not restrain itself in what assumptions about the world and about morality that it draws on.<sup>30</sup> This is perhaps the most common point of view. Key contemporary figures include Ronald Dworkin and Thomas Nagel, and such central figures in liberalism's historical development as John Locke and John Stuart Mill should also be located in this tradition of comprehensive liberalism.

To very briefly illustrate the difference between the different strands of liberal thought, consider the value of liberty. Why is it important? To the perfectionist: because, for persons to be able to make autonomous choices, they require not only the intellectual capacity to make good choices, but some reasonable range of alternatives. This does not justify an across-the-board liberty principle, however, but political power should be exercised such that valuable alternatives are promoted and harmful ones discouraged.<sup>31</sup> To the comprehensive liberal: liberty is important because individuals have an intrinsic right to make decisions for themselves, to be their own rulers. It is the *moral* right of individuals not to be coerced that justifies state action to protect their liberties.<sup>32</sup> This is a very Kantian justification of liberty; other alternatives are available. Political liberalism sees things a bit differently. Political liberalism is political, I have said, because it seeks to limit its content to political considerations: it cannot assume that there are moral rights or intrinsic values. These things must be worked out in concert by those who are to be subjected to the state's coercive power relying on reasons

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<sup>30</sup> See, for instance, Tahzib, Collis: *A Perfectionist Theory of Justice*. Oxford University Press, Oxford, 2022, p. 19f.

<sup>31</sup> Hurka, Thomas: *Perfectionism*. Oxford University Press, Oxford, 1993, p. 147ff; Wall, Steven: *Liberalism, Perfectionism, and Restraint*. Cambridge University Press, Cambridge, Mass, 1998, p. 205f, 213f, 219f.

<sup>32</sup> Ripstein, Arthur: *Force and Freedom: Kant's Legal and Political Philosophy*. Harvard University Press, Cambridge, Mass, 2009, p. 33-34.

that are publicly available—relying, that is, on *public reasons*. A political liberal justification of liberty must turn to the importance of liberty for social cooperation. Given fair circumstances, persons could not accept a basic structure that did not give them the freedom to pursue their own ends or did not count their various ends as worthwhile in themselves, independently of their duties towards society.

Second, I engage in a discussion about state neutrality. The contemporary debate dates back to the early 1970s and identifies Rawls and Dworkin as its instigators.<sup>33</sup> The important point for Rawls is that state power should not be used to further the ends of any particular worldview.<sup>34</sup> For Dworkin, the main concern is the non-enforcement of matters of personal conscience.<sup>35</sup> Rawls thus explicitly favours neutrality in terms of neutrality of aim, and Dworkin seems to strongly favour a conception of neutrality of justification. Yet, as is sometimes noted,<sup>36</sup> these two conceptions of neutrality are not so easily kept apart, and proponents of the one often seems to make claims in favour of the other. Recently, a third view has been introduced by Allen Patten: neutrality of treatment.<sup>37</sup> Patten argues that both neutrality of justification and neutrality of aim are overly broad, in that they count as neutral instances that are intuitively not considered as such. Meanwhile, the problem with neutrality of effect or consequence is the opposite: there are almost no policies that count as neutral given the understanding of neutrality as neutrality of effect.<sup>38</sup> Neutrality of treatment, in turn, is reminiscent of neutrality of effect, but rather than focusing on the consequences of a policy, it considers whether the policy is particularly accommodating of a particular worldview: whether it is more pressing to do away with or impose burdens for some conceptions of the good than for others.

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<sup>33</sup> Patten, Allan: “Liberal Neutrality: A Reinterpretation and Defence”, *Journal of Political Philosophy*, Vol 20. No. 3. 2012, p. 249n2; Franken, Leni: “Liberalism and Neutrality: A Philosophical Examination”, *Liberal Neutrality and State Support for Religion*, Springer International Publishing, Cham, 2016, p. 3f; Madeley, John: “European Liberal Democracy and State Support for Religion”, *West European Politics*, Vol. 26. No. 1. January 2003, p. 4f, 19n15.

<sup>34</sup> Rawls, *Political Liberalism*, p. 193f.

<sup>35</sup> Dworkin, Ronald: *Sovereign Virtue: The Theory and Practice of Equality*. Harvard University Press, Cambridge, Mass, 2000, p. 155; Dworkin, Ronald: *Religion Without God*. Harvard University Press, Cambridge, Mass, 2013, pp. 129f.

<sup>36</sup> See Allan Patten, “Liberal Neutrality: A Reinterpretation and Defence”, pp. 254f; Sadurski Wojciech: “Public Reason in the Universe of Reasons”, *Jus Cogens*, Vol. 1. No. 1. September 2019, p. 50.

<sup>37</sup> Allan Patten, “Liberal Neutrality: A Reinterpretation and Defence”, pp. 257ff.

<sup>38</sup> Allan Patten, “op. cit.,” p. 255f.

But this view too seems to fail, for the same reasons as the views that it is supposed to improve. Neutrality of treatment seems to be simultaneously both too broad and too narrow.<sup>39</sup>

Another point of discussion regarding neutrality is what kind of things should be treated neutrally. It is often supposed, for instance, that the state should be neutral with regards to conceptions of the good, or it should be neutral between religious views and secular views, or it should be neutral with regards to comprehensive views, or cultures, or social groups. This is a central problem for Laborde in *Liberalism's Religion* because of the quite common attempt by some states to justify non-neutral policies by claiming that culture, as one example, does not raise claims to neutrality, as opposed to religion. Thus, by simply reformulating discriminating policies as concerning a matter of culture rather than religion, these states try to bypass the requirement of neutrality.<sup>40</sup>

A third question that I engage with is the place of religion in political discussion. I shall not say much about the historical roots of this question, but as I have done above, I shall give a brief account of the contemporary discussion. Looking particularly at the debate internal to theories of public reason, it goes mainly along two lines: the strength of the requirement to show restraint and the bounds within which the requirement applies. Regarding the strength of the criterion, the weakest formulation of the requirement of restraint, is that citizens need only make their reasons *intelligible* to all.<sup>41</sup> Those philosophers who reject the idea of public reason in its entirety, such as Stout, Nicholas Wolterstorff, and Nigel Biggar, can still be said to endorse this requirement because the alternative—to count unintelligible utterances as reasons—is not a viable approach to discourse, public or otherwise. Their views are not, however, approaches to public reason but to public debate in general.<sup>42</sup> An intelligible reason, one may expect, comprises an inter-

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<sup>39</sup> Cordelli, Chiara: “Neutrality of What?”, *Critical Review of International Social and Political Philosophy*, Vol. 20. No. 1. January 2017, pp. 39, 43.

<sup>40</sup> Laborde, *Liberalism's Religion*, pp. 139f.

<sup>41</sup> For some examples, see: Vallier, Kevin: “Against Public Reason’s Accessibility Requirement”, *Journal of Moral Philosophy*, Vol. 8. No. 3. 2011, p. 367; Gaus, *The Order of Public Reason*, p. 263.

<sup>42</sup> See for instance, Stout, *Democracy and Tradition*, chapter 3; Vallier, Kevin: “Against Public Reason’s Accessibility Requirement”, *Journal of Moral Philosophy*, Vol. 8. No. 3. 2011, p. 108; Biggar, Nigel: *Behaving in Public: How to Do Christian Ethics*. W. B Eerdmans Pub. Co., Grand Rapids, Mich, 2011, pp. 66ff.

pretable sentence and, given a sufficiently good interpretation, expresses a consideration that speaks in favour of a determinate judgement or belief. A stronger formulation of the requirement is that reasons be *accessible*. This requirement is proposed by Laborde as a middle ground.<sup>43</sup> The idea of mere intelligibility, Laborde argues, will include considerations whose full meaning require the framework of a particular worldview to be properly interpreted. An accessible reason, by contrast, relies on whatever common ground there is and transcends the framework of tradition. As such, citizens can understand it as speaking in favour of something, but they need not endorse the reason. The strongest requirement is that reasons be *shareable*: only considerations that all citizens can *endorse* as reasons count. Rawls is generally understood to be proposing that public reasons be shareable reasons. Reasons that draw their force from terms of social cooperation that all can accept meet the requirement of shareable reasons, and among the proponents of this criterion one finds the American feminist philosophers Christie Hartley and Lori Watson.<sup>44</sup>

Turning to the bounds of public reason, the question is whether public reason with its duty of civility should be restricted to questions of basic justice, or whether citizens are required to show restraint to some extent across all political questions. The justification for the first view, the *narrow view*, is that questions of basic justice affect the political relationship of citizens, whereas other questions do not. Rawls, and Hartley and Watson are among the proponents of this view.<sup>45</sup> The other view, the *broad view*, holds that all political decisions must be known to be in accordance with the terms of cooperation. As Quong has argued, if “citizens should not be subject to the exercise of political power on grounds that they cannot reasonably accept, then public reason

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<sup>43</sup> Laborde, *Liberalism's Religion*, p. 120f.

<sup>44</sup> Rawls, *Justice as Fairness: A Restatement*, pp. 28f. Christie Hartley and Lori Watson, *Equal Citizenship and Public Reason: A Feminist Political Liberalism*, pp. 62ff. Rainer Forst is sometimes understood to propose such a criterion as well by his suggestion that reasons be general and reciprocal (Etinson, Adam: “On Shareable Reasons: A Comment on Forst”, *Journal of Social Philosophy*, Vol 45. No. 1., March 2014, pp. 78f).

<sup>45</sup> Watson & Hartley: *Equal Citizenship and Public Reason: A Feminist Political Liberalism*. Oxford University Press, Oxford, 2018, p. 62ff; Rawls, John: “The Idea of Public Reason Revisited”, *University of Chicago Law Review*, Vol. 64. No. 3. 1997, pp. 767-768.

should extend to all instances where political power is exercised over citizens.”<sup>46</sup>

It is not only proponents of public reason who propose to impose constraints on political discourse. American theologian and philosopher Robert Audi has notably suggested that whenever one supports imposing coercive legislation, one is under a duty to provide natural reasons for doing so. Natural reasons are similar to public reasons in the sense that they do not presuppose the existence of God. Yet, Audi only takes a considers the state-religion relationship, not the relation between the state and other kinds of comprehensive views. As such, Audi’s theory does not correspond to the constraints imposed by public reason, but should be mentioned here regardless as it nonetheless involves a discursive constraint.<sup>47</sup>

Finally, there is the question of the conditions for the legitimate exercise of political power. Charles Larmore suggests that this is the oldest political question. The central problem for the modern political philosophers (beginning with Thomas Hobbes) was not justice but political legitimacy and this did not change until Rawls’s *A Theory of Justice*.<sup>48</sup> The concept of legitimacy has both a descriptive and a normative aspect. Descriptively, legitimacy is concerned with the degree of acceptance by the citizenry that a state enjoys. Do the citizens consider their state an authority? The normative aspect is instead about the state’s or the states actions’ rightness. Similar to this distinction, American political philosopher John Simmons is keen to point out that legitimacy is only concerned with whether or not citizens accept the political authority. The normative question is distinct and is concerned with whether this political authority is justified. Citizens can, of course, accept a political authority that is not justified or reject one that is. Legitimacy thus accounts for the descriptive part and justification for the normative.<sup>49</sup>

Often enough, however, in contemporary political philosophy legitimacy is used solely to account for the normative side of the concept, and does so by focusing on the legitimacy of a political authority:

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<sup>46</sup> Quong, *Liberalism Without Perfection*, p. 275.

<sup>47</sup> Audi, Robert: *Democratic Authority and the Separation of Church and State*. Oxford University Press, Oxford, 2011, pp. 76-86.

<sup>48</sup> Larmore, *What Is Political Philosophy?*, p. 4.

<sup>49</sup> John Simmons, “Justification and Legitimacy”, pp. 769f.



whether it is legitimate in *wielding* political power.<sup>50</sup> For Rawls, however, the question is not primarily about the state's right to wield political power, but whether its wielding is right.<sup>51</sup> Of course, the two notions overlap; to say that the state has acted rightly implies that the state has acted within its right, and the right to rule is not unconditional but subject to moral constraints.<sup>52</sup> But the essential difference between Rawls's approach to legitimacy and the contemporary discussion, Paul Weithman argues, is that Rawls is not primarily interested in *the state's* exercise of political power, but *ours*—the citizens that are to be subjected to that same exercise of political power.<sup>53</sup> Of course, the state—its institutions and employees—are the medium through which this power is exercised, but it is, in the end, exercised in *our* name.

## Outline of the Study

Having presented the purpose of the study, my research questions, and my central evaluative criteria, I now turn to the analyses I will undertake. In the next chapter, I address Rawls's theory of public reason. I begin by presenting a brief sketch of Rawls's theory of justice and his "political turn": his realization that his theory's claims were not compatible with the plurality of views that characterize modern democratic societies. My goal here is to present the framework of political liberalism and its rationale, into which public reason, then, must fit. I then consider each of the three components of public reason in turn: first neutrality, then the duty of civility, and finally the liberal principle of legitimacy. I show how each component relates to the overarching framework of political liberalism—the framework of social cooperation between free and equal persons. I analyse what is, to my mind, Rawls's quite ambivalent commitment to neutrality, and point out some of its

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<sup>50</sup> Knowles, Dudley: *Political Obligation: A Critical Introduction*. Routledge, London, 2010, p. 19; Ladenson, Robert: "In Defence of a Hobbesian Conception of Law", *Philosophy and Public Affairs*, Vol. 9. No. 2., 1980; Quong, *Liberalism Without Perfection*, p. 108.

<sup>51</sup> Peter, Fabienne: "Political Legitimacy", *The Stanford Encyclopedia of Philosophy* (Summer 2017 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/sum2017/entries/legitimacy/>>; Rawls, *Political Liberalism*, pp. 137, 217.

<sup>52</sup> Weithman, Paul: "Another Voluntarism: John Rawls on Political Legitimacy", in Wojciech Sadurski et. al. (eds.), *Legitimacy: The State and Beyond*. Oxford University Press, Oxford, March 2019, p. 46.

<sup>53</sup> Paul Weithman, op. cit., p. 57.

issues. I analyse the discursive constraints imposed by the moral duty of civility, relying on the example of physician-assisted suicide. My ambition is to make clear what considerations count as public and which considerations do not, and why that is. I also want to point out certain ambiguities in Rawls's account of the publicness of reasons. Finally, I shall consider the liberal principle of legitimacy and how to assess whether a decision is legitimate or not. I return here to the example of physician-assisted suicide.

In chapter two, I revisit the question of neutrality by turning to Laborde's critique of Rawls and egalitarian liberalism more generally. Laborde identifies a similar problem with liberal neutrality as that which I have pointed to, and proposes a much more nuanced theory to solve this problem. The problem is that no theory of neutrality manages to identify where neutrality is necessary and where it is not. Instead, theories of neutrality seem to count policies as neutral which are intuitively not neutral and this gives rise to normative concerns as moral wrongs are legitimized. Laborde's analysis shows that it is not sufficient to rely on merely one conception of neutrality, for different problems are neutral or non-neutral in different ways. Similarly, problems with neutrality do not arise merely in relation to particular understandings of what neutrality is but might also arise with regards to what the state should be neutral about. For instance, claims to neutrality arise regarding our worldviews not only in virtue of them expressing a particular conception of the good, but also in virtue of them relying on reasons that cannot be properly engaged with as reasons outside of a specific tradition or worldview. These are only a few examples. The result is a three-legged theory of neutrality. The state must exercise a strict neutrality in its exercise of political power such that it justifies its decisions based on *accessible* reasons; it must not show allegiance with particular social groups when doing so might be divisive; and it must not make decisions that concern personal ethics.

Chapter three considers the duty of civility. The initial area of focus is the idea of the reasonable along with Rawls's and Stout's different conceptions of social cooperation, because the most central question is whether the constraints on political discourse imposed by the duty of civility are actually compatible with a plausible conception of social cooperation. Stout, of course, argues that the constraints are not so compatible. While citizens certainly have justificatory obligations towards one another, it is not plausible to require them to give reasons that one

can expect everyone to accept, because no such reasons exist. What reasons one can appreciate depends on what tradition and worldview one endorses and its associated standards of reasoning, and there exists no position outside of tradition from which claims can be evaluated. There is no common ground. Stout's vision is instead of a society in which citizens engage respectfully with one another from their own points of view and justify desired policies that appeal to others' particular views by presenting arguments that they expect those they are speaking to at that particular point in time will have reason to accept.

Chapter five argues that Wall is wrong in his claim that Rawls's liberal principle of legitimacy is self-defeating. Basically, Wall proposes that the liberal principle of legitimacy and other similar principles raise conditions for the exercise of political power that end up applying to themselves, and because these principles are unable to meet those conditions, a principle of this kind is not a correct principle for the exercise of political power. I argue that, given the logical structure of Rawls's principle, Wall's argument fails. The liberal principle of legitimacy does not apply to itself. Wall does, however, raise some serious issues. For instance: can there exist any principles and ideals that are acceptable to all persons, even all *reasonable* persons? Is Rawls's understanding of the reasonable plausible? I dedicate the majority of this chapter to discussing both questions.

In the final chapter, I revisit all these issues and tie up remaining loose ends. Each chapter contributes to a critique and a deeper understanding of Rawls's theory of public reason, while leaving some loose strands. I turn immediately to the idea of society, persons, and reason and consider how these ideas are best understood. In particular, I argue for a very specific conception of the *reasonable* that takes up and, I think, advances the constructivist elements in Rawls's theory. I find Rawls's conception of the person and society to be largely satisfactory, but the idea of the reasonable requires revisions. An important part of the problem lies in the way that Rawls places emphasis on the reasonable *person* over all the other things that can be reasonable and the idea that reasonable persons have certain commitments, rather than basing this idea in a conception of our *practical reason*. I then turn to the three components of public reason and how this idea of Rawls's relates to the rationale imposed by the idea of social cooperation. I argue, in accordance with my discussion of Laborde in chapter two, that the concept of

neutrality is superfluous, and even introduces more difficulties than it solves.

Turning to Stout, I do not think that the duty of civility must be abandoned but that it, along with the bounds of public reason must be revised. Although Stout is right that public reason distributes the burdens of cooperation to the disproportionate disfavour of religious citizens, the duty of civility should not be abandoned. It serves to protect very important aspects of social cooperation and if it can be more plausibly formulated, then we do right to maintain it as part of a political morality. Finally, I try to respond to Wall's worries regarding Rawls's appeal to particular values that all citizens can accept because they are a part of the society's political culture. Part of my argument builds on the fact that the political culture is invoked not to *justify* political values, but only as a *source* of such values. The main argument here, however, aims to show that there is a way in which one can speak of principles and ideals all reasonable persons can accept. I do this by relying on my particular conception of the reasonable and by introducing a distinction between principles of justice and terms of cooperation. This distinction facilitates the move from the comprehensive conceptions of justice that are part of our worldviews to a political conception regulating our societies as a system of social cooperation.

# Chapter 1: Political Liberalism and the Idea of Public Reason

In this chapter, I present Rawls's theory of public reason and how it relates to the overarching framework of political liberalism. I start by introducing the following ideas: the framework, the basics of Rawls's theory of justice, and his idea of public reason. Regarding the framework, this means that I analyse Rawls's conception of society and the person as well as the relation between persons' worldviews and political philosophy that political liberalism expresses. I then turn to some central aspects of Rawls's theory of justice, his principles of justice, and the idea of primary goods simply to introduce some of the key ideas that the remaining discussions presuppose some basic understanding of. Finally, I turn to the idea of public reason itself. The idea of public reason, I argue, is a conception of democratic decision-making. It is a *public reason* because it is a democratic society's way of making decisions and deliberating within itself about what ends to pursue and how, and it is *public* because all citizens have an equal share in this decision-making process. This idea of a public reason draws heavily on the idea of society as a system of cooperation between reasonable and rational persons, and I analyse and criticize Rawls's account of three features or *components* of public reason that illustrate this relationship particularly well: neutrality, the duty of civility, and the liberal principle of legitimacy.

## Rawls's Theory of Justice and His Political Turn

Modern democratic societies are characterized by a plurality of beliefs about the world we humans live in—what is good in and about it and how we should treat each other, our environment, and its non-human inhabitants. Many of these accounts come with determinate conceptions of how to organize society, and what is the aim of our doing so. We find

among them the realization of perfectionist ideals, the salvation of the human soul, or maximization of the net amount of happiness. This is all as it should be. Yet it is also a source of conflict, since it is not only that some persons may reject a given perfectionist ideal or a particular sociology such that they would not want it to organize their society. Persons have woven their plans and projects into their interpretations of the world, and often enough one person's plans and projects run contrary to the substantive ideals of others. More importantly, these substantive ideals, often framed in terms of justice, tend to override the plans and projects of society's individual members. The rights of citizens might rest, for instance, on the net happiness they provide, making their grounding rather insecure. Indeed, insofar as they are conditioned upon contributing to particular goods, they are not rights at all.

In *A Theory of Justice*, Rawls explains that the purpose of the book is to test certain intuitions about justice:

Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust.<sup>54</sup>

He continues:

Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others. ... Therefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests.<sup>55</sup>

To see whether these intuitions about justice and its primacy are sound they must be considered in their proper context as parts of a theory of justice. One starts with familiar and non-controversial, perhaps even trivial principles that are fairly abstract and works one's way down to principles carrying more substantive content. If, given a particular set of abstract ideas, an adequate theory of justice cannot be constructed, it is necessary to go back and add further notions to the original account, and perhaps reconsider some of the initial premises. When one has a

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<sup>54</sup> Rawls, *A Theory of Justice*, p. 3.

<sup>55</sup> Rawls, *op. cit.*, pp. 3-4.

plausible candidate, it can be checked against one's "considered judgements" about justice (presumably those, among others, with which the section began). Quite plausibly, this will not generate a perfect match. The search must continue, "going back and forth",<sup>56</sup> either altering the abstract ideas or revising the initial judgements to better match these ideas. As this justificatory process continues, the theory will come to stabilize in a *reflective equilibrium* and can be considered justified.

Starting from the particular intuitions about justice mentioned in the above quotes, Rawls then goes on to suggest, first, that justice requires giving a certain priority to the freedom of persons to pursue their ideas of the good life. Second, he suggests that one does best to consider society as a *system of social cooperation* designed to advance the good of those taking part in it. Importantly, not only does this idea narrow down forms of social organization to democratic forms of organization, but it also excludes, say, agonistic theories of democracy and conceptions of democracy as an instrument for the satisfaction of self-interest.<sup>57</sup> The terms that regulate this cooperative endeavour, then, should regulate the *basic institutional structure* of society and not extend to the conduct of individual persons. Institutions—ranging from the government to the family—are the main focus because they are the main actors regarding citizens' claims to justice. Finally, a society—more specifically, its basic institutional structure—is *well-ordered* when "(1) everyone accepts and knows that others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles."<sup>58</sup> These are the abstract ideas, as Rawls calls them, from which a more substantive theory can take its form.

The problem the idea of the well-ordered society, Rawls later notices, is that it, and the related idea of *stability for the right reasons*, are incompatible with the principles of justice that his theory, justice as fairness, consists of. In *A Theory of Justice*, Rawls argues for a conception of stability that assumes that in a well-ordered society, citizens accept the view of "Justice as Fairness" as it is explained in that book. But in *Political Liberalism* he says:

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<sup>56</sup> Rawls, op. cit., p. 18.

<sup>57</sup> Watson & Hartley, *Equal Citizenship and Public Reason: A Feminist Political Liberalism*, pp. 41ff; Rawls, *Political Liberalism*, pp. 15f, 212ff.

<sup>58</sup> Rawls, *A Theory of Justice*, p. 4.

However, since the principles of justice in *Theory* require a constitutional democratic regime, and since the fact of reasonable pluralism is the long-term outcome of a society's culture in the context of these free institutions, the argument in *Theory* relies on a premise the realization of which its principles of justice rule out.<sup>59</sup>

What Rawls has come to realize is that for citizens to agree to one particular comprehensive worldview the government must exercise its coercive force and make them. In any other case, because of the difficulties pertaining to the use of human reason, persons will reach different—although under favourable conditions, still reasonable—conclusions. So it seems that if Rawls does not want to reject the principles of his theory of justice as fairness, he faces the dilemma of having to abandon either democracy or stability. Both alternatives, of course, are unacceptable. He thus asks: “how is it possible for there to exist over time a just and stable society of free and equal citizens who still remain profoundly divided by reasonable religious, philosophical and moral doctrines?”<sup>60</sup> His solution is to turn his theory into what he terms a political conception of justice rather than the comprehensive doctrine it previously was. As a political conception, it is a theory that can stand on its own, free from controversial philosophical, moral, and religious assumptions. A political conception thus must make sense apart from these commitments. Consider utilitarianism's principle of utility. “[H]owever understood, it is usually said to hold for all kinds of subjects ranging from the conduct of individuals and personal relations to the organization of society as a whole as well as to the law of peoples.”<sup>61</sup> Such wide scope requires more content and ties acceptance of principles of justice to a commitment to its more comprehensive assumptions. In contrast, a political conception applies only to the basic institutional structure of society and assenting to this conception should not depend on any particular comprehensive claims. It should rely only on political values found in the society's political culture. To the extent it does, it can be the object of an *overlapping consensus*, meaning simply that different worldviews in all their difference can nonetheless endorse the political conception.

Of course, although not relying on any particular tradition for its content, a political conception must not—indeed, *cannot*—be completely

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<sup>59</sup> Rawls, *Political Liberalism*, p. xl.

<sup>60</sup> Rawls, *Political Liberalism*, p. 46.

<sup>61</sup> Rawls, *Political Liberalism*, p. 13.



unrelated to the worldviews and traditions that citizens endorse. Since every person is expected to have a worldview (that draws on a tradition), it must be possible to endorse this political conception from the point of view of one's comprehensive commitments. Moreover, for the same reason, any political conception will bear the marks of some worldview or another. It is unavoidably the case that constructing a conception of justice (even a *political* conception of justice) necessarily involves making judgements about values and interpretations of these values. To make such judgements, then, one relies on one's reason, informed by commitments belonging to one's worldview. As I understand Rawls, what makes a conception of justice *political* rather than comprehensive is not that the former lacks the flavour of a particular worldview, but that it does not need those comprehensive commitments for its intelligibility and justification. As Rawls writes:

[...] we must distinguish between how a political conception is presented and its being part of, or as derivable within, a comprehensive doctrine. I assume all citizens to affirm a comprehensive doctrine to which the political conception they accept is in some way related. But a distinguishing feature of a political conception is that it is presented as freestanding and expounded apart from, or without reference to, any such wider background.<sup>62</sup>

Therefore, there can be many kinds of political conceptions of justice, not all of which are liberal. Being *presented* as freestanding does not mean of course that its freestandingness is merely a mirage (although one can present something as freestanding which is not), but simply that a conception of justice that has a certain, say, Kantian air to it (as Rawls' theory does, for example) is not thereby a comprehensive view. What matters is its depth, so to speak, and whether it can stand on its own independently of, say, the Kantian doctrine of autonomy or pure reason.

In constructing a political conception of justice then, worldviews play a double role. First, the ideas found in the political culture on which the political conception of justice relies for its content are provided by the many different traditions to which citizens' worldviews relate. This means that the political culture contains a motley selection of suggestions for how to organize the basic structure of society and thereby coordinate citizens' behaviour. Even in a well-ordered society, where the

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<sup>62</sup> Rawls, *Political Liberalism*, p. 12.

political culture is made up of *reasonable* commitments, there will be a plurality of such commitments<sup>63</sup>—and not only that, there will also be different interpretations of specific commitments. Two persons can both have a commitment to respect for persons, to equality, or to liberty yet they might understand these commitments in quite different ways. In actual societies, one cannot suppose that the political culture only contains reasonable ideas, of course, and actual citizens are not necessarily committed to some reasonable interpretation of equality (or *any* interpretation, for that matter). When society is well-ordered, however, it makes sense to say that its citizens are committed to (for example) equality, given a general understanding of this idea, even though different persons have somewhat different understandings of what equality is.

Second, in setting out to construct a conception of justice—even a political conception of justice—one cannot help but rely on one’s worldview to navigate the ideas of the political culture. *At this particular point*, there is no other way to choose one idea instead of another; there is only what makes sense to oneself. Indeed, Rawls suggests that when constructing a political conception one should avoid controversial ideas, but without any normative guidance (given one’s own worldview) this amounts to nothing more than conventionalism.<sup>64</sup> So, one sifts through the political culture to find non-controversial, yet normatively appealing ideas to work from. These will be very general ideas with little normative substance that requires specification. The task then is to move back and forth between these ideas, trying out different conceptions of them and seeing whether they could support principles of justice that have normative appeal, seeking to find rest in a reflective equilibrium. One might have to try different kinds of principles, and different ways of understanding one’s fundamental ideas and everything in between, checking them against one another but also against

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<sup>63</sup> This is the fact of reasonable pluralism. See Rawls, *Political Liberalism*, pp. 36-38.

<sup>64</sup> One could, of course, add criteria of various kinds—necessary conditions for a plausible normative theory. But, again of course, any criteria that can help will be a part of one’s worldview—or if they are not already, then they are at least incorporated into it after due reflection. There is no point in adding criteria that one does not believe are necessary conditions of plausible normative theories, say. The best one can do, I think, is to formulate criteria that do not depend upon, say, the principles of justice that one is trying to evaluate. The idea of the well-ordered society is one such condition.

the reasonable views of others so as to ensure that one has good reasons for not endorsing those views instead.<sup>65</sup>

## Justice as Fairness and Public Reason—A Political Conception of Justice

Following Rawls's political turn, his point of departure is no longer intuitions about justice, but rather abstract ideas and values that one finds in the political culture of democratic societies. Society remains a system of fair social cooperation, and now as before, it is well-ordered when all citizens can willingly participate in its maintenance. To these notions, Rawls adds a conception of persons as citizens. As citizens, persons are assumed to possess the necessary capacities to participate on equal terms in the cooperative endeavour that is society. From these ideas, through the process of reflective equilibrium, it should be possible to arrive at a set of principles of justice that can organize society as a fair system of social cooperation that citizens can freely endorse. These principles, besides organizing the society's basic institutional structure, take the form of a public basis for justification: it is to these principles, these *terms of cooperation*, that citizens should appeal to settle their claims on one another, rather than the controversial and comprehensive commitments found in their different worldviews.<sup>66</sup> One knows that a set of principles can fulfil these two functions if they could make a society well-ordered—that is, if those principles could win the assent of all citizens. The political culture provides several alternative principles; the question is how to choose the right ones: principles that both have moral appeal and are appropriately severed from comprehensive commitments.

Part of the answer is to continue the process of reflective equilibrium and give the abstract ideas listed some substance. Looking first at the conception of persons, Rawls assumes that persons have two moral powers: they have a capacity for having a conception of the good and they have a capacity for having a sense of justice. The first capacity means that citizens are assumed to be able, given their cognitive and affective functions, to form ideas about what is good in life, what is meaningful, and so on, and based on these ideas to formulate ends and

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<sup>65</sup> Rawls, *Justice as Fairness: A Restatement*, pp. 29-32.

<sup>66</sup> Rawls, *op. cit.*, p. 27.

organize these ends into plans that they then will want to realize. They are also assumed to be able to identify the means by which to do so. The second capacity implies an ability to care about the ends and plans of others and assign them appropriate weight in an overall balance of reasons. By extension, persons are assumed to be able to recognize and accept that, sometimes, the ends of others might come before their own.<sup>67</sup> This capacity is necessary to be able to engage in cooperation with others at all. Further, from a political point of view, citizens are “self-authenticating sources of valid claims”,<sup>68</sup> meaning that citizens’ claims count independently of whether they can be “derived from duties and obligations specified by a political conception of justice, for example, from duties and obligations owed to society.”<sup>69</sup> Citizens are also thought of as being responsible for advancing their ideas of the good, and to be able to adjust their “aims and aspirations in the light of what they can reasonably expect to provide for.”<sup>70</sup>

Turning to the conception of society, it is considered a system of fair social cooperation and refers to the means by which citizens’ behaviour is coordinated. Social cooperation does not mean that a leader or a group of leaders, whichever authority they claim to serve, sets the society’s political aims and the means to achieve them. Nor are the terms of social cooperation written in stone, so to speak, or settled by an external authority. Rather, social cooperation means that the shape of society lies in the hands of its citizens and the power to shape it is distributed equally between them. To count as social cooperation, the principles and ideals according to which behaviour should be coordinated must be acceptable to those whose compliance they demand. These terms are *fair*, then, when they are reciprocal in the sense that those that do their part are supposed to benefit in collectively agreed-upon ways. Cooperation also involves leaving a space for persons to advance their own good, as specified independently of the terms of cooperation.<sup>71</sup>

Although society is a system of cooperation, one should not think of it as an association that one can join or leave at will. Voluntary associations, such as workplaces, or organizations, might also be systems of cooperation, yet, because they are voluntary, their terms are not subject to the same strict moral requirements. They can, and generally do, have

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<sup>67</sup> Rawls, op. cit., pp. 18-19.

<sup>68</sup> Rawls, op. cit., p. 23.

<sup>69</sup> Rawls, op. cit., p. 23.

<sup>70</sup> Rawls, *Political Liberalism*, p. 34.

<sup>71</sup> Rawls, *Justice as Fairness: A Restatement*, pp. 6-7.

particular final and comprehensive ends that cooperation aims to realize. A democratic society cannot have such comprehensive ends without undermining equality. There is no point when one decides to join society; one simply finds oneself in it, and for most persons, too much is at stake for leaving to be plausibly considered voluntary. Indeed, one cannot simply quit society, for as soon as one exits the jurisdiction of one society, one winds up within the bounds of another. Nor is a society plausibly considered a community. Communities are guided by a pursuit of some common and comprehensive values or goods but are not necessarily either voluntary or cooperative.<sup>72</sup> For these reasons, it is very important that the terms that organize social cooperation in a political society have the shape of a political conception of justice—that social cooperation does not have a particular comprehensive aim but seeks only to secure political justice.

It is by turning to these considerations and setting up a choice situation that adequately represent them that one can choose principles of justice that appropriately regulate political society. At this point, one has worked through the process of reflective equilibrium and continually given the structural features of our societies and their inhabitants more determinate content. At this particular point, it must be shown how these can best be woven together in such a way that fair terms of cooperation can be deduced. Rawls proposes that this is best done through his idea of the original position with its veil of ignorance. This is a deliberative procedure that seeks to remove any bargaining advantages between participants and ensure that the things that matter to persons are given their due weight by restricting the reasons one may give in favour of one's preferred set of principles.

To recapitulate, persons are considered self-authenticating sources of valid claims, and through their capacity to have a conception of the good they raise claims in order to be able to pursue the various projects and plans that they have. This capacity for a conception of the good must be taken into consideration. Speaking of the moral powers, persons also have a sense of justice, such that it matters to them that others can also carry out plans of their own. It is not only they themselves who count as a self-authenticating source of valid claims, so to speak. This second moral power too must be modelled in the original position, or for that matter any similar procedure. One must also take into consider-

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<sup>72</sup> Rawls, *Political Liberalism*, pp. 40-43.

ation the features of our societies noted above. Indeed, the understanding of society as a system of cooperation lies at the very heart of the deliberative procedure, such that persons' representatives must unanimously agree to a decision. The shape of society does lie in their hands. As society is not a voluntary association, there can be no ultimate end to the cooperation of persons other than to secure justice, nor can cooperation be based around comprehensive values and commitments. All of these considerations must be modelled somehow in (a choice situation like) the original position.

In the original position, then, citizens of a society send their representatives to select a set of principles to organize their basic institutional structure. To make their choice, these representatives, the parties, are given a list of the best conceptions of justice that political philosophy has yet produced and put under a veil of ignorance. This veil makes them oblivious to such things as their own social position and relationships and those of the persons they represent: all those things that might make them better or worse off than others under the existing arrangements. They do not know their sex, religion, class, or ethnicity; they do not know what good they want to pursue or any of their other commitments. They have general knowledge about societies and about human psychology; otherwise they could make no decision at all, or their decision could end up being one they cannot not maintain when the veil is finally lifted. The parties, therefore, are in a position where their sole interest is to secure the good of those they represent. They do not know their relation to anyone else and have no interest in either aiding or impeding the pursuits of others. Indeed, they do not even know what it is that those they represent want to pursue, although they do know that those they represent have some plans and projects they want to realize.<sup>73</sup>

This is how the two moral powers of persons are represented in the original position. As the parties seek to advance their particular ends, they must ensure that no pursuits are burdened more or assigned lower priority than others, unless of course it is a pursuit that directly involves obstructing others' plans. Importantly, their claims to be able to pursue their goods are counted in the overall balance of reasons; indeed, they even weigh quite heavily. The implication, of course, is that so do everyone else's, and because the parties cannot do anything to favour their

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<sup>73</sup> Rawls, *Justice as Fairness: A Restatement*, p. 15.

own projects and plans, the second moral power—their sense of justice—is thus represented.<sup>74</sup> In the same sense, they cannot ground their claims in their worldviews, for although they know what kinds of traditions and worldviews to expect in societies characterized by reasonable pluralism, they do not know which ones they themselves or those they represent endorse.

The veil of ignorance allows some knowledge about how humans and their societies work: some basic understanding about human psychology and the fundamentals of sociology and economics—just enough to be able to select a set of principles that citizens could continue to regard as both plausible and fair as the veil is lifted and the principles are put into practice. Any principles that are selected must be practicable in this sense. This requirement is particularly important because of the limited freedom that exists to leave or join societies. When the veil is finally lifted one wants the principles to go on to seeming plausible. The parties cannot assume that they can simply leave if things go badly, nor can they renegotiate the terms to reach a new agreement. What they have is what they get.<sup>75</sup> There are further considerations about persons and societies that I mentioned above that must be modelled in a similar sense, and other considerations as well.

The agreement, then, has two parts.<sup>76</sup> First, the parties will agree to a set of principles of justice. These principles should distribute social and economic resources—certain goods that are particularly important to persons' different pursuits—equally between them. What goods these are depends on the parties' knowledge of humans and societies and thus reflects the kind of society implied by the assumptions built into the original position. Given the constraints of the veil of ignorance, these goods must be such that they are valuable whatever else a person might want. The goods cannot be tied to particular pursuits or bound to a specific worldview or specific social position. They must be what persons need as members of a society that is understood as a system of social cooperation. The result is five categories of primary goods: basic liberties and rights; freedom of movement and free choice of occupation; the powers and prerogatives of positions of authority; income and wealth;

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<sup>74</sup> Rawls, *Political Liberalism*, pp. 25-26, 305-306.

<sup>75</sup> Rawls, *Justice as Fairness: A Restatement*, pp. 103-104.

<sup>76</sup> Rawls, *op. cit.*, p. 89.

and the social bases for self-respect.<sup>77</sup> These primary goods are distributed by two principles of justice. Rawls formulates the principles as follows:

- (1) Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and
- (2) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle).<sup>78</sup>

Secondly, the parties agree to principles of public inquiry and reasoning: they “ensure that inquiry is free and public as well as informed and reasonable.”<sup>79</sup> The aim is to ensure that the principles are endorsed for the right reasons, and not because someone agrees out of necessity or because they are coerced. Rising to this task is the idea of *public reason*. According to Rawls, a “political society, and indeed every reasonable and rational agent [...] has a way of formulating its plans, of putting its ends in an order of priority and of making its decisions accordingly.”<sup>80</sup> This—its way of doing so and its ability to do so—is that society’s reason. There are three senses in which a society’s reason can and should be public: it is a way of formulating and prioritizing ends that all citizens can endorse; it is not directed towards some particular end other than the fair cooperation of its citizens; and “its nature and content are public.”<sup>81</sup>

To elaborate, the first sense has in view the society’s decision-making procedures (formulating and prioritizing ends are political decisions). These procedures are public; that is, the society’s reason is the reason of its citizens as a corporate body, when the exercise of political power is properly said to be in the hands of the citizens and when citizens have an equal share in the exercise of political power. The second sense means that the ultimate end of the cooperative endeavour that is society is not specified by some particular worldview. Cooperation does

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<sup>77</sup> Rawls, *op. cit.*, pp. 57-59, 91.

<sup>78</sup> Rawls, *op. cit.*, pp. 42-43.

<sup>79</sup> Rawls, *op. cit.*, p. 91.

<sup>80</sup> Rawls, *Political Liberalism*, p. 212.

<sup>81</sup> Rawls, “The Idea of Public Reason Revisited”, p. 767.



not have an end, in the sense of furthering human excellence or obeying God. Indeed, it does not have an end at all except for persons to be able to lead their lives on equal terms. Thirdly, a public reason is “public” because it expresses the content of a political conception of justice, and it should do so according to commonly recognized methods of reasoning, inference, and inquiry and non-controversial interpretations of the world and our societies. Therefore, in Rawls’s view, public reasons are *shared* reasons, meaning that public reason is supposed to proceed from a consensus that imposes constraints on admissible reasons and acceptable outcomes. I cannot say much more at this early point, but in the remainder of this chapter, I shall give Rawls’s view of what each of these three senses implies.

The second point of elaboration focuses on the kinds of questions with which public reason is concerned: that is, the questions to which its constraints on political discourse apply. According to Rawls, public reason applies only to questions of fundamental concern—in his terms, constitutional essentials and matters of basic justice, and to such decisions as bear directly upon them. By constitutional essentials, Rawls means, firstly, the most fundamental principles that shape the way in which political power is exercised: principles that specify the political process and form of government, principles for the separation of powers between the different parts of government, and what is within the powers of the majority to make decisions about. Secondly, by constitutional essentials Rawls means such things as the basic democratic rights and liberties that it is necessary that the majority respect: “the right to vote and participate in politics, liberty of conscience, freedom of thought and of association, as well as the protections of the rule of law.”<sup>82</sup> Opportunities like freedom of movement and free choice of occupation also belong to the essentials, whereas other opportunities belong to the questions of basic justice together with other questions of distributive justice. The idea is that having established a framework that is public in all three senses, as long as political power is exercised in accordance with this framework, those decisions are also to be considered public, and therefore legitimate.

The third point of elaboration is public reason’s rationale. This involves the justification of public reason, the reasons for imposing its constraints on some aspects of political discourse. But this is not all. Public reason must also be shown to be consonant with the overarching

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<sup>82</sup> Rawls, *Political Liberalism*, p. 227.

aims and central commitments of political liberalism—at least, that is, in Rawls’s case. In political liberalism, the rationale is that of fair social cooperation, and I shall make it as clear as I can how the three components of neutrality, the duty of civility, and the liberal principle of legitimacy fit into this rationale.

The fourth and final point of elaboration is about the implications of public reason: that is, what reasons are recognized as public and how public reason affects our political deliberations. I shall try to illustrate this point over the course of the thesis, although it falls outside my primary focus, which is in the abstract. However, I shall generally have something to say about the implications of the principles I am considering, for it is by considering these implications that one can know whether the principles work as they should.

## State Neutrality and Public Reason

Having introduced Rawls’s theory of justice and the general idea of political liberalism, I will now present three components of public reason, their place in this theory, and their relation to the overarching framework of political liberalism and its central value that is social cooperation. I begin with neutrality, turning in the next section to the duty of civility, and finally to the liberal principle of legitimacy.

When it comes to Rawls’s political philosophy, the question of neutrality is an interesting one. Rawls is generally classified as a “liberal neutralist”,<sup>83</sup> yet he himself displays a quite ambivalent if not outright sceptical attitude towards neutrality, mentioning it, when at all,<sup>84</sup> only

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<sup>83</sup> See for instance, Patten, “Liberal Neutrality: A Reinterpretation and Defence”, p. 249n2; Kymlicka, Will: “Liberal Individualism and Liberal Neutrality”, *Ethics*, Vol. 99. No. 4., 1989, p. 883; Laborde, *Liberalism’s Religion*, p. 27; Franken, “Liberalism and Neutrality: A Philosophical Examination”, p. 3.

<sup>84</sup> The index to *A Theory of Justice* does not mention neutrality; here, Rawls speaks of tolerance instead. While there is, of course, a close connection between the two concepts (see for instance, Forst, Rainer: *Tolerance in Conflict: Past and Present*. Cambridge University Press, Cambridge, Mass, 2013, p. 343; Laborde, *Liberalism’s Religion*, p. 27), neutrality and tolerance are not entirely the same. The state can be tolerant of different worldviews without being neutral—and it seems, to me at least, that it can be neutral without being very tolerant (strictly speaking, neutrality is compatible with a certain amount of repression, as long as the state is equally repressive against those things it should be neutral with regard to). Tolerance of course has unattractive connotations as well. It is the powerful that are “tolerant” of those with less power and allow their ways to exist.

in passing and with some reluctance. Commenting on his use of neutrality, Rawls says that:

[...] in discussing the next two ideas [...] I shall use the familiar idea of neutrality as a way of introducing the main problems. I believe, however, that the term *neutrality* is unfortunate; some of its connotations are highly misleading, others suggest altogether impracticable principles [...] using it only as a stage piece, as it were, we may clarify how the priority of right connects with the above two ideas of the good.<sup>85</sup>

In this section, I consider what Rawls nonetheless has to say about the neutrality of his theory, and then build on it. I aim here to make clear the ways in which neutrality is part of Rawls's theory of public reason: in particular, how it contributes to public reason being public. I make three claims. First, given ideal conditions, I claim there are two different conceptions of neutrality at play that corresponds to one component each (neutrality excluded, of course). My second claim is that these components (reasonable acceptability and the duty of civility) are only loosely connected to their respective conceptions of neutrality. Finally, and implied by the previous claims, I claim that neutrality does not have a very central theoretical role to play in Rawls's political liberalism and its idea of public reason.

When speaking of liberal neutrality, as I showed in the previous chapter, it is common to distinguish between *neutrality of aim* on the one hand and *neutrality of justification* on the other. Liberal political philosophy tends to favour one or the other approach. As I see it, Rawls claims that to the extent that neutrality is not a misleading concept, justice as fairness is neutral in the former rather than the latter sense.<sup>86</sup> Justice as fairness is neutral in the sense that it seeks to secure equal opportunity to pursue any aim that is compatible with the principles of justice and it must not do anything to favour any particular pursuit rather than another.<sup>87</sup> He then adds:

Even though political liberalism seeks common ground and is neutral in aim, it is important to emphasize that it may still affirm the superiority of certain forms of moral character and encourage certain moral

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<sup>85</sup> Rawls, *Political Liberalism*, p. 191.

<sup>86</sup> Rawls uses the term "procedural neutrality" rather than "neutrality of justification", but it is clear that these are the same views. See Rawls, *op. cit.*, pp. 191-192 and p. 192n24.

<sup>87</sup> Rawls, *op. cit.*, pp. 191-193.

virtues. Thus, justice as fairness includes an account of certain political virtues—the virtues of fair social cooperation such as the virtues of civility and tolerance, of reasonableness and the sense of fairness. The crucial point is that admitting these virtues into a political conception does not lead to the perfectionist state of a comprehensive doctrine.<sup>88</sup>

This runs contrary to many readings of Rawls that tend to understand justice as fairness as being neutral in the second sense: favouring neutrality of justification.<sup>89</sup> Rawls rejects this approach because he thinks that it requires endorsement only of procedural values such as impartiality, coherence, and equal opportunity to participate and voice concerns. Justice as fairness is clearly not neutral in this way. The principles of justice express far more than merely such procedural values.<sup>90</sup> In a well-ordered society, then, where political power is exercised in accordance with fair terms of cooperation, and as part of public reason and *relying on these values*, political power is not neutral in virtue of its justification but is neutral in aim. The reason for this difference of interpretation is that Rawls relies on a different understanding of neutrality of justification than some of his readers. For Laborde, for instance, as will become clear in the next chapter, given neutrality of justification, the exercise of political power is neutral when it does not presuppose the truth or intrinsic worth of a particular conception of the good or specific tradition.<sup>91</sup> It does not require, as Rawls seems to think it does, that justifications of political decisions rely on nothing but neutral values like impartiality or coherence.

Rawls attributes this view of neutrality of justification to Larmore, but this interpretation does not seem to hold, because Larmore relies on an understanding of neutrality of justification like that endorsed by Laborde. According to Larmore, “neutral principles are ones that we can justify without appealing to the controversial views of the good life to which we happen to be committed.”<sup>92</sup> There must be some set of *moral*

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<sup>88</sup> Rawls, *op. cit.*, p. 194.

<sup>89</sup> Kymlicka, “Liberal Individualism and Liberal Neutrality”, p. 885.

<sup>90</sup> Rawls, *Political Liberalism*, p. 192.

<sup>91</sup> Laborde, *Liberalism’s Religion*, p. 47. This is also Patten’s understanding of neutrality of justification, it seems. Patten, “Liberal Neutrality: A Reinterpretation and Defence”, p. 255.

<sup>92</sup> Larmore, “Political Liberalism”, p. 341.

principles that is more likely to be the object of agreement between citizens otherwise divided. In this sense, a liberal state need not be neutral with regard to morality.<sup>93</sup>

As I see it, the concept of neutrality itself does not matter much to Rawls. He introduces it, as shown above, only as a “stage piece.” What Rawls does care about is to show that his principles of justice are fair to (permissible) ways of life even when those ways of life are illiberal, and that the judging of some ways of life as impermissible is not itself necessarily unfair.<sup>94</sup> In what remains of this section, I focus on the idea of political liberalism as a freestanding political conception and how this adds to Rawls’s analysis of neutrality. For the sake of clarity, I use neutrality in its different senses in the following ways: the exercise of political power is *neutral in aim* when it does not seek to favour or disadvantage permissible pursuits, and *neutrality of justification* means that the exercise of political power is not justified by appeal to the truth or intrinsic worth of a particular tradition or conception of the good.

I have previously, if only briefly, presented the idea of justice as fairness as a freestanding political conception, and likewise the idea of the original position with its veil of ignorance. To recapitulate, a freestanding political conception is formulated without reference to a particular comprehensive worldview and relies on values upon which persons (with their different worldviews) looking for fair cooperation could converge. Two aspects in particular make justice as fairness a freestanding view: first, its commitment to reasonable acceptability, and second, the constraints on political discourse that prevent participants in such discourses from grounding their claims in their different worldviews. In its turn, the original position is, as Rawls calls it, “a device of representation” that aims to model human practical reason. On the one hand, persons are portrayed as rational (in the means-ends kind of way) and mutually disinterested in each other’s projects, wanting simply to advance their own good; on the other, they are put under a veil of ignorance which makes them unable to favour their particular conception of the good or base their principles of justice on such a conception.

Rawls seems to hold that reasonable acceptability goes hand in hand with neutrality of aim, in the sense that the exercise of political power is acceptable to all reasonable persons only if political power is exercised in such a way that it does not *aim* to benefit or disadvantage any

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<sup>93</sup> Larmore, *op. cit.*, p. 341.

<sup>94</sup> Rawls, *Justice as Fairness: A Restatement*, p. 150f.

pursuits compatible with the principles of justice. He writes: “Here neutrality of aim as opposed to neutrality of procedure means that those institutions and policies are neutral in the sense that they can be endorsed by citizens generally as within the scope of a public political conception.”<sup>95</sup> This relation might hold under the ideal conditions of strict compliance where fair background conditions are to be expected, but unless this is the case, policies that are neutral in aim are not necessarily reasonably acceptable. In fact, it seems that neutral policies are quite likely not to be reasonably acceptable as proposedly neutral policies tend to favour the status quo. Now, this objection does not touch the heart of the matter. It bears only on the definition of neutrality *as* acceptable to reasonable and rational persons—on the claim that the two are equivalent. The claim is simply that we cannot expect neutral policies to always be reasonably acceptable, nor reasonably acceptable decisions to be neutral. We can expect these things *only* given a well-ordered society.

The problem is that in a well-ordered society it seems that there cannot arise any issues regarding neutrality. When society is well-ordered, it is presupposed that all citizens endorse the same conception of justice, so that even if they do not believe that this conception is the best one there is, they believe that it is “reasonably just” and that political power that is exercised in accordance with it should count as legitimate law.<sup>96</sup> Because neutrality is thought to be the same as reasonable acceptability, this means that by definition, the state in a well-ordered society exercises power in such a way that it does not aim to either hamper or favour permissible worldviews. If it did, that society would simply not be well-ordered. Thus, the question of neutrality does not become an issue here. Neutrality becomes an issue only from the point of view of the real world and the far from well-ordered arrangements of contemporary societies. It is not sufficient to reject neutrality simply on the grounds that, given arrangements that are far from fair, it fails to produce fair outcomes. Instead, to rebut Rawls’s conception of neutrality, the objection must be that

[...] the well-ordered society of political liberalism fails to establish, in ways that existing circumstances allow—circumstances that include the

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<sup>95</sup> Rawls, *Political Liberalism*, p. 191.

<sup>96</sup> Rawls, *op. cit.*, pp. 94; Rawls, “The Idea of Public Reason Revisited”, p. 798.

fact of reasonable pluralism—a just basic structure within which permissible ways of life have a fair opportunity to maintain themselves and to gain adherents over generations.<sup>97</sup>

This, then, is what one must be able to show. Basically, an objection to Rawls's theory must try to show that the well-ordered society does not manage to establish background conditions that are fair to the many different worldviews that exist within it. In the chapters that follow, I shall consider neutrality under non-ideal conditions, and the question of whether justice as fairness is fair to the many conceptions of the good. I shall not, therefore, engage in those discussions here. Instead, I will move on to the next aspect of Rawls's theory that has a bearing on neutrality. It has to do with the reasons that underly a decision, particularly a decision that bears on constitutional essentials and basic justice. The idea is that to be neutral, a decision cannot be grounded in the comprehensive assumptions of a particular tradition or worldview. This is of course not a matter of neutrality of aim, but of neutrality of justification. What matters are the reasons for exercising a particular policy, that it is motivated by considerations belonging to a political conception of justice and not a particular tradition or worldview. This is the duty of civility.

One should note that this is not a condition on the legitimate exercise of political power, like reasonable acceptability, but a moral duty that cannot take legal form.<sup>98</sup> While of course, the idea of reasonable acceptability is also a moral requirement, the difference is that in a well-ordered society, where decision-making procedures are drawn up in such a way that the exercise of political power is reasonably acceptable and thus legitimate, the duty of civility could still not be legally enforced. It remains a moral duty, and to honour it—that is, to justify the bills one supports by appealing to public reasons only, and not to one's worldview—is simply a way of respecting others as citizens. A well-ordered society exhibits agreement on a set of principles of justice that functions as terms of cooperation. It is therefore considered proper, if not to base one's commitment on this agreement, then at least to be prepared to discuss with others how one's own belief about the way that political power should be exercised is compatible with it. The exercise of political power, therefore, is neutral with regards to its justification,

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<sup>97</sup> Rawls, *Justice as Fairness: A Restatement*, p. 155.

<sup>98</sup> Rawls, *Political Liberalism*, p. 219.

if it can be justified by appealing only to the terms of cooperation. This conception of neutrality is not affected in the same sense by the point of view of a well-ordered society as the notion of neutrality of aim connected to reasonable acceptability. Under non-ideal circumstances, of course, where there is no agreement to turn to, the question arises as to what terms of cooperation the exercise of political power should appeal to for its justification. This absence of agreement also gives rise to moral concerns, as this duty of civility might contribute to a disproportional distribution of the burdens of cooperation, to the disadvantage of some group of citizens.

To conclude, then, the freestandingness of political liberalism is tightly connected to the idea of state neutrality in two different ways, and as these two ways are central to the idea of public reason, neutrality too is important to it—at least given ideal circumstances. Looking at a well-ordered society, its system of rules and the legislative procedures and so on are neutral in aim such that the legitimate exercise of political power cannot favour or disadvantage any particular worldview. Moreover, in treating each other with due respect, citizens do not appeal to the comprehensive claims of their worldviews when they justify their support of some piece of proposed legislation, and public reason is therefore neutral in its justifications. Turning to the real world, however, the idea of neutrality of aim no longer seems to hold: its connection to reasonable acceptability deteriorates, and with it, its moral appeal. Often enough, given non-ideal circumstances, the neutral exercise of political power will not seem reasonably acceptable. Given neutrality of aim's rather loose connection to the idea of reasonable acceptability, and considering the fact that the duty of civility as exemplifying neutrality of justification is not legally enforceable but a moral duty, there are good reasons to be wary of the ideal of liberal neutrality—even in liberal political arrangements and theories.

## The Duty of Civility

Now, neutrality is not what motivates imposing constraints on public reasoning, but these constraints are part of an ideal of democratic citizenship. Government officials, judges, members of parliament all have a moral duty of civility to conduct their reasoning on fundamental political matters in a way that relies only on public reasons. The duty of



civility thus picks up where the veil of ignorance left off, preserving the constraints on our reasoning that the veil imposed, although now in the form of a moral duty applying primarily to persons in public offices participating directly in the exercise of political power. In the original position, the parties come to two agreements: an agreement on principles of justice to organize the basic structure of their society, and an agreement on principles of reasoning and evidence.<sup>99</sup> It is according to the principles of justice that the burdens and fruits of cooperation are to be distributed, and it is by the principles of reasoning and evidence that persons are to evaluate, when the veil is finally lifted and they go on leading their lives, whether or not their political institutions fulfil the principles agreed to.

In what follows, I shall proceed by way of example, illustrating how the theory of public reason affects political discussions that have a bearing on fundamental political questions. Consider the issue of physician-assisted suicide. Imagine a close to well-ordered society where it is currently illegal to assist someone in ending their life, but where for some time, following a case that revealed many issues with existing legislation, many sceptical voices have been calling for a revision of the legislation. The issue is being discussed between citizens and in the media, and it has found its way into the speeches of the leaders of political parties and into political debates as well. Various organizations with an interest in the question are engaged in these discussions. Some seek to make physician-assisted suicide legal, whereas others argue in favour of smaller revisions or think that no revisions are required at all. These discussions have also made their way into parliamentary debates, with several elected representatives writing proposals for how to correct the existing legislation.

Let me start here, with the deliberations in the formal public sphere, for it is to the legislative processes and the application of these rules—the exercise of political power—that the duty of civility primarily applies, at least when it bears on fundamental political questions. It is important to note that public reason does not generally settle disputes. Because of the fact of reasonable pluralism, one can assume that it is a rare occasion when disputes that arise in well-ordered or close to well-ordered societies will be settled by reminding participants in debates to honour this ideal. Often enough, in a well-ordered society, the alternatives between which a decision has to be made are all reasonably just.

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<sup>99</sup> Rawls, *Justice as Fairness: A Restatement*, p. 89.

Consider the following common arguments both for and against physician-assisted dying:

- (i) Because life is a gift from God, no one has the right to end it, not even the person whose life it is.
- (ii) The terminally ill are a particularly vulnerable group of citizens and could feel pressured into requesting assistance to end their lives. It cannot, therefore, be established with full certainty that all applicants actually want to end their lives.<sup>100</sup>
- (iii) All human beings are created in God's image and are therefore equal. Standing ready, as a society, to end the lives of citizens with terminal illnesses signals that these citizens are not equal. It signals that society too (and not just the applicants themselves) considers the applicants' lives as not worthy of being lived.
- (iv) Were I to be terminally ill and unable to do all the things that I enjoy doing, perhaps be unable even to move, then I would not want to go on living. Being deprived of the means to take the matter into my own hands, I would very much like for my doctor to be able to be of assistance.
- (v) To refuse to aid persons with a terminal illness to end their life, even when no other alternatives to relieve their suffering are available, is a violation of their freedom to make decisions about matters of fundamental concern to them.

Arguments (i)–(iii) are arguments against the legalization of physician-assisted suicide. The remaining arguments are in favour of it. It does not matter whether these are good arguments or not. The central question is whether the reasons they consist of are public and the grounds for considering an argument to be public or not. Arguments can be public in the relevant sense either by virtue of their content, that is, by their appeal to properly political values, or because the inferential steps are taken in publicly recognized ways. Regarding the values of political justice, one can appeal to the terms of cooperation and the derivative list of primary goods. One can argue that a particular bill fails to distribute these goods in a proper way, but there are more fundamental values to appeal to as well, it seems. Considering how to deliberate

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<sup>100</sup> Arguments (i) and (ii) can be found in Laborde, *Liberalism's Religion*, p. 121.

about a matter like abortion and the values to which participants must appeal, Rawls says that he has

[...] in mind such values as the following: that public law show an appropriate respect for human life, that it properly regulate the institutions through which society reproduces itself over time, that it secure the full equality of women, and finally, that it conform to the requirements of public reason itself.<sup>101</sup>

Respect for human life, to take one example, is not directly tied to his two principles, but of course, social cooperation between free and equal persons depends on this or some similar value being endorsed. So in that sense it seems reasonable to consider it a political value. Rawls also mentions equal liberty, fair equality of opportunity, social equality, and reciprocity, which of course are directly tied to the principles of justice and his list of primary goods. With the values of public reason, instead, one finds

[...] not only the appropriate use of the fundamental concepts of judgement, inference, and evidence, but also the virtues of reasonableness and fairmindedness as shown in the adherence to the criteria and procedures of commonsense knowledge and to the methods and conclusions of science when not controversial.<sup>102</sup>

Consider the first argument. Our time on earth has been given to us by God, and we do not have the right—or perhaps better, the *authority*—to end it prematurely (and nor, for that matter, does anyone else). This argument is clearly in violation of public reason's constraints on political deliberation. The value that it most clearly appeals to is respect for God, which is tied directly neither to the principles of justice nor to any other obvious values of cooperation. Quite the contrary: it is tied very strongly to the commitments of particular religious ethics. It might or might not be true, but in public reason it does not count as a reason to exercise political power. Such an argument (this particular one is not a complete deductive argument, however, because many premises are left implicit) properly applies the concepts of judgement and inference, but not the more specific values of public reason such as reasonableness and fair-mindedness. It goes contrary to those values, because they both

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<sup>101</sup> Rawls, *Justice as Fairness: A Restatement*, p. 117.

<sup>102</sup> Rawls, *op. cit.*, pp. 91-92.

presuppose a willingness to honour the duty of civility and cooperate on terms that all can reasonably be expected to endorse. To invoke comprehensive grounds for the cooperative endeavour stands in stark contrast to this understanding of reasonableness and fair-mindedness.

The second argument is compatible with public reason. There is an inherent vulnerability in being terminally ill: one might feel oneself a burden to one's friends and family and to society as well. Making physician-assisted suicide legal could increase the feeling of being a burden on those groups. The social bases for self-respect constitute one of the primary goods distributed by the principles of justice, and the legalization of physician-assisted suicide could undermine the equal distribution of this good. Speaking of the values of public reason like fair-mindedness and reasonableness, this argument seems to meet these criteria.

I have included the third argument in order to discuss some complexities. Here, our being created by God is invoked as a basis for equality, which is then taken to run contrary to physician assisted suicide. The third argument differs from the first because of the different kind of work that the theological reasons are invoked to do. Although the argument clearly invokes comprehensive commitments as a justification of equality, equality *itself* is not a comprehensive value but a political one. One must also recognize that the justification of equality is not what is at stake here, but rather the rightness of physician-assisted suicide. There is already good reason to think that persons are equal from the political point of view—their having the two moral powers to a sufficient degree<sup>103</sup>—and the relevant issue is whether equality requires that physician-assisted dying remain illegal. Furthermore, providing comprehensive arguments in public reason is not a violation of the duty of civility as long as they are complemented by proper public reasons in due time,<sup>104</sup> and such public reasons are clearly present here. So, considering the values of political justice, the argument is not in violation of the duty of civility.

The values of public reason must also be considered. Whether one should consider the argument to be consonant with the duty of civility or not turns on *imago dei*'s relation to other grounds for equality. Rawls supposes that in a well-ordered society, citizens will have their own comprehensive justification of political values, such as equality. It might be that they believe that citizens are equal in virtue of their being

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<sup>103</sup> Rawls, *Justice as Fairness: A Restatement*, p. 20.

<sup>104</sup> Rawls, "The Idea of Public Reason Revisited", p. 776.

created by God in his image. The question, I believe, is whether this image could involve persons having the two moral powers to the minimum degree necessary so that this theological conception of equality does not immediately rule out the political conception. Certainly, the *imago dei* conception of equality might be much thicker, but the question is whether persons that hold this belief could grant the political grounds for equality for political purposes, or whether they would have to reject it. It is only in this latter case that the argument would be considered uncivil in Rawls's view.

Turning now to the arguments in favour of legalizing physician-assisted suicide, I want to continue to illustrate ways in which arguments can be compatible and incompatible with public reason's duty of civility. The fourth argument invokes personal experience, such that the person making the argument thinks physician-assisted suicide should be legal because under certain circumstances, they themselves would want to be able to receive assistance to end their life. Is this argument compatible with public reason, or is it not? The latter, I say. The issue is not, again, about the values of political justice, because in political liberalism, persons are viewed as self-authenticating sources of valid claims, so the expressed desire to have the opportunity to receive assistance in ending one's life if circumstances were unfortunate enough has some kind of weight. Moreover, no obvious comprehensive claims are invoked. Instead the issue lies again with the values of public reason. It is no more plausible to think that political power should be exercised in accordance with one's own will than with the will of God.

These kinds of arguments can be evocative, and of course, it matters greatly that there are persons who do not wish to go on living because they no longer have any prospects for leading a good or even tolerable life and that some of these persons may not have the power to do anything about it themselves. One can imagine that these persons suffer greatly. One can imagine that "were I in this situation, I would not want go on living either" and feel supportive of legislation that permits physician-assisted suicide. All this matters very much, but these are not themselves reasons that can justify the exercise of political power. These are reasons that point to a problem with the existing situation, and suggest that current legislation perhaps should be reconsidered, but not in what way. Perhaps other alternatives exist to legalizing physician-assisted suicide. To exercise power, however, the argument must be framed in political terms. Such an argument must show that there are

not only personal reasons to exercise power in this way but public reasons—reasons grounded in our common concern for justice, for fair cooperation. Argument five, relying on a claim to freedom, is one example.

I want to point out here again that public reason's constraints on deliberation are not invoked to settle this or any other issue. In a democracy it is the citizens that must decide themselves how to regard this issue. There is no other political authority. This means that there might be standoffs: say that a majority wants physician-assisted suicide to be legal. Rawls suggests that the opposing side should simply accept the outcome as legitimate law, resting assured that it is compatible with fair terms of social cooperation.<sup>105</sup> Indeed, were it not compatible with the terms of cooperation, the issue would not be considered in public reason (given the ideal conditions of a well-ordered society), and the opposing side could always continue to argue against the decision. It is not written in stone. Before I turn to further considering the difficulties involved with ideas of legitimacy, I shall briefly consider how the constraints of public reason apply to other spheres than the formal public. Rawls says explicitly that in those spheres, it does not apply at all; indeed, *could* not apply because that would infringe on the freedom of speech. Yet it does not seem to be that simple.

Whereas the constraints on discourse only apply to public officials and judges and others who are similarly *directly* involved in the exercise of political power, citizens, although they are not under those constraints themselves, must check that their representatives observe these bounds and should themselves act *as if* they were under those constraints. Rawls writes:

Thus when, on a constitutional essential or matter of basic justice, all appropriate government officials act from and follow public reason, and when all reasonable citizens think of themselves ideally as if they were legislators following public reason, the legal enactment expressing the opinion of the majority is legitimate law. [...] Each thinks that all have spoken and voted at least reasonably, and therefore all have followed public reason and honored their duty of civility.<sup>106</sup>

It is, I think, a very fine line between actually being under constraints and being supposed to act as if one were under those same constraints—

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<sup>105</sup> Rawls, *op. cit.*, pp. 798-799.

<sup>106</sup> Rawls, *op. cit.*, pp. 770-771.

if there is a line at all. Moreover, because the duty to abide by these constraints is a moral and not a legal duty, the difference is blurred even more. What is really the difference between having a moral duty and being supposed to act as if one had that moral duty? In either case, failing to meet the same requirements results in a moral wrong. Equally difficult to answer is the related question of when the constraints apply to citizens in their roles as citizens (to the extent that they do, that is). In the background culture, as Rawls calls it, there are no constraints on what reasons to use when persons discuss political issues with one another. Two friends discussing politics could, and even should, probe the depth of their worldviews and the comprehensive reasons that they bring with them, whether secular or religious. Indeed, this is the key to a thriving political culture that even *can* function as it is supposed to in political liberalism—namely, as a source of values that can be shaped into a political conception of justice. The question is where the line is supposed to be drawn. When is a citizen, in their role as citizen, supposed to engage in deliberations as if they were a public official having to honour the constraints of public reason? When discussing matters that bears upon constitutional essential and basic justice? When deciding how to cast one’s vote or otherwise participate in the exercise of political power or political advocacy? It is not clear at all.

I shall make one final point. Public reason’s constraints on political discourse are remnants of the original position’s veil of ignorance. The duty of civility excludes the same kinds of reasons as the veil of ignorance does and forces the discourse’s participants to rely on their common practical reason uninformed by any particular worldview. The reason is not only to remove any biases there might be, but also to ensure that political power is exercised according to recognized procedures, not in pursuit of any ultimate end other than justice, and for reasons that all can endorse as bearing on the subject at hand.

## The Liberal Principle of Legitimacy

Political legitimacy is commonly understood as being about the state’s right to rule.<sup>107</sup> It is an inquiry into the conditions that must be met for

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<sup>107</sup> Andersson, Emil: *Reinterpreting Liberal Legitimacy*, Acta Universitatis Upsaliensis, Uppsala, 2019, pp. 28f; Knowles, *Political Obligation*, p. 19; Quong, *Liberalism Without Perfection*, p. 108.

the state to be justified in making rules and, perhaps particularly, enforcing those rules through the threat of force. These conditions can involve the way the state, or a particular political agent such as the government, is created or comes to power. Allen Buchanan suggests, for instance, that such an agent cannot be someone who has deposed a legitimate wielder of political power.<sup>108</sup> Other conditions constrain the wielding of power: for instance, that basic human rights be protected (and by means that respect those rights).<sup>109</sup> Some, such as Quong, invoke reasonable acceptability as a condition on legitimate political agents, such that a political agent has a right to wield political power only if it can be accepted by all reasonable persons. More specifically, according to Quong, a political agent has a right to rule if “good arguments can be made by reference to values or principles acceptable to all citizens conceived as free and equal.”<sup>110</sup> Rawls is often interpreted as holding a similar view, or at least, there is a failure to reflect upon the possibility that his conception of legitimacy could be different. His conception is simply inserted into the “right to rule” framework.<sup>111</sup> I believe this is a mistake, for as Rawls says,

[...] democratic decisions and laws are legitimate, not because they are just but because they are legitimately enacted in accordance with an accepted legitimate democratic procedure.<sup>112</sup>

Specifying these procedures is a task that falls upon the constitution, or as Rawls sometimes puts it, “the general structure of authority.”<sup>113</sup> As legislative and elective procedures, the form of government, and so on are part of the constitutional essentials, they are a central component of public reason. But in this sense, because legitimacy is essentially procedural, it cannot be so much about the wielders of political power; it cannot consist in a right to rule. In Rawls’s view, legitimacy is instead

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<sup>108</sup> Buchanan, Allen: “Political Legitimacy and Democracy”, *Ethics*, Vol. 112. No. 4., 2002, p. 703.

<sup>109</sup> Andersson, *Reinterpreting Liberal Legitimacy*, p. 157; Buchanan, “Political Legitimacy and Democracy”, p. 703.

<sup>110</sup> Quong, *Liberalism Without Perfection*, p. 133.

<sup>111</sup> Andersson, Emil: “Freedom, Equality, and Justifiability to All”, *The Journal of Ethics*, Vol. 26. No. 4. 2022, p. 592n2.

<sup>112</sup> Rawls, John: “Reply to Habermas”, *The Journal of Philosophy*, Vol. 92. No. 3. March 1995, p. 175.

<sup>113</sup> Rawls, *Political Liberalism*, p. 136; Rawls, “Reply to Habermas”, p. 148.



about the wielding of political power: not so much about the particular decisions, but about the way in which they are made.

Now, of course, just as the philosophers mentioned in the previous paragraph must impose constraints on the political power exercised by legitimate political agents, so must one endorse from this other point of view conditions for legitimate government. But this question can be approached in quite the same way as when considering the legitimacy of particular statutes or policies. It is a question of their enactment. A legal rule is legitimate because it is the outcome of a legitimate decision-making procedure, and the same goes for legitimate government. In enacting a legal rule political power is being exercised, and the same goes for electing a government. Thus, in either case it is perfectly plausible to say, as Rawls does, that

[...] our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational. This is the liberal principle of legitimacy.<sup>114</sup>

I shall turn specifically to this principle in chapter four. At this point, I am more interested in Rawls's general approach to legitimacy, and one of the most interesting aspects of this approach is one that goes well beyond that of his principle and is pointed out by Paul Weithman. Rawls, Weithman argues, is very careful to stress that legitimately exercised political power is political power in which *all* citizens have an equal share. Indeed, it is central to Rawls' very idea of public reason that it is the reason of society's members as a corporate body; it is *our* exercise of political power.<sup>115</sup> Unless political power can be said to lie in the hands of the citizens, which it does not do unless all citizens have an equal share in its exercise, society cannot be considered a system of social cooperation. Of course, the institutions and public officials of various sorts are the main subjects of justice, the ones that actually make most of the decisions that citizens must comply with, but they do so in *our* name. Political power is thus exercised in our name not only when our elected representatives exercise their legislative powers and enact new laws, but also when public officials interpret and apply these

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<sup>114</sup> Rawls, *op. cit.*, p. 217.

<sup>115</sup> Weithman, "Another Voluntarism", pp. 57-58.

laws.<sup>116</sup> Of course, political power can be exercised in our name in many vicious ways and could be so with the expressed support of a majority of citizens. This is, however, not what it means to exercise political power in the name of each citizen—political power in which all citizens have an equal share. Such an exercise, in Rawls view, is in accordance with principles and ideals that all reasonable and rational persons can accept.

The big question is what this means. Weithman thinks—and rightly, I believe—that these are principles and ideals that would be agreed to in the original position.<sup>117</sup> As I have said already, the original position models the assumptions of the two moral powers, the idea of social cooperation and the well-ordered society, and it is these ideas, taken in conjunction, that defines what counts as reasonable and rational.<sup>118</sup> The constraints imposed on deliberations in the original position by the introduction of the veil of ignorance model the citizens’ sense of justice, which is what the reasonable represents in its pure form, so to speak. As Rawls writes,

[...] applied to the simplest case, namely to persons engaged in cooperation and situated as equals in relevant respects (or symmetrically, for short), reasonable persons are ready to propose, or to acknowledge when proposed by others, the principles needed to specify what can be seen by all as fair terms of cooperation.<sup>119</sup>

To be reasonable means, in essence, not only that a person *has* the requisite capacity for a sense of justice to a minimum degree. The idea of reasonable persons, which is a considerable idealization, shows this capacity as fully realized in persons. Reasonable persons are genuinely moved by others’ claims to allow them to realize their own plans, or claims to an appropriate share of goods, or by similar claims to justice, and by extension are committed to finding terms of cooperation that all others can also accept. By definition, then, reasonable persons are ready to propose and acknowledge fair terms of cooperation.

Rawls also adds a second condition for a reasonable person: they accept the burdens of judgement. This is a very important idea that lies behind Rawls’s political turn. Someone who exercises their reason

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<sup>116</sup> Weithman, *op. cit.*, pp. 57-58.

<sup>117</sup> Weithman, *op. cit.*, pp. 57-58.

<sup>118</sup> Rawls, *Political Liberalism*, pp. 107ff.

<sup>119</sup> Rawls, *Justice as Fairness: A Restatement*, pp. 6-7.

flawlessly will not necessarily come to affirm true statements. As such, a group of persons who all have access to the same information and all have excellent reasoning skills will not necessarily all reach the same conclusion in the end, and none of the conclusions will necessarily be true. Our concepts are vague and ambiguous and to a great extent we will always have to rely on our past experience of the world to make our judgements and decisions.<sup>120</sup> This gives rise to the idea of reasonable pluralism, which I have mentioned. Because reason is indeterminate, persons will inevitably come to different conclusions about how to view the world. Different worldviews and traditions will develop which are sometimes radically different and conflicting. These views are nonetheless many and in a well-ordered society all of them are reasonable.

I have said that the reasonable person is a considerable idealization, and Rawls often seems to say the same, as reasonable persons are an essential part of ideal theory. Reasonable persons are persons prepared to act in strict compliance with the principles of justice. However, Rawls sometimes diverges from this stance. For instance, he writes that:

In a reasonable society, most simply illustrated in a society of equals in basic matters, all have their own rational ends they hope to advance, and all stand ready to propose fair terms that others may reasonably be expected to accept, so that all may benefit and improve on what every one can do on their own. This reasonable society is neither a society of saints nor a society of the self-centered. It is very much a part of our ordinary human world, not a world we think of much virtue, until we find ourselves without it.<sup>121</sup>

Of course, even the well-ordered society which is *not* part of our ordinary human world is no society of saints (nor, of course, is it a society of the self-centred, but this goes without saying). The idea of cooperation rules out perfect altruism as a political ideal because it is too self-sacrificial to be considered *cooperation*, and if everyone was invested in everyone else's ends nothing would get done at all. Indeed, there would be no ends to be invested in. Even the well-ordered society is a society of conflict and resentment—but also compromise and reconciliation (a society being well-ordered only rules out decisions that are incompatible with the principles of justice, and citizens' actions that are

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<sup>120</sup> Rawls, *Political Liberalism*, pp. 56-57.

<sup>121</sup> Rawls, *op. cit.*, p. 54.

in a similar sense impermissible). This opens the door to questions about what we are to do with those citizens that are unreasonable, because when it comes to “our ordinary human world”, we have a not inconsiderable number of unreasonable persons to deal with. How should the liberal state respond to the claims of unreasonable citizens?

Persons are unreasonable, Rawls suggests, when they engage in society and enjoy the gains of cooperation yet have no intention to do their part as far as duties and responsibilities go.<sup>122</sup> I do not see the place of this idea of unreasonable persons. In a well-ordered society, persons who have the two moral powers are reasonable, so the unreasonable, to the extent that they exist, must be composed of persons who are lacking in their sense of justice. In the real world, of course, given non-ideal circumstances, there is strictly speaking a good deal of unreasonableness: that is, examples of persons who care to benefit from cooperation yet do not care to do their part. At the same time, however, given its non-ideal circumstances, the real world is morally ambiguous and one cannot so easily distinguish clearly between reasonable and unreasonable persons.

I find the common answers to this question about how to handle the unreasonable to be heading in the wrong direction, and I find the way of understanding the reasonable that is implicit in this line of inquiry to be similarly in the wrong. One reason is that it takes too lightly the relation between ideal and non-ideal theory. How these perspectives relate is no simple matter and one cannot without further ado simply apply ideal considerations on real world problems in real world situations. I am not saying that the two should be kept separate—that would deprive ideal theorizing of any meaning. I am only saying that what works under ideal circumstances does not necessarily work as well when these circumstances are nowhere to be found. Ideal theory provides both abstract and general as well as ideal considerations, like that of equality being based in our having the two moral powers to a minimum degree. Yet real persons, although assumed to have the moral powers to at least the minimum degree, are not properly thought to be reasonable because real-world people are moved by so many other kinds of considerations that contribute to a tendency to less than strict compliance. In this sense, the category of the unreasonable seems superfluous.

This approach to the unreasonable is the cause of further oddities. In one passage, Rawls suggests that given the existence of unreasonable

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<sup>122</sup> Rawls, *op. cit.*, p. 50.

persons and their unreasonable views, the state will be faced with the “practical task of containing them—like war and disease—so that they do not overturn political justice.”<sup>123</sup> What containment implies is not clear, however. Quong thinks that it raises questions such as whether unreasonable citizens have the same rights as their reasonable dittos. What is odd about this, of course, is that this problem that the unreasonable pose does not arise under ideal circumstances where the concept of the reasonable and unreasonable apply—where citizens exert strict compliance with the society’s rules, there is nothing to contain. Conversely, where views that are not compatible with reasonable principles of justice can develop, and where persons can be expected not to fulfil their obligations grounded in cooperation, yet still seek to enjoy the benefits of the cooperative scheme, the reasonable and the unreasonable are a source of ambivalence. Of course, actual states are unavoidably faced with this “practical task”, and perhaps it is a theoretical task for political philosophy to suggest appropriate solutions, but I do not think that doing so plausibly involves discussions about unreasonable people.

I want to conclude this section by returning to the question of how to exercise political power in a way that is acceptable to reasonable and rational persons. Let me look again at the example of the previous section: that of physician-assisted suicide. The liberal principle of legitimacy, the idea that political power should be acceptable to reasonable and rational persons, is indeterminate about whether physician-assisted suicide should or should not be legal. Specific bills can of course be ruled out as illegitimate, but it is often difficult to simply exclude the general position unless that position goes directly contrary to the terms of cooperation. I shall not consider specific legislation, but merely consider what could render a bill legitimate or illegitimate.

Consider a society in which the principles of justice are thought to be satisfied—except, that is, for this problem with the existing situations for palliative care and related issues that was introduced in the scenario I sketched at the beginning of the previous section. Such problems can be expected to occur even in a well-ordered society, for as the world changes, as it inevitably does, our circumstances change and may cause problems that legislation must address. This may happen in many different ways. Nonetheless, the society under consideration is a well-ordered one, or at least very close to well-ordered, so that the distribution of primary social goods is fair, or if not perfectly fair, at least there

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<sup>123</sup> Rawls, *op. cit.*, p. 64n19.

are good reasons for thinking that it satisfies the principles of justice. The aim is simply to ensure that whatever decision is made does not distribute the primary social goods unequally or make their distribution deteriorate over time. Any rights or liberties concerned with the right to physician-assisted suicide that its supporters stress are not basic liberties. Of course, other primary goods are concerned. Supporters and opponents of physician-assisted suicide alike can point to the social bases of self-respect, for instance. Opponents worry that were physician-assisted suicide to be made legal, the bases of self-respect would deteriorate: an increasing amount of people would feel that their life was not worth living. Proponents worry instead that the suffering some people with terminally illness are required to endure to no effect (in the sense that they cannot hope for any improvements in their condition) is a violation of their autonomy and the social bases of their self-respect. So, whichever decision is made, it is legitimate only if there is good reason to expect it will avoid these issues. Any legitimate decision, whether for or against physician-assisted suicide, must not undermine *the social bases* of self-respect, nor violate patients' autonomy in the sense of depriving them of any (relatively speaking) good alternatives. It cannot simply leave them to suffer. Physician-assisted suicide need not be an alternative as long as there are good palliative programmes.

Again, I am not trying to discuss the issue of physician-assisted suicide here, but only to illustrate the various considerations that the legitimate exercise of political power necessarily involves.<sup>124</sup> Of course, even in a well-ordered society, when a legitimate decision is made there will be those who remain unconvinced that the decision is right—perhaps because of their worldview, which is sure to influence a person's commitments and views even in public reason.<sup>125</sup> This is just as it should be and it points to something very important about the relation between the different normative concepts in play: just because a decision is recognized as being in accordance with the terms of cooperation and therefore *acceptable* to reasonable and rational persons, and, implicitly, legitimate, does not mean that all reasonable and rational persons will find it morally right or even the most just alternative. Persons' worldviews will make them favour other conceptions of justice even if

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<sup>124</sup> I believe that Rawls's discussion on the right to abortion (quoted in the previous section) is illustrative in this case as well. See Rawls, *Justice as Fairness: A Restatement*, p. 117.

<sup>125</sup> Rawls, "The Idea of Public Reason Revisited", pp. 798-799.

they accept the public political conception of justice as “reasonably just,” and a person may reject a decision as wrong even if they accept it as legitimate.

## Conclusion

This chapter presents an interpretation of Rawls’s idea of public reason and thereby an answer to the question: *How should one understand Rawls’s idea of public reason and its relation to the overarching framework of political liberalism?* To conclude this chapter, I shall briefly summarize that answer. I provide and argue for a particular interpretation of Rawls’ view according to which public reason is a conception of democratic decision-making suitable for a democratic society, understood as a system of fair social cooperation between reasonable and rational persons. The idea of public reason is a *reason* because it is a way of deciding which ends to pursue and how, and it is *public* in the sense that all citizens have an equal share in it. This idea of public reason provides a particular understanding of fair social cooperation according to which the exercise of political power must be neutral, must be justifiable by reasons that all citizens can endorse, and must be in accordance with principles and ideals acceptable to reasonable and rational persons. I consider these three *components* and direct some initial critical points against them that arise from trying to piece together this Rawlsian puzzle. As far as I am concerned, the interpretation that I have presented above is a plausible reading of Rawls’s idea of public reason. Still, it raises certain problems that depend either on the relation between the ideas or on the ideas themselves.

I argue, first, that Rawls’s understanding of neutrality is redundant and basically reducible to the two other components. Next, I point out that the duty of civility—the moral duty applying primarily to public officials to justify the exercise of political power on public reasons only—has rather ambiguous bounds. It is not as clear as one would wish when one is under this duty and when one is not, in particular considering the duty of ordinary citizens to honour the bounds of public reason. Finally, the liberal principle of legitimacy states that *our* exercise of political power is legitimate only if it is in accordance with principles and ideals acceptable to reasonable and rational persons. I focus on this

idea of reasonable acceptability and point to some interpretative difficulties that arise from the disproportionate focus on reasonable *persons* and the companion idea of the *unreasonable* person.

Below, I turn to the critique directed at Rawls by Cécile Laborde, Jeffrey Stout and Steven Wall. Each philosopher provides interesting, original, and challenging objections against a particular component of public reason. This chapter sets the stage for my analysis of these objections, which, in different ways, directly or indirectly, challenge the idea of public reason and the idea of social cooperation that it embodies. In the next chapter, I shall analyse Laborde's engagement with the idea of state neutrality.



## Chapter 2: State Neutrality and Minimal Secularism

The previous chapter introduced Rawls's theory of public reason and Rawls's understanding of three of its components: neutrality, the duty of civility, and the liberal principle of legitimacy. I presented some initial critical remarks on Rawls's view, and in this chapter and the subsequent ones, I will probe even more deeply into these components. This chapter is about neutrality. I have said that I am sceptical of this ideal. Neutrality, as it is understood by Rawls, is either superfluous or misguided. Either it is equal to the idea of reasonable acceptability, or when circumstances are non-ideal, it will often be contrary to it. The main question for this chapter is how best to understand the objections that Laborde poses to Rawls's understanding of neutrality, and whether Laborde is able to provide a conception of neutrality that improves on Rawls's analysis.

I begin by considering Laborde's analysis of egalitarian liberalism and its conception of the proper relation between state and religion. I cover how the principle is formulated in the literature and give a brief outline of Laborde's own political liberalism and her critique of state neutrality. According to Laborde, the problem with the common liberal analysis of neutrality is that it does not pay sufficient attention to all dimensions along which religion engages with the state, and she thus proposes an interpretative theory of religion that understands religion and therefore neutrality differently in different situations. What religion is in a particular situation depends on the way in which religion interacts with the state. Laborde calls this the "disaggregation approach." Relying on this methodology, Laborde develops a different conception of neutrality, a theory she calls *minimal secularism*. This theory is developed from three out of eight dimensions of religion along which the state must distance itself from religion—that the state must be neutral towards religion.

## Liberalism's Neutrality: On Laborde's Political Liberalism

Political liberalism, as I said in the previous chapter, is a conception of the relation of our worldviews to politics. According to political liberalism, the state cannot rely on any particular worldview to justify its laws or seek to favour any particular worldview. In the case of Rawls, this is clear from his idea that a political conception of justice should be *freestanding*: not presented as a part of or derived from a worldview but “worked out”, as Rawls says, from a set of political values to fit the basic institutional structure of a society. As such, a political conception of justice is not a normative ethical theory applied to politics. It does not seek to provide the most correct theory of political justice, but tries to answer the question of how human persons deeply divided by their different worldviews are to live together—how should these persons coordinate their behaviour? The political liberal answer is that behaviour should be coordinated cooperatively. The coordination of behaviour, that is, the exercise of political power, should be such that all cooperating parties can assent to it.

I have said that it is to the rationale of fair social cooperation that public reason relates. It does so by explaining what social cooperation between members of a political society involves. One thing it means is that political power must be exercised in the light of principles and ideals acceptable to all reasonable and rational persons—principles that are *public*. What this means, according to Rawls, is that the principles do not aim to favour or disadvantage particular worldviews. Reasonable persons in a well-ordered society cannot be expected to endorse terms of cooperation that favour particular worldviews over others, whether in the justification of those terms or in their aim. Principles of justice that are acceptable to reasonable and rational persons are justifiable by public reasons and neutral in aim. If the terms of cooperation are neutral and political power is exercised in accordance with those terms, then the exercise of political power too will be neutral and it will be legitimate.

Laborde's view is superficially similar. The central problem for her, as it is for Rawls, is the question of how human persons can live together despite deep disagreements about both justice and the good. Like Rawls, Laborde thinks that liberal states are systems of social cooperation and understands legitimacy as a question of whether citizens can

be expected to endorse the terms of this cooperative endeavour. The substantive differences between Rawls and Laborde on these matters spring from Laborde's rejection of ideal theorizing. She is not interested in ideal principles that are inapplicable to any actual society, but wants to develop a practical philosophy that takes into consideration the many complex issues that actual societies must deal with.<sup>126</sup> To illustrate, both Rawls and Laborde would agree that terms of cooperation are reasonable to the extent that the cooperating parties are respected as free and equal persons, and so too are disagreements about what terms actually do this best or at all. For Rawls, however, as was illustrated in the previous chapter, a reasonable state of affairs is realized in a well-ordered society. Reasonable terms of cooperation—that is, reasonable principles of justice—can win the free assent of persons prepared to engage in fair cooperation with others and observe strict compliance with regard to those terms of cooperation. To acquire this assent, the principles must be such that strict compliance is possible without them undermining themselves—one must be able to make them universal law, so to speak.

Laborde cannot, and indeed, does not care to entertain such aspirations, but this also complicates any comparison between the two theories. Disagreements about justice are reasonable, Laborde suggests, as long as “the disagreeing parties share a broad commitment to the liberal ideal of the basic moral equality of all.”<sup>127</sup> This means, Laborde adds, both not trying to enforce one's comprehensive view on others and seeking mutually acceptable terms of cooperation. But of course, the latter condition cannot involve terms of cooperation that could win the assent of persons prepared to observe strict compliance given fair background conditions and the assurance that others will do their part. In Laborde's view, mutually acceptable terms of cooperation are simply understood as “basic liberal norms.”<sup>128</sup> It is certainly the case that Rawls does not propose anything else than basic liberal norms, but when Laborde gets rid of ideal theory she loses the reasons for which these basic liberal norms are considered mutually acceptable. They are simply taken for granted.

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<sup>126</sup> Laborde, Cécile: *Critical Republicanism: The Hijab Controversy and Political Philosophy*. Oxford University Press, Oxford, 2008, p. 8.

<sup>127</sup> Laborde, *Liberalism's Religion*, p. 154.

<sup>128</sup> Laborde, *op. cit.*, p. 154.

For Rawls, neutrality is a component of public reason, as I have called it. Public reason is not public unless it is neutral. As I argued in the previous chapter, however, given ideal conditions, neutrality seems to disappear, as the neutral becomes indistinguishable from the reasonably acceptable. Unless these ideal conditions hold, however, neutrality will rarely turn out to be what reasonable persons can accept, as unfair background conditions skew the neutrality of the terms of cooperation toward reproducing the unfairness of existing arrangements rather than seeking background conditions that are fairer and more equal. This is the kind of argument Laborde directs against the French republicans defending the ban on Muslim headscarves in schools. As they think the ban is otherwise justified by their interpretation of secularism, one should not worry about the unequal outcome that the ban results in.<sup>129</sup> Her argument against Rawls and the other egalitarian liberals is quite similar. Egalitarian liberalism, Laborde points out, “must be clearer about what it means to treat religious and non-religious commitments equally,”<sup>130</sup> that is, *neutrally*. This is the challenge of *ethical salience*. Another failure of liberalism is that the state is arbitrarily given authority over other kinds of associations within the state—associations like the Church, for instance. Liberals, Laborde contends, “must think harder about the ultimate sovereignty of the state in enforcing specific terms of liberal justice in a context of reasonable democratic disagreement about justice itself.”<sup>131</sup> This is the *jurisdictional boundary* problem and is not a primary concern of this chapter.

Before I turn to Laborde’s theory, I shall attempt to explain this criticism as applied specifically to Rawls’s theory of justice. If we look first at the problem of ethical salience, the problem according to Laborde is that in order to settle religious and non-religious claims, Rawls analogizes the category of religion as conceptions of the good life. Like, say, John Stuart Mill’s liberalism, religions are conceptions of the good life and their analysis of political justice and legitimacy are simply those conceptions as applied to politics. This would be problematic because neither religion nor comprehensive liberalism are plausibly reduced to conceptions of the good life. However, as should be clear from my anal-

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<sup>129</sup> Laborde, *Critical Republicanism: The Hijab Controversy and Political Philosophy*, p. 55 (for the connection between French secularism and neutrality of justification see pp. 39f).

<sup>130</sup> Laborde, *Liberalism’s Religion*, p. 5.

<sup>131</sup> Laborde, *op. cit.*, p. 6.

ysis of Rawls, Laborde's criticism does not hold. Contrary to what Laborde claims, Rawls does not analogize religion with conceptions of the good life. Religions, in Rawls's view, are comprehensive doctrines, or worldviews in my preferred terminology. Of course, worldviews include conceptions of the good as well as conceptions of the right and of political justice, but they also extend well beyond it. On Laborde's view, therefore, a problem for Rawls's analysis is that worldviews are not disaggregated, to use Laborde's term, and therefore that the many ways in which religion and other worldviews are legally and politically relevant are obscured. This conflation of the many dimension of the legal category of religion, not only detracts from the accuracy of the liberal egalitarian analysis of religion's (and its analogues') legal and political relevance. It also, and more importantly, results in a faulty conception of neutrality.

This, I believe, is a plausible construal of the issue with the egalitarian liberal understanding of neutrality, one which makes sense of Laborde's critique of egalitarian liberalism when applied to Rawls, and that provides good ground from which to, in due time, assess Laborde's own theory.

The jurisdictional boundary problem, in turn, asks with what right the state creates boundaries between the public and the private, between morality and political justice, and distributes authority between itself and the various associations within it, giving itself the ultimate authority and with it the final word. For Rawls, the state does not seem to have any right to exercise political power beyond what could reasonably be considered to be in accordance with the will of the citizens of a well-ordered society—in accordance with the society's public reason. This means also that many of the boundaries that have to be drawn are not settled arbitrarily by the state, but must rely on the society's political culture and practice, of which political philosophy is a part. This does not mean that in a given society there is only one way for any given boundary to be drawn; a political culture is not homogenous in this sense. A particular political conception of justice, however, will come with its own jurisdictional boundaries. This, it will be clear, is not too far from Laborde's own solution. As I have already mentioned, the jurisdictional boundary problem will not be of primary concern in this chapter.

## Disaggregating Religion

That there is nothing special about religion from the point of view of the liberal state is, in Laborde's view, perhaps the central insight in the liberal egalitarian approach to religion. What is often construed as religious either has its secular analogues or is not necessarily part of all those belief systems that are commonly recognized as religions. Moreover, to the extent that these aspects are protection-worthy, they are so not because they are religious, but because they form part of a worldview: that is, the many attitudes towards the world from which persons proceed in their interactions in and with the world and with its inhabitants.

Developing as a response to the religious wars in sixteenth- and seventeenth-century Europe, liberalism has advocated tolerance on part of the state towards various Christian views. As the plurality of religious views has increased in modern societies, along with non-religious views, the notion of tolerance must be extended to these as well. Enter ideas of liberal neutrality.<sup>132</sup> To recapitulate, liberal philosophy is traditionally divided between two interpretations of neutrality: *neutrality of aim* and *neutrality of justification*. In the former interpretation, the focus lies on the ends that the state pursues. The exercise of political power is neutral if and only if that exercise does not favour any particular ends or certain conceptions of the good human life over others. As long as an end is within the bounds of justice, the state must not favour any particular one.<sup>133</sup> In the latter interpretation, the state cannot favour any particular worldview in its justification of its exercise of political power. A more recent proposal is termed *neutrality of treatment*, according to which neutrality means that the state does not either burden or advantage one worldview more than it does any other. It is, as Patten says, "equally accommodating."<sup>134</sup>

The ideal of neutrality has its critics, of course. Neutrality, it is often argued, is just the status quo playing dress-up. To secular liberals, the staunchest champions of neutrality, the neutral way of things seems to be both secular and liberal, and in political practice it is often the current arrangement that is considered neutral. This was one of the blind spots for the republicans defending the ban of the Muslim hijab in France,

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<sup>132</sup> Laborde, *op. cit.*, p. 27.

<sup>133</sup> Rawls, *Political Liberalism*, p. 193.

<sup>134</sup> Patten, "Liberal Neutrality: A Reinterpretation and Defence", p. 250.

and it is a similar blind spot for liberals in their defence of non-establishment.<sup>135</sup> One problem is of course the particular understanding of neutrality itself. None of the common understandings are considered to have an appropriate extension but will generally lead either to counting non-neutral policies as neutral or the reverse, rejecting neutral policies as non-neutral.<sup>136</sup> In her inquiry, Laborde starts with a particular branch of critique of liberalism she calls the school of *critical religion*: a motley crew of philosophers, sociologists, and religious scholars who seemingly have little in common, but among whom she identifies three general objections to the liberal state-religion relationships.

The first objection is that liberal engagement with religion is problematic because no such thing as religion seems to exist. The word “religion” has no referent. Laborde does not give much for this critique because contemporary egalitarian liberalism is not concerned with religion *per se* but with conceptions of the good. A second line of argument is that liberalism’s conception of religion or even its conception of the good is biased, enjoying a very Protestant interpretation of religion or conceptions of the good as something internal and individual, connected to a person’s beliefs rather than their way of life or their participation in the common life of their community. The third objection is that liberalism’s doctrine of neutrality is simply impossible because liberalism is itself a religion. These two latter objections fail as well, especially because they are blanket criticism of the practice of liberal states, which is fair enough but does not therefore automatically target liberal political philosophy. However, the challenges point in interesting and fruitful directions.<sup>137</sup>

The first line of argument has already been dismissed: liberal philosophers are concerned not simply with religion but with conceptions of the good, or even better, different worldviews. Taking a look at legal practice, however, it is not primarily as conceptions of the good that religions face or cause problems. Conceptions of the good, Laborde notes, do not form the only relevant analogy. Similarly, regarding the second critique, it is not perhaps religious *belief* that is most often actualized as a legal category but religious *practice*. Even when such practices are not targeted, practices in general are not valued as much as the

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<sup>135</sup> Laborde, *Critical Republicanism: The Hijab Controversy and Political Philosophy*, pp. 34, 95-96; Laborde, *Liberalism’s Religion*, pp. 46-47.

<sup>136</sup> Cordelli, “Neutrality of What?”, pp. 37-38, 46.

<sup>137</sup> Laborde, *Liberalism’s Religion*, pp. 17-18.

beliefs protected by the liberal freedoms of thought and expression. Indeed, it is central that the state does not force its citizens to endorse a particular religious view, but religious practice is often both what is considered a threat against liberal values and thus confined to the private, and (as a result) what is threatened by the liberal search for the secular state. These criticisms are what give rise to the two challenges I mentioned earlier: the problems of ethical salience and jurisdictional boundaries. The liberal state cannot be completely neutral; it cannot help prioritizing between goods and considering one thing more valuable than another. Or rather, any reasonable conception of neutrality does not preclude such valuations.

Laborde suggests instead that religion, in particular its political and legal role, should be approached interpretatively. Legal and political categories are not best created by supplying a definition of a phenomenon and putting into it anything that fits the description, but conversely by identifying social practices that require a particular form of protection or regulation and lumping these practices together.<sup>138</sup> The interesting point is not to settle what (say) religion *is*, but to say what makes something religious from the point of view of a particular legal system.<sup>139</sup> The problem for this approach is that religion (as the relevant example) is many different things. Where liberal philosophy, as described above, has taken the interpretative step to capture the relevant dimensions of religion, liberals have done so with severe tunnel vision. Religion has been equated with conceptions of the good or matters of conscience. Rather than exhausting the concept of religion, such analogizing strategies all point to different salient dimensions of religion's political role. To see more clearly what dimensions these are, religion as a political and legal category must be *disaggregated*.

To disaggregate something means to pick it apart. Laborde introduces disaggregation as a methodology, arguing that freedom of religion does not adequately identify all the dimensions of the phenomenon

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<sup>138</sup> Legal categories draw on social categories because the social world is the law's object; thus I imagine there are both social and legal categories that cover the same phenomena, yet interpret these phenomena differently. This is partly because although a legal category might have been created to address a specific social phenomenon, over time, the social world evolves and the legal system must change with it. Rather than reinventing itself, old categories are reinterpreted to fit the new circumstances. It is also partly because a legal category need not mirror its social ditto, but only those dimensions important for its purposes. These dimensions become apparent in the light of other legal and extra-legal considerations that form the basis for interpretation.

<sup>139</sup> Laborde, *Liberalism's Religion*, p. 30-31.



it is supposed to protect or protect against. It does not capture all the dimensions of religion that warrant legal action.<sup>140</sup> A disaggregation of the legal and political category of religion reveals several salient dimensions. As Laborde points out: although religions generally come with a conception of the good life, they are important parts of our identities and forms of association. Sometimes religions are “totalizing institutions” and “inaccessible doctrines”; religions give rise to moral obligations, and often they are markers of vulnerability.<sup>141</sup> Being able to identify these dimensions opens the door to much more accurate political and legal action. So, religion is disaggregated.

Laborde points to a total of eight salient dimensions of religion as a legal category, each corresponding to one special liberal value. These eight dimensions are divided into two sets. The first set of four dimensions concerns the non-establishment of religion and requires a certain distance by the state from religion and secular worldviews. First, the state must justify its exercise of political power by appealing to reasons that all can engage with as reasons according to common standards. This appeals to the liberal value of *justifiability* and imposes a revised, more permissive civility constraint. Second, the state must also take care not to associate with worldview on divisive issues, as that becomes a symbol for the lower status of citizens belonging to the losing side, so to speak. This is the value of *inclusion*. According to the third value, the state should refrain from coercively enforcing practices that are part of comprehensive ethics. This resembles Rawls’s requirement that a political conception of justice be freestanding, although it is somewhat more permissive. A political conception need not be freestanding in Laborde’s view, only *limited*. The fourth and last value in the first set is *democratic sovereignty*: it is the democratic state that has the ultimate authority to draw the boundaries within which other agents, whether individuals or associations, are to conduct their activities and pursue their ends.

The second set of values takes the opposite approach from the first. Where justifiability, inclusion, limitedness, and democratic sovereignty all are dimensions of citizens’ worldviews that the state should distance itself from, this second set focuses on dimensions along which exemptions to laws should be granted in the name of religion’s free exercise.

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<sup>140</sup> Laborde, Cécile: “Religion in the Law: The Disaggregation Approach”, *Law and Philosophy*, Vol. 34. No. 6. 2015, p. 583.

<sup>141</sup> Laborde, op. cit., p. 594f.

One such dimension is freedom of association. The state must not interfere with the internal life of associations, especially when these associations are genuinely voluntary *and* identificatory. Such associations might be granted exemptions from general laws, even when these laws are imposed to protect core liberal values like anti-discrimination. They can be granted such exemptions because the cost of leaving the association is not too high, and because persons join the group to pursue goods pertaining to their identity. Another dimension of this second set is simply to give persons sufficient space to pursue their conception of the good life: negative freedom. The two remaining dimensions are both part of a theory of persons' integrity as agents. Exemptions must be granted when compliance with general rules would mean that a person would have to act contrary to their conscience or their identity.<sup>142</sup>

The result of this disaggregation of the category of religion is a pluralistic theory, not only of religion (as a legal category) but also of neutrality. The upshot of the theory is that it responds differently to the many different ways in which religion engages with the liberal democratic state. Thus, rather than simply saying that neutrality means neutral justifications or that the state is neutral in its aims, Laborde's theory says that the state is neutral when it exercises a strict separation between "religion" and the state along the particular dimensions safeguarding their corresponding values. This is her theory of *minimal secularism*. Minimal secularism lays down the fundamental principles of the neutral state and it is, for this reason, the theory I will focus on in this chapter. To it, Laborde adds a theory of legal exemptions that falls outside my scope. When general principles of neutrality do not promote a social world of equality but work to reproduce the inequalities of existing arrangements, it might be that exemptions to these general principles or the rules they prescribe are necessary. These exemptions are of two kinds: they might be exemptions for associations to act contrary to otherwise valid legal rules or they might grant such a privilege to individuals—given that certain conditions are met, that is. The point is to give sufficient leeway to all arrangements that treat citizens as free and equal, and not fall for the temptation to narrow the range of reasonable arrangements down to include only liberal arrangements, which purportedly is common among egalitarian liberals. In what follows, I ana-

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<sup>142</sup> For all eight dimensions with their corresponding liberal values, see: Laborde, *Liberalism's Religion*, p. 241.

lyse Laborde's minimal secularism, going over each of the three dimensions of her minimal secularism with their corresponding liberal values and considering their plausibility.

## Minimal Secularism I: Justifiability to All Citizens

In my view, Laborde's minimal secularism is a theory of neutrality, and a necessary condition for political legitimacy. If the exercise of political power fails to be neutral along the three principles of minimal secularism, it is not legitimate. Taken in concert with a principle of democratic fairness, the theory of legitimacy is complete, being both necessary and sufficient for legitimacy. This principle states simply that it is fair democratic decision-making procedures that confers legitimacy to political decisions. Moreover, legitimacy is prior to justice in the sense that justice is something that it is for the various worldviews to have an account of. Similarly to how Larmore sees it, Laborde endorses a conception according to which liberal legitimacy only includes a minimal moral principle: respect for persons. In Laborde's view, as long as this minimal morality is not violated, if an *actual majority* (as opposed to all reasonable persons) endorses a decision following a fair and inclusive process of democratic reasoning, the exercise of political power must be considered legitimate. Thus, I think Laborde's conception of political legitimacy can be formulated as follows:

The exercise of political power is legitimate *if and only if* it is exercised through a fair process of democratic reasoning and citizens are respected as self-determining and equal democratic reasoners.

Here, I want to consider each of these liberal values and their corresponding dimension of religious and secular worldviews. What does it mean to respect citizens as self-determining agents? As equal citizens? As democratic reasoners? I will begin with the value of justifiability and work my way back.

Justifiability is inspired by Rawls's duty of civility. It requires that the state and its officials should rely only on *accessible* reasons in their justification of the policies and legal rules that they support. The problem here is that it is not very easy to understand what an accessible reason is. Laborde gives two main explanations that aim to clarify the idea of an accessible reason, yet it still does not seem to make sense. I

shall very briefly inquire into these ideas, arguing that neither of them helps much. Her first explanation contrasts accessibility with the weaker requirement of *intelligibility* and the stronger requirement of *shareability*. The second explanation identifies accessible reasons with *detachable* reasons. Regarding the first explanation, Laborde states that

[...] *intelligible* reasons can be understood only in relation to the specific doctrine or epistemic standards of the speaker. *Shareable* reasons are endorsed according to common standards. *Accessible* reasons can be understood and assessed, but need not be endorsed according to common standards.<sup>143</sup>

This typology raises at least two basic questions: what is a reason and what standards could qualify as *common* standards? Laborde does not say what a reason is. It is common to consider reasons to be “considerations that speak in favour of something.”<sup>144</sup> Whether something is a reason or not, then, depends on the logical connections between the concepts that we entertain. So, for instance, consider argument (i) from the previous chapter: “Because life is a gift from God, no one has the right to end it, not even the person whose life it is.” Here, “life is a gift from God” is taken as a reason to think that “no one has the right to end their life”. The inferential expression “because” is a hint and suggests that life being a gift of God is a sufficient condition for believing that no one has the right to end a life. What then does “common standards” mean? Laborde writes that her view

[...] is an epistemic desideratum, in the sense that it sets out conditions of knowledge and understanding: more specifically, the conditions of possibility of public debate. [...] Public reasons, on this view, are analogous to official languages: they are the vocabulary, grammar, and references of the shared political language of particular societies.<sup>145</sup>

One may interpret Laborde here as meaning that in particular societies, a particular way develops of speaking and thinking about matters (politics for instance) and that it is this way of speaking and thinking—implicitly, the words and concepts that are used, the beliefs that are

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<sup>143</sup> Laborde, *Liberalism's Religion*, p. 120.

<sup>144</sup> Scanlon, Thomas: *What We Owe to Each Other*. Belknap Press, Cambridge, Mass, 1998, p. 17; Larmore, Charles: *Morality and Metaphysics*. Cambridge University Press, Cambridge, 2021, p. 29.

<sup>145</sup> Laborde, *Liberalism's Religion*, pp. 120-121.

taken for granted, and the accepted inferences—that are the common standards. Of course, it seems that these standards are not so much *common* standards, but merely the standards of the majority. Nonetheless, this seems to be what Laborde has in mind.

Turning to the typology, consider first the idea of a shareable reason. I have said that this is the kind of standard that Rawls endorses.<sup>146</sup> The parties in the original position agree to a set of principles of justice and principles of reasoning and public inquiry. These are publicly acknowledged—that is, *common*—standards by which citizens can settle their claims on one another. Considerations that, given these moral and epistemic principles are to be interpreted as reasons are *public* reasons and as such, as Laborde’s requirement states, are endorsed as reasons.<sup>147</sup> Of course, given the burdens of judgement and the fact of reasonable pluralism, it must be assumed that persons will differ in the weight they attribute to these various reasons, but they all agree that the reasons bear upon the case at hand. This is, as far as I know, what it means to endorse a reason.

This is of course not a viable route for Laborde to take because it relies on ideal theorizing. In particular, it relies on Rawls’s original position. Turning instead to the standard of intelligibility, Laborde formulates this standard in terms of *understanding*: intelligible reasons are such that they can only be understood given the speaker’s own epistemic standards (as provided by their particular tradition).<sup>148</sup> But this seems odd. One can understand a good many things that are not conformant to the epistemic standards of one’s own tradition and one would expect a requirement of intelligibility to seek to secure understanding rather than locking it behind the standards of a particular tradition.<sup>149</sup> The point with this requirement is that most reasons are intelligible. Applied to political deliberations, what this requirement states is that I

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<sup>146</sup> To assume that Rawls and Rawlsian political liberals like Quong adhere to a shared-reasons view of public reason is not uncommon. See Watson, Lori & Christie Hartley: “Feminism, Religion, and Shared Reasons: A Defence of Exclusive Public Reason”, *Law and Philosophy*, Vol. 28. No. 5. September 2009, p. 497; Adam Etinson, “On Shareable Reasons: A Comment on Forst”, pp. 77f; Motchoulski, Alexander: “The Epistemic Limits of Shared Reasons”, *European Journal of Philosophy*, Vol. 28. No. 1. March 2020, p. 165.

<sup>147</sup> Laborde, *Liberalism’s Religion*, p. 120.

<sup>148</sup> Laborde, *op. cit.*, p. 120.

<sup>149</sup> As Kevin Vallier points out, it is a search for intelligibility that motivates the accessibility requirement in the first place. See his “Against Public Reason’s Accessibility Requirement”, p. 388.

am within my rights to support coercive legislation that affects me, only if it is clear to me that your view is justified given your own epistemic standards. To be sure, and this is Laborde's point, I believe, that in terms of understanding, intertraditional discourse requires that one understand quite a lot about the reasons that are not one's own. One must understand so much that one understands whether or not the other is justified in their view.<sup>150</sup> In such circumstances, then perhaps one can give a counterargument that relies on this other person's standards, arguing that their reasons are bad.

*Accessibility*, as Laborde sees it, is supposed to fit somewhere in between the ideas of shareable and intelligible reasons. Accessible reasons, she says, "can be understood and assessed, but need not be endorsed according to common standards."<sup>151</sup> I am not quite sure what to make of this. It seems that this requirement collapses into either intelligibility or shareability, rather than floating between them. From where I am standing at least, there is no good middle way available. Suppose that there are actual common standards available—epistemic and moral standards that everyone actually endorses. Is it possible to identify something as a reason according to those standards, yet not endorse it as a reason? I am not so sure. If endorsing a reason means thinking that the reason has bearing on the case under consideration, then recognizing it as a reason (a consideration that speaks in favour of something) according to common standards means endorsing this reason. On the other hand, getting rid of the idea of common standards opens up the possibility of reasons that can be understood and assessed without being endorsed because there are different standards at play; but in this case, accessibility becomes very similar to intelligibility. As such, this typology does not help much in making sense of the idea of accessibility—at least not on its own.

Turning to Laborde's second attempt to explain her accessibility requirement, she says that accessible reasons are *detachable* reasons. This idea of detachability is similar to Rawls's idea of a freestanding political conception of justice, only it is applied to reasons rather than conceptions of justice. One could say that a reason that is detachable is not derived from or presented as part of a particular tradition, or rather, in Laborde's words, it does not refer to the deeper foundations of any

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<sup>150</sup> Kevin Vallier, op. cit., p. 388.

<sup>151</sup> Laborde, *Liberalism's Religion*, p. 120.

view.<sup>152</sup> The main problem here is perhaps that this criterion does not explain accessibility as much as it introduces the detachability requirement: it does not seem like all detachable reasons are also accessible. For instance, a reason can be accessible because it is in accordance with the majority's epistemic and moral standards while not being detachable because it is dependent on those particular standards. Another problem is that the concept of detachability is not much clearer than accessibility. Now, Laborde illustrates the difference between detachable reasons and non-detachable reason with the two "statements: 'God wishes us to treat all as free and equal' and 'We should treat all as free and equal.'"<sup>153</sup> But of course, as Aurélia Bardón points out, whereas God's wish in the first statement is an inaccessible reason, the so-called detached second statement gives no reason at all.<sup>154</sup>

I do believe that there is an interpretation that can manage to locate accessibility in between shareability and intelligibility and at the same time explain how accessible reasons are also detachable from their deeper foundations. The key lies in replacing the idea of common standards with something like "familiar standards": an appeal to a shared culture where different standards have to get along and with which one can expect members of the society to be familiar. This is not the political culture that Rawls speaks of, for that is an institutional culture depending on the behaviour of political agents, not persons in general. Although this accessibility requirement applies only to the state, it can rely on reasons that are, in Rawlsian terms, part of the background culture—the informal public sphere. Reasons are accessible, not because they can be assessed according to common standards but because the claims and commitments relied on are part of the knowledge and understanding of citizens generally. As Laborde argues,

[n]atural theology arguments, I suggest, are *detachable* from specific systems of belief: they can be assessed on their own merits, by reference to ordinary criteria of rationality. Specific theological arguments, by contrast, are not so detachable. To make sense of providentialism, you must believe that God exists, that at least some of His intentions are discernible through human reason, that He relates to the world and to human actions in a certain way, and so forth. Such matters, of course,

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<sup>152</sup> Laborde, op. cit., pp. 122, 126.

<sup>153</sup> Laborde, *Liberalism's Religion*, p. 122.

<sup>154</sup> Bardón, Aurélia: "Is Epistemic Accessibility Enough? Same-Sex Marriage, Tradition, and the Bible", *Critical Review of International Social and Political Philosophy*, Vol. 23. No. 1. 2020, p. 32.

are the subject of intense theological controversy, both within Christianity and within other religious traditions. But such controversies are only meaningful to those who are embedded in such epistemic communities.<sup>155</sup>

Religion is not special in this sense, but

[...] there is an intriguing parallel between science and religion. Only those who apply themselves to the discipline of scientific learning can make sense of, and meaningfully argue about, the intricate findings of science. Consider climate change. Only trained climatologists can meaningfully debate the plausibility of different scenarios of future climate emergency. It is extraordinarily difficult for lay citizens to have proper access to this knowledge, as they lack the training and understanding to grasp the scientific facts.<sup>156</sup>

Looking at what Laborde says here, the problem is not the epistemic source, so to speak; that is, the problem is not the tradition from which the argument originates. Instead, the problem seems to be that some arguments require complex theoretical knowledge to appreciate and the general public will not in general have *access* to these arguments. They will not be able to understand and assess these arguments.

This view does not collapse into intelligibility nor shareability, for despite Laborde's insistent talk about epistemic standards to assess and evaluate claims, accessibility is not a matter of epistemic standards but of culture. It is a matter of what reasons and arguments and perhaps knowledge in general are part of the consciousness of ordinary citizens, and what views they expect one another to have. The state can rely on such reasons and knowledge, but not on anything that goes beyond what is in this sense *accessible* to anyone. What appears here is a form of neutrality, according to which justifications need not be neutral about what is good in and about the world, or neutral regarding our worldviews and traditions in general. What is required of a justification is that it is not entangled in intricate theological, philosophical, or scientific ways of speaking and thinking about a matter, but that it relies on knowledge all can be expected to be able to understand and further engage with. This is, I believe, the most plausible way to understand this principle and I think that it does capture an important aspect of

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<sup>155</sup> Laborde, Cécile: "On the Parity Between Secular and Religious Reasons", *Social Theory and Practice*, Vol. 47. No. 3. July 2021, p. 585.

<sup>156</sup> Laborde, op. cit., p. 585.



treating citizens with respect. On its face, however, it is also not entirely unproblematic. On the one hand, political reasoning is sometimes unavoidably quite complex and the state must simply do its best to ensure that citizens can participate in the political processes on the necessary level and on equal terms. A level of complexity that can be considered reasonable must be stipulated, and through basic education and information campaigns, the state must seek to keep its citizenry fit to participate in political processes. On the other hand, sometimes the level of complexity is (again, unavoidably) so high that ordinary citizens cannot be expected to have equal access to it. The legal system is a good example. In such cases, the state must, at least in certain cases, such as when a person faces trial, stand ready to provide a legal representative in order to level the playing field.

## Minimal Secularism II: Social Divisiveness and Comprehensive Ethics

In this section, I consider the second and third principles of Laborde's minimal secularism, grounded in their respective dimension of religion with corresponding liberal values. I begin with the second one: religion as a vulnerable social group and the corresponding liberal value of inclusion. The second principle, too, is a question of neutrality, although not about neutral justifications; it is best understood in terms of treating persons as equals. The most obvious breaches of this interpretation of neutrality are laws that distribute basic rights and liberties unequally or shift opportunities in favour of particular groups of citizens. These kinds of state action clearly consider disfavoured groups of citizens as less than equal, and they do so on the basis of their particular group membership. There are, however, more subtle ways for the state to not accommodate a particular group than by blatantly withdrawing its rights, liberties, or opportunities. For instance, the state might express its allegiance or opposition with or against a social group in its speech, by using particular symbols, or taking actions that are symbolically significant.<sup>157</sup> These subtle means are all examples of what can be termed *symbolic establishment*.

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<sup>157</sup> Laborde, *Liberalism's Religion*, p. 132.

Symbolic establishment, Laborde says, is not always wrong. As in the more obvious cases involving liberties, rights, and opportunities, the issue is whether the state through its actions makes a particular group identity a part of what it means to be a citizen and thereby treats non-members of the group as second-rate citizens by establishing and reproducing hierarchical, subordinating, or dominating social relations.<sup>158</sup> For Laborde, this question of symbolic establishment is very closely related to group membership. The state acts wrongly when it associates too closely with a particular group, for instance by relying in its communication on particular symbolic expressions connected with the group, and thereby makes the minority status of others relevant to their civic identity.<sup>159</sup> But it is not always wrong to associate with a group and not all ways of associating with a group are wrong—the problem is to know which groups not to associate with and how not to associate with them. The difficulty, in other words, is to know when hierarchical or dominating social relations are established and when state association with one group denigrates other group identities.

Laborde's approach, as I have pointed out, is interpretative. There are no universally and by necessity socially salient groups that the state cannot associate with; nor are there any universally and necessarily wrong ways for the state to associate with them. The relation between men and women, for instance, is rendered salient through an interplay between state action and political culture: men and women become salient social groups because of historical and present legislation and enforcement of marriage, heritage, and organization of family life. The relations between groups and state action are essential for their saliency. Although it might not always be the case that the state is the primary cause of whatever injustices exist (in the current case, however, it certainly has had a very central role), it is sufficient that it has acted so as to fuel and institutionalize, rather than level, whatever inequalities arise from ordinary social interactions. Another key point for constructing *salient* social groups is that there are or have been injustices that have established hierarchical or dominating relations between the groups in question.<sup>160</sup> Men and women, for instance, are salient groups for which, in terms of basic rights and liberties, many societies are approaching something like formal equality. Existing injustices are centred around

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<sup>158</sup> Laborde, *op. cit.*, pp. 135, 136.

<sup>159</sup> Laborde, *op. cit.*, p. 137.

<sup>160</sup> Laborde, *op. cit.*, p. 136.

social attitudes and expectations, which indeed might be institutionalized and affect the distribution of various goods, but the inequalities are rarely legally enforced. Inequalities persist through state policies that are often formally neutral and sometimes even intended to mitigate said inequalities (affirmative action policies, for instance). As such, the question of the rights and wrongs of symbolic establishment is connected to a much wider conception of justice. Laborde's theory is not, on its own, sufficient to explain when symbolic establishment is wrong and when it is not, nor which groups are salient.

Consider one of Laborde's examples, the case of *Lautsi and others v Italy*. At issue is whether the display of crucifixes in public schools in Italy is a breach of freedom of religion and state secularity. One of the government's arguments is that the crucifix is not only and not primarily a religious symbol but rather a part of Italian tradition.<sup>161</sup> As Laborde points out, however, regarding this case "[i]t will not do [...] to re-describe crucifixes in Italian schools as cultural instead of religious symbols."<sup>162</sup> The relevant interpretative dimension here is not religion but "vulnerable social group" and therefore it makes no difference whether the symbol is religious or cultural. However, to be able to tell if the state's association with the crucifix, whether interpreted in cultural or religious terms, one must know much more about Italian society and its social world. Without trying to say whether or not the court was right in its judgement that the Italian government was well within its margin of appreciation and thus did not violate the convention, I want to consider some of the arguments issued by the Italian government and the European Court of Human Rights simply as a means to illustrate Laborde's minimal secularism. What I want to know is how to reason about whether endorsing a symbol, like the crucifix, makes it relevant to civic identity such that it establishes non-Catholics as second-rate citizens.

Laborde explains that symbolic establishment must be evaluated in relation to three variables: its interpretative dimension, which is group membership; objective criteria for evaluating social relations (such as a theory of justice); and finally, the particular society, because groups that are salient in one society might not be salient in another.<sup>163</sup> It has been

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<sup>161</sup> For the state's reasoning on the matter, see, for instance, *Lautsi v Others. European Court of Human Rights*. Strasbourg, March 2011, §§ 36, and 67.

<sup>162</sup> Laborde, *Liberalism's Religion*, p. 140.

<sup>163</sup> Laborde, *Liberalism's Religion*, p. 140.

established that the relevant interpretative dimension is group membership, not strictly religious membership. I have also pointed out that one cannot say anything determinate without a thorough analysis of the particular society in question. What is wrong in one society might not be wrong in another because social relations and power structures are different in different societies. What is lacking at this point is some indication of what the objective criteria should be. Looking only at the reasoning of the Italian government and the court, a few arguments are noteworthy. First is the appeal to Italian tradition. The fact that the crucifix is a symbol of Christianity generally and Catholicism particularly, which is the majority religion among Italians, is on its own a reason to be suspicious of it. Taking into consideration Europe's history of religious violence, in particular the Crusades and, later, the religious wars following the Reformation, one might suspect that the crucifix is indeed a divisive symbol. Taking into consideration Italy's fascist period, during which there was a re-insistence on the display of the crucifix in schools, which had previously fallen out of practice,<sup>164</sup> one might expect social structures created by the long-time state-enforced dominance of the Catholic Church to remain. These factors suggest that the display of the crucifix in public schools indeed could be signalling that non-Catholics are not equal citizens, precisely because of the ties between Catholicism and Italian culture and identity.

On the other hand, as the Court notes,

[...] the effects of the greater visibility which the presence of the crucifix gives to Christianity in schools needs to be further placed in perspective by consideration of the following points. [...] Secondly, according to the indications provided by the Government, Italy opens up the school environment in parallel to other religions. The Government indicated in this connection that it was not forbidden for pupils to wear Islamic headscarves or other symbols or apparel having a religious connotation; alternative arrangements were possible to help schooling fit in with non-majority religious practices; the beginning and end of Ramadan were "often celebrated" in schools; and optional religious education could be organised in schools for "all recognised religious creeds."<sup>165</sup>

It is clear that this kind of inclusivity is very important to the case, and it suggests that the symbolic establishment exemplified in this case could be benign. Nonetheless, it is important to point out that allowing

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<sup>164</sup> *Lautsi and others v Italy*, § 19.

<sup>165</sup> *Lautsi and others v Italy*, § 74.

religious symbols to be worn by pupils or even staff is not on par with having one attached on the classroom wall. The former signals tolerance and the latter expresses endorsement. In the government's argument, the crucifix is strongly associated with Italian national and cultural identity and is taken to symbolize the values underlying Italian democracy. Thus, one way to decisively settle whether this case of symbolic establishment is acceptable or not is to assess the overall inclusivity of Italian identity and the relation between Italian nationhood and citizenship. A strong relation between nationhood and citizenship, together with a non-inclusive Italian identity, would suggest that the crucifix is a symbol that matters very much to civic identity, whereas the opposite would suggest it is not.

Another question that could help the assessment is considering the distribution of resources. As in the case of equality between men and women, historical inequality is likely to leave structural marks that affect the distribution of various social primary goods such as opportunities, social and economic resources, and the social bases of self-respect.<sup>166</sup> The absence of such structures would suggest that the present case of symbolic establishment is benign and therefore permissible, and the presence of such structures would point to the symbolic establishment being contrary to Laborde's principle.

Turning to the final principle of Laborde's minimal secularism, a third way in which religion is legally relevant is as a form of comprehensive ethics and thus a potential threat to the right of persons to make ethical decisions for themselves: to be *ethically independent*. This right delineates a kind of private sphere for persons similar to John Stuart Mill's harm principle, which says that the state must not interfere with how persons live their lives unless they harm others. The relevant interpretative dimension is religion as comprehensive ethics, that is, as a value system that goes far beyond political values.<sup>167</sup> This third principle of minimal secularism invokes two criteria: "my liberty is egregiously violated by a freedom-restricting law if (1) the law is justified by appeal to a comprehensive worldview; or if (2) however the law is justified, it limits my liberty to live with integrity."<sup>168</sup> What does it mean to be eth-

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<sup>166</sup> Indeed, this analysis takes justice as fairness as the relevant theory for assessing particular social conditions, other theories of justice picks out different things as relevant and weigh them in different ways.

<sup>167</sup> Laborde, *Liberalism's Religion*, pp. 143-144.

<sup>168</sup> Laborde, *op. cit.*, p. 146.

ically independent—to be able to live one’s life without state interference? According to Laborde’s two criteria, ethical independence involves, first, that the reasons for making ethical choices must be one’s own, and secondly that the state should not prohibit certain actions when they are particularly closely related to one’s identity and conscience. I consider these two criteria in turn.

The first criterion states that the exercise of political power is automatically rendered illegitimate if it concerns ethical matters and assumes the truth of a particular worldview in its justification.<sup>169</sup> This criterion emphasizes the importance of deciding for oneself. It is important that, concerning such intimate matters, a person is allowed to act for reasons that are their own and that are not decided by the state. Of course, the state must justify its freedom-restricting laws and give the reasons it has for prohibiting a particular practice, but it matters which reasons these are.<sup>170</sup> Consider Sweden’s understanding that freedom of conscience does not include the right for health-care personnel to refuse to participate in providing abortions on conscientious grounds. Suppose that the state’s reasoning was something like “because it is wrong not to protect women’s bodily autonomy, health-care personnel have no right to refuse to participate in providing abortions.” Whether or not this argument is a good one, the point is that it does not merely involve the state’s reasons for making a particular legislative decision but also concerns the validity of the reasons of individual persons. It would be implicit in the state’s justification of its stance that it judges the conscientious refusal to be morally wrong. Following Laborde’s third principle of minimal secularism, this reasoning seems on par with an argument appealing to the will of God, or our human duty to respect life as God’s gift.

Appealing instead to, say, its duty to guarantee equal access to health care does not seem to evaluate individual reasons in that same way. Again, the argument may be good or bad; the point is that it does not

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<sup>169</sup> This interpretation might seem to be a tad creative, yet I believe that it is the most reasonable one. I interpret “freedom-restrictive law” in a most narrow sense as denoting only the freedom to make one’s own ethical decisions. There are two primary and decisive reasons for this interpretation. First, all legal rules restrict freedom, whether it concerns our taxes or traffic rules or zoning regulations, and Laborde does not have such a wide sense of “freedom-restrictive” in mind but is concerned strictly with comprehensive ethics. Second, any wider understanding would compete with her accessibility requirement regulating political deliberation, rendering it superfluous.

<sup>170</sup> Laborde, *Liberalism’s Religion*, p. 146.

assess the rightness of the refusal to participate in carrying out abortions. It does not involve a judgement of personal ethics. So, although Laborde's theory with its first principle allows the state to rely on comprehensive reasons generally, even when this presumes the truth of a particular worldview, the state may not do so in the case of specific freedom-restricting laws. In cases concerning "comprehensive ethics", the state's justification is a more sensitive matter.

The second criterion aims to protect personal integrity. Like the first, this criterion is motivated by a concern that persons be able to make ethical decisions on their own. Suppose that a law is neutral in its justification: it is grounded in legitimate and weighty state interests, yet prohibits certain ethically related practices. Such a law is wrong, according to Laborde, when the prohibited practices are related to personal integrity—practices that are intimately related to who we are as persons and the kind of lives that we want to lead. Personal integrity involves such matters as family, sexuality, religion, and friendship.<sup>171</sup> It is for this reason that integrity-related claims are attributed special weight. These claims to integrity are protected by corresponding integrity-related liberties that stand in contrast to our ordinary freedoms. The latter category of liberties covers most kinds of behaviour. As Laborde explains, one might have "an ordinary freedom to wear a clown hat" to work, in contrast to a Muslim colleague's "integrity-related claim to wear her hijab."<sup>172</sup> But this example does not bring out the more controversial aspects of the distinction. The category of ordinary freedoms is not limited to the comparatively insignificant freedom to wear a clown hat in the workplace, but also encompasses quite weighty liberties like "thought, conscience, association, movement, and so on."<sup>173</sup> Although these liberties are certainly important, being merely ordinary freedoms they are quite easily restricted. Their restriction requires only sound reasons, as opposed to the compelling state interests necessary for restricting integrity related liberties.

From the point of view of integrity, two claims are relevant: identity claims and obligation claims.<sup>174</sup> The idea behind integrity is that throughout a person's life they develop a sense of who they are. It is so essential that persons should not only be given a scheme of basic rights

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<sup>171</sup> Laborde, *op. cit.*, p. 147.

<sup>172</sup> Laborde, *op. cit.*, p. 148.

<sup>173</sup> Laborde, *op. cit.*, p. 147.

<sup>174</sup> Laborde, *op. cit.*, p. 215.

and liberties within the bounds of which they are allowed to do this, but that the state should grant exemptions from general rules along these lines. Laborde notes that many egalitarian liberal theories have focused on the importance of acting in accordance with our conscience, and while it is important, it is not sufficient for a theory of integrity. On the one hand, conscientious duties are not the only kind of ethically salient obligation. Laborde points out that religious and cultural practices can be understood as obligatory, and this too should be protected for integrity's sake. On the other hand, integrity is not only about ethics. A person's sense of who they are is, to a great extent, a sense of their identity. Here, Laborde is interested in practices like

[...] piety, exhibiting the virtues of fidelity, devotion, care of the self and others, and so on. Most of the practices associated with such a religious way of life are ethically salient, even though they are not duties of conscience, or even obligations. Yet, taken together, they form a complex web of social and ethical meanings.<sup>175</sup>

The identity dimension of integrity, although important, is nonetheless not as salient as the dimension connected to obligations, Laborde argues. The relation between the kinds of cultural meanings that connect to a person's integrity is less direct than the connection between integrity and the duties and obligations that a person has.<sup>176</sup> A person's integrity is more thoroughly damaged by being forced to act against their conscience than by the prohibition of certain cultural practices related to the integrity of members of certain cultural or religious groups.

This priority is perhaps explained by Laborde's idea that what makes a person's integrity ethically salient is its grounding in our moral powers, particularly our capacity for having a conception of the good human life. This is also the idea behind integrity-related liberties: that they have a particularly intimate connection to the powers of moral personality, more so than do the other ordinary freedoms. This claim is particularly controversial considering (for instance) Rawls's list of primary goods: goods selected because of their relation to the moral powers. However, Rawls's list is not limited to goods with a connection to personal integrity. The primary goods are goods necessary to be able to realize one's life plan, whatever that plan is. As Rawls notes regarding the liberty of conscience,

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<sup>175</sup> Laborde, *op. cit.*, p. 216.

<sup>176</sup> Laborde, *op. cit.*, p. 217.



[...] the parties [in the original position] must assume that they may have moral, religious, or philosophical interests which they cannot put in jeopardy unless there is no alternative. One might say that they regard themselves as having moral or religious obligation which they must keep themselves free to honor.<sup>177</sup>

Laborde's protection of integrity seems in this sense to be a personalized (or perhaps "disaggregated") theory of freedom of conscience rather than the general freedom that the parties in the original position would agree to. However, this is merely one liberty among the many liberties, opportunities, and economic resources that are part of Rawls's list. Indeed, the focus on identity claims justifies the turn to integrity from mere freedom of conscience, an aspect missing from the list of primary goods and, as Laborde notes, from many other liberal theories. Yet the protection of integrity is not sufficient to fully protect the capacity for a conception of the good. Political liberties such as the right to hold public office and the right to vote, the rule of law, and freedom from arbitrary arrest are examples of Rawls's basic liberties. The aim here is to provide the background conditions necessary for the free exercise and development of the moral powers.

Of course, integrity or freedom of conscience is absolutely necessary, but neither on its own nor with the help of the two previous principles of minimal secularism can it guarantee the stability that the free exercise and development of the moral powers requires. Similarly, Laborde is not concerned with justice as Rawls is, but rather with a minimal morality that specifies the legitimate exercise of political power. The point is not that Laborde should provide a more all-encompassing theory that gives more adequate protection to the moral powers. Instead, the point is that Laborde should find some other aspect to give salience to persons' integrity.

## Minimal Secularism III: A Theory of Political Morality

In the previous sections, I introduced Laborde's theory of minimal secularism, including its methodology and substantive content. What remains, I think, is to consider what kind of theory it is. Laborde makes

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<sup>177</sup> Rawls, *A Theory of Justice*, pp. 180-181.

some grand claims for it, considering it a joint theory of neutrality, political legitimacy and principles of political morality exempted from reasonable disagreement. The first question for this last section is whether minimal secularism can actually play the role that Laborde has assigned it. I shall argue that it cannot. The next question is how the theory works when understood merely as a theory of neutrality. To do so, it must meet one requirement that is independent from the immediate plausibility of the three principles. It must give neutrality a clearer *raison d'être* than does Rawls's understanding. I argue that it does. Any further analysis of the plausibility of the principles must wait for the last chapter.

To begin with, Laborde's theory is, as she says, a theory of restricted neutrality. It does not apply across the board, but only along particularly ethically salient dimensions. And while it is a theory of neutrality, it also aspires at the same time to be a minimal morality exempted from reasonable disagreement.<sup>178</sup> In this sense, although Laborde does not provide a theory of justice, compatibility with the principles of minimal secularism is a necessary condition for any theory of political justice to count as reasonable. This is a cause for concern. Laborde sees *the reasonable* similarly to Rawls, in that she sees reasonable principles as principles that treat citizens as free and equal (protecting the free exercise of the two moral powers).<sup>179</sup> The question is if Laborde's minimal secularism actually lives up to this claim. As I noted at the end of the previous section, Laborde's third principle does not, nor does the first or second principle, nor all three principles in concert. For the state to treat its citizens as free and equal, some kind of egalitarian distributive arrangement is required. Of course, funding decisions are subject to principles of neutrality. In particular, the second principle of minimal secularism could be concerned with such matters, because the distribution of economic resources is one way for the state to associate with different groups and make group identity matter for their civic identity. However, as a principle of neutrality rather than a principle of distributive justice, it can only do so much. It can require the state to allocate resources differently between relevant groups because it seems to favour one group at the expense of others. This far from covers all questions of distributive justice, however. Thus, as I noted regarding the third principle, to achieve the desired end (to guarantee the free exercise

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<sup>178</sup> Laborde, *Liberalism's Religion*, pp. 152, 154.

<sup>179</sup> Laborde, *op. cit.*, p. 152.

of the moral powers) a much wider set of both liberties and distributive arrangements are required.

One should note one more thing. As a conception of a minimal political morality, Laborde's theory is elaborated in the interaction between the state and religion, which necessarily gives it a certain flavour. It is because it is so elaborated that it is a theory of neutrality, and one might expect that disaggregating something else than religion would have generated different principles. This is not a problem in itself, of course. It becomes a problem because Laborde does not just take her minimal secularism to be an answer to the question of how the state should act along the many particular dimensions she identifies. She argues that her minimal secularism is a minimal morality exempted from the purview of reasonable disagreement that is a necessary condition for the legitimate exercise of political power, and together with a principle of democratic fairness, she considers it a sufficient condition.<sup>180</sup> The problem is that it is not sufficient. Minimal secularism is too narrow to fill such a large role, and because Laborde disaggregates the *legally relevant* dimensions of *religion*, this methodology results in principles that would be different if some other legal category were to be disaggregated. To be sure, it makes sense to disaggregate the category of religion to look for principles of neutrality, but a theory that reaches farther than that must also be wider in its scope. For these reasons, it is not plausible to consider Laborde's minimal secularism to be much more than a theory of neutrality. A theory of neutrality is, of course, just what I was looking for. To finish this chapter, the question is now whether it does better than Rawls's account of neutrality, and in particular, whether it can explain why we need a theory of neutrality at all.

In the previous chapter, I explained that one problem with Rawls's analysis of neutrality as what reasonable and rational persons could accept is that it undermines any reason for relying on an analysis of neutrality at all: in a well-ordered society, the neutral exercise of political power is identical to the legitimate exercise of political power. This happens because legitimate exercise is defined by what reasonable and rational persons can accept, and no reasonable and rational person would accept non-neutral policies. So, under ideal circumstances the concept of neutrality adds nothing of content. When circumstances are non-ideal, however, neutrality and reasonable acceptability diverge too much and neutrality does not necessarily point in the direction of what

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<sup>180</sup> Laborde, *Liberalism's Religion*, pp. 153-154, 158.

can be reasonably accepted. Here, neutrality is simply misguided. What is needed is a theory of neutrality that, on the one hand, is tightly connected to reasonable acceptability when circumstances are ideal, and on the other hand is able to point in the direction of reasonable acceptability under more realistic conditions. One difficulty is that Laborde is not concerned with ideal theory and has no ambition to make her theory reasonably acceptable in that strong sense. Yet her theory is built on the same ground as Rawls's, so it should not be too serious an obstacle.

I believe that Laborde's minimal secularism solves at least this particular issue. Understood merely as a theory of neutrality, inserting it into Rawlsian ideal theory, it need not be able to well-order a society. Minimal secularism need only be compatible with a reasonable conception of justice that can. Perhaps it is proper that the theory states that a necessary condition for reasonably acceptable principles of justice is that they are neutral, otherwise it would be superfluous in the opposite sense. The theory need not—indeed, *should not*—state a sufficient condition. This analysis applies under ideal circumstances. How does Laborde's theory fare under non-ideal circumstances? It is clear that it does a better job than does Rawls's conception. As Laborde argues, the problem with the common egalitarian liberal approach to neutrality is that it is much too broad in its scope and does not attend to the different dimensions of religion that are made relevant in any given case. This is why neutrality of justification and neutrality of aim often yield odd results. The solution is clear: not all dimensions of religion that are legally relevant and require the state to be neutral, require the state to be neutral *in the same way*.

It is important to note, however, that the disaggregation approach is the primary reason for this realization—not minimal secularism. The latter simply combines the disaggregation of religion with a judgement of the ethical salience for some particular dimensions. I have questioned whether it should really be these particular dimensions that are emphasized in this particular way. Similarly, it seems to me that we need some non-arbitrary way of determining precisely what dimensions are actualized in particular cases. Laborde criticises Christopher Eisengruber and Lawrence Sager, whose theory of freedom of religion she relies on for formulating her second principle, for misidentifying the relevant dimension of religion in their analysis of science education. In education, she argues, science and creationism are not different social groups but competing bodies of knowledge, and along this dimension neutrality is

not required.<sup>181</sup> Without some kind of guiding principle for identifying the relevant dimension, judgements like this one seem ad hoc.

## Conclusion

This chapter offers part of the answer to the question of how one should understand the challenges that the three critics pose to Rawls's understanding of public reason. It focuses on Laborde's critique of egalitarian liberalism conceptions of neutrality, including Rawls's conception. Laborde argues that the liberal analysis of neutrality lends itself to protecting the status quo, because the liberal analysis is too rigid. It is not sensitive to the many ways in which religion engages with the state, nor to the fact that these different ways require different conceptions of neutrality. Liberal conceptions of neutrality tend to construe religion as conceptions of the good and require the state to be neutral in aim or in justification. However, religions are not *only* conceptions of the good. They are also sometimes inaccessible to common reason; they are vulnerable social groups; and they are comprehensive ethics. It is only in these cases that strict separation between the state and religion is required. Laborde shows that Rawls's conception of neutrality is not plausible and that neutrality thus conceived does not fit into the rationale of public reason as an elaboration of social cooperation and the overarching framework of political liberalism.

This chapter also sketches an answer to the question of how to formulate a more plausible conception of the idea of public reason, focusing on neutrality as one of its components. Laborde argues that one should respond by disaggregating religion into its legally relevant dimensions. It is then by judging of the ethical salience of these dimensions that one can decide when and how the state must be neutral. The methodology that Laborde has developed renders the concept of neutrality quite plausible. If the problem with the egalitarian liberal conception of neutrality is that it is too rigid and too wide, the solution is to let the particular understanding of neutrality vary with the relevant dimension of religion and *require* that the state be neutral *only* along the particularly salient dimensions. Laborde suggests that the state must be neutral along three particular dimensions. First, when religion and secular worldviews are not accessible to common reason, the state must

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<sup>181</sup> Laborde, op. cit., pp. 90f.

be neutral in the sense that it must rely on reasons that are accessible to common reason. Second, when group membership is made relevant to civic identity such that members of minority groups are not treated as full citizens, then the state is required to be neutral in the sense that it does not associate with the majority group. Third, when the state makes judgements about comprehensive ethics, it must not at the same time endorse a particular worldview to be true, nor must it act so as to violate a person's integrity. These are the principles of Laborde's minimal secularism.

Of course, Laborde's view has its problems. It lacks any mechanism for making judgements about ethical salience. Laborde invokes the protection of the moral powers (and treating persons as free and equal, but this is essentially the same) as the rationale behind the principles she formulates, but I have argued that this is not entirely plausible. Rawls's list of primary goods, for instance, is drawn up to fill the same purpose as Laborde's three principles but is much more extensive. Even considering the protection of the moral powers, there is no obvious reason to consider precisely the dimensions Laborde identifies to be particularly salient. Laborde points this out herself when she says that she, like Rawls, singles out certain liberal values without actually justifying these values. But as I think I have shown in the previous chapter, the fundamental ideas that Rawls relies on are justified in the reflective equilibrium: the way it all fits together. Another point is that these liberal values, for Rawls, are not exempted from the possibility of reasonable disagreement. As long as the theory is able to well-order a society, what principles are chosen is not important.

Another (although related) problem is that Laborde does not provide any principle for identifying which dimension of religion is relevant in any particular case, or, if more than one principle is relevant, which dimension has priority. Of course, solving the previous problem would partially solve this too. It would provide a way to prioritize between some dimensions at least, sorting out the salient from the non-salient. Finally, it is also a problem for Laborde that she presents her theory not merely as a theory of neutrality but also as a joint theory of neutrality and a minimal morality that makes up a necessary condition for political legitimacy. These are problems that I will save for the final chapter.

## Chapter 3: Social Cooperation and the Duty of Civility

In this chapter I continue to examine the challenges that I have posed to Rawls's understanding of public reason, turning here to Stout and his critique of Rawls's duty of civility. I begin by reviewing Stout's general objective in his book *Democracy and Tradition* in order to provide context in which to situate his more specific argument against Rawls. That argument targets not only the duty of civility but also its connection to the overarching rationale of social cooperation. I will analyse the second target first. Here, Stout argues not only that the duty of civility stands contrary to social cooperation but also that political liberalism's conception of social cooperation is misguided. Social cooperation, he claims, should not be so tightly connected to the social contract. Anyone who is prepared to engage sincerely and seriously with others and prepared to give reasons for their own views is engaged in the cooperative enterprise that is their political society. Similarly, one should revise the picture of the reasonable person to fit better with this view. A reasonable person, Stout suggest is someone who comports themselves epistemically responsibly.

With the stage thus set, I turn to Stout's argument against Rawls's duty of civility. The main argument is that reasoning from principles that everyone can be expected to endorse is not necessary in order to treat one's fellow citizens with the respect they are due. Quite the opposite: seeking to rule out certain forms of speech from the public sphere seems to run contrary to the spirit of political liberalism and public reason, with its commitment to freedom of expression, and thus to its conception of respect. Stout also argues that the search for a common ground dries out the public sphere, and that instead we should aim to enrich it with our various points of view. I agree with Stout that this enrichment is desirable and indeed, even necessary. Yet I argue that the duty of civility does not cause the drought and that there are reasons for maintaining the duty of civility or a principle like it.

## Democracy and the Claims of Tradition

Modern liberal democracy is gnawing at the bonds holding society together, so the “new traditionalists” hold. Liberal democracy “undercuts the structure of tradition and community within which alone it is possible to nurture the virtues that sustain moral education and political life.”<sup>182</sup> It distances persons from their social identity and thus from the communities to which they belong, and as a consequence, liberal and democratic institutions have made the modern person into an egoist looking only to their own good.<sup>183</sup> Liberal democracy has made social relations calculating and manipulative, and in seeking to break free from the claims of tradition—the only place where our moral judgments make sense—democracy’s decay cannot be mitigated.<sup>184</sup> Stout concedes that this critique of liberalism is not entirely misplaced. Liberalism often develops in opposition to a traditionalist standpoint, rejects authority whether worldly or divine, and favours the good of the individual over the community in a way that is not entirely healthy.

Fortunately, this is not an all or nothing affair. Stout contrasts traditionalist thinkers with contemporary liberalism in order to find a middle ground, one that jettisons traditionalist hierarchical conceptions of tradition and authority, but also maintains, in opposition to liberalism, that authority and tradition are concepts that one neither could nor should get rid of. Indeed, this middle ground says, liberalism and democracy are traditions themselves with their own conceptions of legitimate authority to which deference is required.<sup>185</sup> Stout’s aim is not only to remind liberals and traditionalists of this but also to develop a conception of democracy as a tradition, one that is able to meet the challenges that pluralism presents and one in which citizens can develop into virtuous persons, and with them, their societies.<sup>186</sup> One leg of Stout’s project is therefore to criticise liberalism. As part of this, he critiques Rawls’s idea of public reason as a form of political deliberation in order to develop a conception of his own that can answer the question of how citizens divided by fundamentally different worldviews should be able to deliberate with one another on political matters. This conception of political

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<sup>182</sup> Stout, *Democracy and Tradition*, pp. 24–25.

<sup>183</sup> MacIntyre, Alasdair: *After Virtue*. Bloomsbury, London, 2011, p. 255; Stout, *Democracy and Tradition*, p. 118.

<sup>184</sup> Alasdair MacIntyre, *After Virtue*, pp. 28f.

<sup>185</sup> Stout, *Democracy and Tradition*, pp. 212–213.

<sup>186</sup> Stout, *op. cit.*, pp. 6–9, 296–297.



discourse centres on how persons can sincerely participate in the ethical life of their societies by engaging in political discussion. Discussants do this by stating their own views in their own idiosyncratic ways, and then criticizing the views of others, given those idiosyncratic views.

The argument that Stout develops focus on the constraints on discourse that the duty of civility imposes, claiming that these constraints run contrary to principles of freedom of expression. As such, they make public reason less public. He takes the argument further. It is not only that public reason does not adequately represent the reason of citizens, such that the ties to the political liberal conception of society and its citizens are severed. It seems that the political liberal conception of society as a system of cooperation between reasonable and rational persons is misguided in the first place. Stout begins his argument by noting that Rawls's intuitions are nonetheless on point:

Political policies, when enacted in law, are backed by the coercive power of the state. To be recognized as a free and equal citizen of such a state is to be treated as someone to whom reasons must be offered, on request, when political policies are under consideration. The reasons that are demanded are not just any reasons. Each citizen may rightfully demand reasons why *he or she* should view the proposed policy as legitimate. It does not suffice, in this context, to be told why other people, on the basis of their idiosyncratic premises and collateral commitments, have reached this conclusion.<sup>187</sup>

That every political action must be supported by reasons is not a controversial proposal. Nor is it controversial to claim that these reasons cannot be any reasons whatsoever but must be reasons the addressee can be expected to find acceptable. It is not enough to receive an explanation of how someone has reasoned their way to the conclusion that some action ought to be taken, some legal rule enacted. Decisions must be justified, and they must be justified to each citizen. Since all exercise of political power is exercise of coercive power, this justification is required for all citizens to be treated as free and equal persons.<sup>188</sup> Thus far, Stout and Rawls agree. As Stout acknowledges, “[p]roper treatment of one’s fellow citizens does seem to require an honest justificatory effort of this sort. When proposing a political policy, one should do one’s

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<sup>187</sup> Stout, *op. cit.*, p. 65.

<sup>188</sup> Stout, *op. cit.*, p. 65.

best to supply reasons for it that other people occupying other points of view could reasonably accept.”<sup>189</sup>

Their views diverge when Rawls suggests that in the public sphere, one should not merely try to offer someone reasons that *that person* will find acceptable, but instead offer reasons acceptable *to all*. On Rawls’s view, the parties in the original position set out to determine the terms of social cooperation that citizens agree to abide by when the veil of ignorance is finally lifted. Among these terms, one finds this ideal of public justification and the corresponding justificatory structure that prioritizes claims to public goods necessary for fair social cooperation over persons’ (in Rawlsian terms) non-public conceptions of the good human life.<sup>190</sup> It is even the case—and this is where Stout takes issue—that arguments grounded in ideas of the good life carry no weight until they have been complemented by proper public reasons: reasons that any reasonable person could accept. But this, Stout complains, assumes a citizenry of persons that not only see the use for a social contract but also are willing to propose terms of cooperation they think will be acceptable to others and that they are willing to *comply with* and *reason from* if everyone else does.

Stout takes issue with this idea and wants “to explore the possibility that a person can be a reasonable (socially cooperative) citizen without believing in or appealing to a free-standing conception of justice.”<sup>191</sup> Stout does not believe either (i) that being a reasonable person requires one to propose and abide by fair terms of social cooperation or (ii) that being socially cooperative means that one must propose and abide by fair terms of social cooperation.

Both claims play important roles in Stout’s argument. First, it is implausible to understand reasonability in such ethically loaded terms as Stout thinks that Rawls does: that is, as someone who is socially cooperative in the sense of being prepared to propose and to reason from premises that everyone could accept. Part of Stout’s problem is that such premises are quite unlikely to exist—persons engage with each other, in the public sphere, from the point of view of their particular traditions.<sup>192</sup> Rawls’s duty of civility, therefore, does not place citizens on grounds where they can gain an equal footing. Religious convictions

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<sup>189</sup> Stout, op. cit., p. 65.

<sup>190</sup> Stout, op. cit., p. 66.

<sup>191</sup> Stout, op. cit., p. 68.

<sup>192</sup> Stout, op. cit., p. 70.

go deep and influence directly and forcefully the moral and political commitments of the believer. To be obliged to restrain oneself from relying on such reasons when arguing about politics is to be obliged to reason from premises that are not one's own and thus give voice to opinions that one does not hold. Such an obligation goes against treating each person as free and equal.

Secondly, according to Stout, Rawls has a much too restrictive conception of what it means to be socially cooperative and thus respectful. In particular, it is Rawls's understanding of the reasonable person that causes many of the problems that Stout identifies. The result is an understanding of social cooperation that underdetermines, so to speak, instances of persons being socially cooperative. It is particularly troubling considering persons' relation to their substantial moral commitments, such as conceptions of justice based in religious belief. It goes against "the spirit of free expression that breathes life into democratic culture"<sup>193</sup> that citizens should have to restrain themselves from relying on their own conceptions of justice, and by extension, it goes against the tenets of liberalism too. As such, the problem is not merely that public reason ought to be more inclusively constructed, but that it ought not to have been constructed in the first place.

It is not the ideal of a common morality that Stout seems to take issue with. He seems to think that it is part of the democratic project to find or build such common ground, and he seems to consider it, at least in theory, a realizable aim. Stout's problem with the Rawlsian view is rather that he thinks that it proceeds from a particular conception of what a common morality should be like and that it seeks to purge the public domain and its political discussions from reasons inconsistent with that conception. In what follows, I elaborate on these two points of contention between Stout and Rawls.

## Terms of Cooperation and Reasonable Persons

Recall Rawls's distinction between the rational and the reasonable, where the point is to provide a grounding for evaluative judgements. Whereas the rational denotes reasoning about what means are most effective to realize some goal, and what goals to pursue considering what

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<sup>193</sup> Stout, *op. cit.*, p. 68.

is realizable from a given share of primary goods, the reasonable is assigned an ethical meaning—a kind of fair-mindedness.<sup>194</sup> Both concepts are related to the moral powers of persons. Being rational has to do with having, and assembling, one's conception of the good. Being reasonable is connected to one's sense of justice: the capacity to appropriately weigh competing claims to shares of our common resources.<sup>195</sup> In a sense, the two concepts make up a conception of practical reason. They are tightly intertwined with one another. A merely rational person could not transcend the limits of means-ends reasoning. Although rational persons would not necessarily be egoistic—they might be concerned with the effective realization of, say, a loved one's goals—a merely rational person would not be fair. This is where the reasonable comes into the picture. As a reasonable person, one is able to weigh one's own ends, the claims to their realization, and the justification of those claims against those of others. Thus, someone who is both rational and reasonable sees that we all have our conceptions of the good that we want to pursue and that we all have legitimate claims to a share of the stock of common goods.<sup>196</sup>

As such, Stout is essentially right when he construes Rawls's conception of the reasonable person as a socially cooperative person to be an ethical conception. He is right as well when he understands that what Rawls means by someone being socially cooperative is that they are prepared to propose and comply with principles acceptable to all reasonable persons. *Essentially* right—because while I find his interpretation to be accurate, some things are missing from the picture: namely, that the rational and the reasonable are not merely a construct of our moral powers but are inevitably tied up with the powers of reason as well. The powers of reason (or the intellectual powers, as Rawls also calls them) manifest as a capacity to (within the bounds of the rational) organize one's aims into a consistent and realizable whole. They are also exercised (within the bounds of the reasonable) as a capacity to decide what to base one's weighing of the ends, claims, and justifications of others on. Thus, the claim that Rawls's understanding of the reasonable is an ethical understanding is an ambiguous one.<sup>197</sup>

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<sup>194</sup> Rawls, *Political Liberalism*, pp. 53-54.

<sup>195</sup> Compare the moral powers to the idea of the reasonable and the rational: Rawls, *Justice as Fairness: A Restatement*, pp. 18-19; Rawls, *Political Liberalism*, p. 49

<sup>196</sup> Rawls, *op. cit.*, p. 49ff.

<sup>197</sup> This interpretation of how the powers of reason connects with the moral powers is simply a conjecture. Considering what Rawls seems to think is a question for theoretical

Turning to Stout's epistemic alternative, we find it is similarly ambiguous. A reasonable person, as Stout sees it, is not socially cooperative in the Rawlsian sense of the term, but rather epistemically responsible: a person who can be counted on to act in ways and believe such things as they are epistemically entitled to do and believe.<sup>198</sup> A point in favour of this understanding is that it does not favour any particular conception of social organization around a social contract, as Stout claims that Rawls's conception of the reasonable does. As long as one does not conduct oneself epistemically irresponsibly, one counts as reasonable.<sup>199</sup> Epistemically responsible behaviour is defined as acting in accordance with epistemic entitlements as defined by one's *epistemic context*. It would be "uncharitable [...] to fault Euclid for failing to anticipate Gödel", Stout explains.<sup>200</sup> Gödel, who belonged to a radically different epistemic context, could develop his proof, and Euclid, if restricted to the information available to him in his time, would be reasonable in rejecting this proof. This holds for epistemic responsibility within the moral domain as well. An argument in favour of the abolition of slavery found to be perfectly reasonable in some contemporary epistemic context would have seemed absurd if introduced into the context of ancient Greece. It is not merely that the conclusion might seem odd to those in that different context, but rather that they cannot see that or how the reasons given in its favour support it.<sup>201</sup>

Now, Stout's view is epistemic only insofar as it focuses on persons' moral reasoning, rather than their moral commitments. But of course, the distinction between ethical and epistemic collapses. Stout wants his reasonable persons to be sensitive to *moral* reasons and he believes that moral beliefs are truth-apt.<sup>202</sup> This means that Stout must stand ready to judge some ethical commitments as unreasonable, if only because it is epistemically irresponsible for persons to hold them. It must, for instance, be possible to rule out some ethical positions, like believing that slavery is morally justified, as being epistemically irresponsible given what we hold as true today. As Stout argues, just like geometry (recall Stout's example of the different contexts of Euclid and Gödel), ethics

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reason, this seems a most plausible construal. Rawls, *Political Liberalism*, p. 19, 224; Martha Nussbaum, "Perfectionist Liberalism and Political Liberalism", p. 25.

<sup>198</sup> Stout, *Democracy and Tradition*, p. 71.

<sup>199</sup> Stout, *op. cit.*, p. 236.

<sup>200</sup> Stout, *op. cit.*, p. 236.

<sup>201</sup> Stout, *op. cit.*, p. 231f.

<sup>202</sup> Stout, *op. cit.*, pp. 238-240.

and politics are rule-governed social practices, where the rules are part of particular epistemic contexts. Indeed, it does not seem as if one can even make such a strong distinction between epistemic and ethical reasons. Reasons, whether practical or theoretical, get their force from their place in a particular language game, or tradition: a particular way of speaking and thinking about a matter. Thus, both kinds of reasons are essentially both normative and world-guided, so to speak.

Of course, Rawls's view is deemed ethical because citizens are meant to reason from a consensus: citizens are supposed to share a commitment to particular moral claims. But this misses an important point: Stout over-emphasizes the reasoning *from* principles all *must* accept and sees the reasoning *to* principles acceptable to all as already settled. The original position becomes a device to justify the principles that are to make up the consensus. However, this grants a rather limited role to the thought experiment. The original position, I believe, should be seen as a model for acceptable terms of cooperation. Its structural features—the construal of persons as merely seeking their own good, disinterested in their fellow human beings, and the knowledge constraints imposed by the veil of ignorance—model our two moral powers.<sup>203</sup> In this sense, the original position is a way to represent appropriate political reasoning. It is, as I have already argued, a model of our practical reason. Thus, one could make the case that the original position provides an idea of what it is to be epistemically responsible when reasoning about political justice. What the argument from the original position is supposed to do is establish that it would be epistemically responsible to accept the principles agreed to, and Rawls would have it that it would be epistemically responsible to assent to those principles independently of epistemic contexts.

From Stout's point of view, one might concede to the first point: that Rawls's conception of the reasonable is a conception of practical reason and thus at least resembles the idea of epistemic responsibility, although for a particular epistemic context. In a pluralistic society, however, where citizens have to engage with one another inter-contextually, Rawls understanding of what a reasonable person is will not do. He confines reasonability to a particular epistemic context that is then taken as a universal standard. As Stout puts it, "the social contract is essen-

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<sup>203</sup> Rawls, *Political Liberalism*, pp. 24, 72-81.

tially a substitute for communitarian agreement on a single comprehensive normative vision—a poor man’s communitarianism.”<sup>204</sup> However, as long as one is willing to engage in fair argumentation and immanent criticism of one’s opponents, it does not matter to one’s social cooperativeness (and by extension, reasonability) that one does not think the project of finding a common justificatory basis to be possible. A willingness to engage with others’ views from within is the only kind of justificatory obligation that social cooperation requires, and this kind of public deliberation is the primary means by which citizens engage with one another, settle their differences, and negotiate their claims on fellow citizens. Stout writes:

Part of the democratic project is to bring as many groups as possible into the discursive practice of holding one another responsible for commitments, deeds and institutional arrangements—without regards to social status, wealth, or power. Because the entire practice is involved, not merely the ideals abstracted from that practice, a common morality can only be achieved piecemeal, by gradually building discursive bridges and networks of trust in particular settings.<sup>205</sup>

In Stout’s view, it is sufficient to participate sincerely in the discursive exchange of reasons central to the social practice that is democracy—there is nothing more to the idea of social cooperation. Citizens must treat each other as having equal standing in the discussion; they must respect one another as individual participants in practical discourses to whom they have justificatory obligations; and as participants in these discourses, they must be personally involved in the continuous development of their social practices.<sup>206</sup> Social contract theories, Stout claims, tend to limit such development, trying to settle contractually what must develop dialectically. The issue at the heart of such discourses is the direction that society ought to take, and certainly, reaching a decision implies that some practices will be promoted “at the expense of others.”<sup>207</sup> Yet again, such decisions are not reached through entering a contract.

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<sup>204</sup> Stout, *Democracy and Tradition*, pp. 73-74.

<sup>205</sup> Stout, *op. cit.*, p. 226.

<sup>206</sup> Stout, *op. cit.*, p. 82.

<sup>207</sup> Stout, *op. cit.*, p. 83.

Stout's point in saying that contractarian theories try to settle contractually what cannot be contractually settled is certainly more sophisticated than simply stating that no one will ever sign a social contract. The idea is rather that contractarians get ethics wrong. Reasonable persons do not necessarily seek to harmonize their interests and convictions with one another, and agreement is not the goal of our practical discourses. This is because the abstract norms with which contractarian theories are concerned are not what actually matters. What actually matters is the ethical development of one's political community: our common ethical life.<sup>208</sup> Quite simply, reasonable persons are prepared to engage sincerely and responsibly with other sincere and responsible persons in the development of what could plausibly be called part of our culture, or using Stout's terminology, *tradition*.

The difference in focus between Rawls and Stout is quite illuminating. Stout is doing ethics,<sup>209</sup> not political philosophy; for Rawls it is the other way around. Where Rawls focuses on the institutional political framework, Stout focuses on the ethical life *within* that framework. Of course, the boundary between the two is not waterproof and there is going to be leakage from both sides into the other. Given this difference in perspective, it makes sense for Stout to say that being a socially cooperative member of society means partaking in the discursive negotiations of the ethical development of one's society. That is because it is "us", the members of society, who are responsible for building "networks of trust", as Stout puts it, rather than relations of wariness. It is "us" who ensure that there is a democratic culture for political liberalism to cling to.

I must point out, however, that this is not what political liberalism tries to do. The *ethical* development of society (in the sense of matters of the good life and the good society) is what political liberalism is explicitly *not* about. I expect that this response would not impress Stout much—that this is the case is part of the Hegelian objection to Kantian philosophy, but it is worth pointing out nonetheless. What political liberalism does try to settle "contractually" are the conditions for our political relations: the terms for our collective exercise of coercive power over one another. "Contractually" here, however, means only that political liberalism takes acceptability as the appropriate evaluative standard.

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<sup>208</sup> Stout, *op. cit.*, p. 93.

<sup>209</sup> Stout, "Comments on Six Responses to 'Democracy and Tradition'", p. 716.



Stout points out that the process of the discursive exchange of reasons “does not *need* the social contract to get going or to get along. [It] is already a system of social cooperation; it needs no help from the formal structure of the social contract to become one.”<sup>210</sup> In pointing this out, Stout makes the difference between him and Rawls that I noted in the previous paragraphs quite evident. What I take Rawls to be saying is that we should sift through the political culture to find ideas *like* fairness, equal standing, respect for persons, and social cooperation (not necessarily precisely these ideas or those ideas understood in precisely the way he does), ideas that already permeate the inner ethical life of our societies. One should take these ideas and build from them. But which ideas? According to Rawls, if a set of principles of justice could win the assent of reasonable and rational persons, that is a good indication that these principles are just. If it could not, then they should be regarded as deficient.<sup>211</sup> Thus, I could concede to Stout that one does not need the idea of a social contract as such, but I do not see how Stout can do without a requirement like acceptability. To have equal standing in discourses, which is one of Stout’s criteria, and especially institutionalized discourses with enforceable outcomes, citizens must be able to give their consent at some point—consent either to the procedures by which decisions are made or to the decisions themselves. In what follows, I shall inquire more deeply into what it means to be part of an epistemic context and the implications for our political discourse.

## An Epistemic Contextualism

Thus far, Stout’s disagreement with Rawls is fundamentally about how to picture the political relationships between the members of societies. Stout’s picture focuses much more strongly on the actual relations between citizens, whereas Rawls’s is more institutionally oriented. For Rawls, the issue is how citizens are situated in relation to one another given a particular basic institutional structure, Stout is concerned more with the interpersonal. It is not simply that Rawls speaks about a social level that Stout does not speak about, but rather that the state has a very different role in their philosophies. As will become clearer below, Stout is much more ambivalent than Rawls. Stout regards the state (and the

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<sup>210</sup> Stout, *Democracy and Tradition*, p. 82.

<sup>211</sup> Rawls, *Justice as Fairness: A Restatement*, p. 9

formal public sphere) proper democratic forum, but as yet another democratic agent, which directs his focus toward civil society. As such, when Stout writes about social cooperation, it is not something that is institutionally organized. Social cooperation according to Stout is when individual citizens and their associations are engaged in improving the inner ethical life of their own society from within their own communities, their own immediate context.

To participate in the ethical development of one's society involves partaking in discourses that criticize the rules of the social practices of which it consists. Democracy is one such practice; science another. Theology is one, and so is morality. In a sense, morality is democracy's "street football" counterpart.<sup>212</sup> Relying on this sports analogy, Stout explains that:

Before human beings invented this practice, there was no such thing as the normative status that soccer players refer to as "having committed a foul." This normative status is a creature of a social practice in which people take one another to have committed a foul or not when competing with their opponents on the playing field. ... Before the officials of British public schools began formalizing the proprieties of soccer in explicitly stated rules, the norms governing the sport were entirely implicit in what soccer players did. By the middle of the nineteenth century, some people hoping to reduce the mayhem of their recreational activities had become disposed (a) to stop play when an especially brutal "hacking" occurred in a game of soccer and (b) to award the ball to the side that had been "hacked."<sup>213</sup>

Democracy, Stout claims, has developed from implicit moral rules into an institutional practice, just like other more formal practices, such as football and science have sprung from less formal practices by developing more or less formal rules. Part of Stout's point is to show how claims about both kinds of practices (those with institutionalized rules on the one hand, and implicit rules on the other) can be objective and apt for truth and falsity. In the case of institutional practices, this is not difficult to see. A claim that a foul has been committed is either true or false, which holds for the legal rules of a democratic society as well. When considering something like street football, however, or to an even larger degree ethics, that these practices are objective and apt for truth

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<sup>212</sup> Stout, *Democracy and Tradition*, pp. 270, 273.

<sup>213</sup> Stout, *op. cit.*, p. 272.

and falsity is not as obvious. The norms that define these social practices are established as a consequence of persons trying to coordinate their activities in relation to others. Norms that in some respect suit those activities, say by furthering the pursuit of the ends to which the activities are directed, are maintained and enforced; norms that do not are discarded.<sup>214</sup>

In Stout's view, epistemic contexts are much like the examples he gives in that they are rule-governed social practices, although in this case, the rules in question govern the practice of reasoning about, say, democracy (or football, or science). These contexts govern how to make inferences and weigh reasons; they decide who is allowed to question whom (Stout uses his own family as an example of one such particularly flat epistemic context<sup>215</sup>) and who may speak about certain topics and similar authority-related questions. Thus, it seems necessary that each person is a member of quite a few epistemic contexts that intersect with one another in complex ways and range from small and informal to large and formal. Someone like me—a Western secular liberal—would be located in a Western epistemic context. As a resident of Sweden, on the contextualist view that Stout proposes, I am a part of a particular national political discourse that come with its own set of norms. My family might add a further context, as do my co-workers and friends. One might perhaps see an epistemic context as a more or less well-defined group of a varying number of persons to which one regularly has to justify decisions and beliefs of different sorts, as it is under such circumstances that the necessary rules and standards develop. The public of a democratic society, then, is one particularly loosely defined and large group.

It is important to note, however, that truth does not vary with context in the same way as the norms of justification do. Stout is not a relativist about truth. Different epistemic contexts might have different standards for what counts as good evidence and valid inferences and might of course come to different conclusions regarding what is and what is not, as well as what should and should not be done. That does not mean that a right answer does not exist, even if we do not know which one it is—which indeed is quite often the case. This prompts Stout to use the concept of truth as a hypothetical: truth is a *possibility* that the norms that coordinate the meta-practice of critically scrutinizing the norms of some

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<sup>214</sup> Stout, op. cit., p. 273.

<sup>215</sup> Stout, op. cit., p. 212.

other practice are aimed at (or at least are supposed to be aimed at). The question of what statements *actually* are true and not merely thought to be true need not be settled. The distinction between “true” and “held true” is all that is required. The importance of this distinction, Stout says, is that it warrants a certain cautious and self-critical attitude to one’s various commitments. This is not a call to justification as far as Stout is concerned, neither to oneself nor to someone else, for Stout thinks that one’s commitments are epistemically innocent until proven otherwise. One need not prove (to others nor to oneself) that one is justified in one’s commitments, because being justified is the default position. As long as one has no special reasons to reject a commitment, they are epistemically responsibly maintained. But it is, perhaps, a call for humility: to not be too confident about the correctness of one’s beliefs.<sup>216</sup> The assumption that there is a right answer, together with the realization that there are several *prima facie* justified candidates for that right answer, should also lead to the realization that all others are also justified in their contrary beliefs—at least, that is, at first glance.

Humility is indeed a characteristic of an epistemically responsible person. I suspect that persons commit to different beliefs depending mainly on different life experiences, so leading different lives will give rise both to different beliefs and different evaluative standards. Different commitments, and by extension different epistemic contexts, thus develop quite naturally as persons simply go about leading their lives—as Rawls would have it, they develop quite naturally from the free exercise of human reason.<sup>217</sup> These contexts turn out differently because, assuming even the flawless exercise of reason and a shared body of information, it might not be obvious how to make sense of that information, or what conclusions it supports. This is made more difficult if—as I assume is often the case—a body of information is not entirely coherent but leads in different directions. Even in those cases where the meaning of some particular *body* of information seems rather clear and coherent, the *pieces* that it consists of may still be assigned different weight, generating different but equally clear and coherent meanings. Concepts may also be vague, and differences in the understandings of these concepts yield different understandings of the information they are supposed to structure.

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<sup>216</sup> Stout, *op. cit.*, pp. 212-213, 233f.

<sup>217</sup> Rawls, *Political Liberalism*, p. 135.

Stout is not explicit about why different epistemic contexts develop—only about the fact that they do. It seems a reasonable supposition, however, that he and Rawls agree on these sources, for on Stout's view too, people acquire different understandings of the world in the course of leading their lives and that is what gives rise to the different judgements that they make. That is to say, the circumstances under which they live influence to some degree the way they assess and interpret information.<sup>218</sup> For Rawls, these *burdens of judgement*, as he calls them, are the source of the fact of reasonable pluralism: because of the burdens of judgement, disagreements about practical as well as theoretical matters are inevitable and several of the different positions that rise from these disagreements will be reasonable. One might wonder whether there can be anything like inter-contextual standards of evaluation, given the plurality of worldviews that characterize modern democratic societies. Stout assumes that because of persons' different commitments related to matters both practical and theoretical it is much too optimistic to expect persons to agree on terms of cooperation—the principles according to which their society's basic institutional structure are supposed to be organized. Since persons believe different things, they also see the world differently and will come to regard different things as true. By extension, different standards of reasoning will form.

In assessing this view, I shall begin with what I take to be its main virtue. Traditions, on Stout's view, are bound not to be clearly defined and rigid but complex and fluent, and Stout's view thus makes a good descriptive job. It seems that persons actually move within such complex networks of contexts, carrying new insights between them. Persons will be influenced by these contexts just as they will influence them. It is also correct that these contexts are characterized by different norms, both epistemic and moral. My main concern, however, is that a person's epistemic responsibilities are given only by conventionalist descriptions of these responsibilities according to the various traditions. For while one can say, in football and democratic practice alike, that it is true that some rule has been broken, the correctness of the rule itself is

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<sup>218</sup> The example with street football is a telling one (see the beginning of this section), so is the example from the novel *Bread and Wine* where an exiled Italian socialist come to live with Italian farmers. Stout explains on the one hand how their views initially is quite distinct because of the different epistemic contexts they have inhabited. However, living together they start to learn about one another, about their different ways of life and their different views and thus revises some of their initial judgements while keeping others. Stout, *Democracy and Tradition*, p. 232.

an entirely different (and much more difficult) question. Moreover, to say, as Stout does, that a person's epistemic responsibilities are determined by their epistemic context is problematic as it implies that as persons move between contexts, their epistemic responsibilities change. Either that, or persons must settle for one such set of epistemic norms to carry around with them as they lead their lives and encounter different norms that challenge those they currently agree with. Again, there are plenty of examples of both strategies in the real world. Many persons certainly behave in these ways, but neither account works as an account of epistemically responsible behaviour.

In the first alternative, as persons move through different contexts, they would be justified in believing different things depending on which context they are in. Of course, one could speak about epistemic contexts containing *expectations* for what to believe and how to act and how to reason that exert normative pressure to make one comply. This does not necessarily have anything to do with justification, however, and especially not public justification, which must be seen as a product of reflective processes that are not necessarily encouraged in every epistemic context. In the other alternative, a person may be, for instance, a Christian Lutheran and stick hard-headedly to the norms of conduct and reasoning that apply in, say, church settings in whatever context they are currently moving in. In order to avoid conventionalism, and favour justification, it is necessary to reach outside one's context and relate to others' traditions not only as a means of persuading them, or bringing them closer to oneself, but also as a way of trying to make sense of their views and considering what is right about them. In this sense, discourse done right is a thoroughly reciprocal process and criteria are required that transcend the bounds of one's tradition. I think that Stout's response would be something along these lines.<sup>219</sup> Nonetheless, this line of thought does not solve the initial problem in which epistemic context determines one's epistemic entitlements and consequently what counts as epistemically responsible behaviour. For this, some kind of objective criteria are needed.

Stout might want to say that the objective criteria available to assess the rules of a practice have to do with whether the rules are conducive to the practice's end. The rules of street football are correct to the extent that they make football fair and meaningful to play, and ethical rules

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<sup>219</sup> Stout's discussion on the novel *Bread and Wine* is again a good example. Stout, *Democracy and Tradition*, pp. 232f.

are correct to the extent that they appropriately structure social interactions. Democratic principles are similarly right when they appropriately structure society.<sup>220</sup> This is fair enough, I think. But it answers only part of the question. What remains is to say which end, among all those ends we might seek to realize, has priority. The only answer that I think is available is that one must go to one's own experience. This experience will of course be shaped by the many epistemic contexts that one is part of, but what counts as epistemically responsible behaviour will not be determined by any one of these contexts. It will be a mix between them.

Thus, the state cannot engage with each and every citizen on their own terms, and this raises the question of how the state is going to make its citizens epistemically entitled to endorse its principles. It may be that this task comes down to us, the citizens. It is we who must engage with one another and give each other reasons to think that the democratic project is worth pursuing, and therefore to recognize as legitimate rules one does not endorse, for the sake of the stability of the society. Stout suggests as much when he says that it is implausible to suppose even ideally that the state can be a medium of the people's will. All we can do is decide amongst ourselves how we want to be governed.<sup>221</sup> The state becomes unfortunately distant on this view. For Stout the state is not, as I think it ideally should be, something that citizens are an integral part of. The legitimate exercise of political power requires not only that citizens allow themselves to be governed in particular ways, but also that said exercise adequately represents the will of the citizens. Following Rawls, this requirement raises three conditions: the way in which ends are formulated and prioritized must be acceptable to all citizens; no ultimate end other than fair social cooperation must be pursued; and decision-making processes must be such that they do not stand in clear opposition to ways of reasoning that are a part of the many worldviews that are part of a society. The duty of civility, or a principle like it, is justified by reference to all three criteria of a public reason.

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<sup>220</sup> This is suggested by Stout in "Comments on Six responses to 'Democracy and Tradition'", p. 724.

<sup>221</sup> Stout, *op. cit.*, p. 717.

## Against the Duty of Civility

As Stout notes, Rawls's idea of public reason includes a moral obligation for all who are involved in public deliberation to restrain themselves from relying on non-public reasons. What this means is that, given a particular set of questions and whilst occupying certain roles, one particular epistemic context is assigned a privileged status. This context accordingly imposes constraints on the reasons that can be appropriately adduced in deliberations. As my argument in this section proceeds, I will concede to Stout that it is difficult to maintain these two distinctions. Rawls's duty of civility, I take it, is his attempt to mitigate the consequences of the burdens of judgement. A political conception of justice and its public reason serve as a public basis for justification. Different traditions and worldviews, Rawls proposes, can endorse its fundamental values from their particular point of view, but when in the formal public sphere, one must appeal to the values of this public basis only.

In contrast to this kind of public reasoning, which Stout does not think possible, Stout suggests that we should engage with one another's views by means of what he calls immanent criticism. Or rather, he claims that there are two steps to the discursive exchange of reasons. Citizens state their view, and then they engage with their interlocutors, trying to show that the latter's views are incoherent or that they would do better coming to a different conclusion, the one the original speaker himself prefers.<sup>222</sup> The second step is where the immanent criticism happens. Of course, in reality, the two steps cannot be so distinguished. Persons switch between them and might revise their view and restate it, after which new criticism might follow. This, Stout argues, is what actual arguments in the public look like, and there seem to be no particular problems with this kind of structure in public discourse. Because anyone participating sincerely in such public discourse would be making the kind of "honest justificatory effort" Stout sought in the beginning of the chapter, this discourse structure does not seem to be treating anyone disrespectfully. There need not be a public stock of reasons, values, and principles that citizens must rely on, because

[w]hy would I be failing to show respect for *X* if I offered reasons to *X* that *X* ought to be moved by from *X*'s point of view? Why would it

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<sup>222</sup> Stout, *Democracy and Tradition*, p. 69.



matter that there might be other people, *Y* and *Z*, who could reasonably reject those reasons? Suppose *Y* and *Z* are also part of my audience. If I am speaking *as* a citizen *to* fellow citizens unconstrained by expectations of confidentiality, they might well be. This is all I would mean by “speaking in public.” Does my immanent criticism of *X* then show disrespect to *Y* and *Z*? No, because I can go on to show respect for them in the same way, by offering *different* reasons to them, reasons relevant *from their point of view*.<sup>223</sup>

Stout puts his finger on it when he says that all *he* would mean by speaking in public is speaking as a citizen to other citizens “unconstrained by confidentiality”. For that is clearly not what Rawls means. The first thing to keep in mind is that in Rawls’s view, the idea of public reason applies to questions of constitutional essentials and matters of basic justice only. The first category applies to the principles that specify the structure of government and the equal scheme of rights and liberties. The latter category applies to the social minimum of resources required to guarantee their fair value.<sup>224</sup> A second point is that the restrictions of public reasoning do not apply to persons’ private deliberations and reflections about political matters that take place in the background culture, as Rawls calls it, but only that reasoning which bears upon our exercise of political power. The duty of civility thus most straightforwardly applies to government officials. It applies to the ordinary citizen, however, when they engage “in political advocacy” and when they vote in elections.<sup>225</sup> Outside of this legislative role, even when dealing with matters pertaining to the organization of the basic structure, deliberations of the first kind are said to belong to the background culture and as such are exempted from the duty of civility.

There are no important problems with Stout’s view of democratic discussion as such. By engaging in immanent criticism with one person, one would not thereby treat another person in the audience with disrespect. The interesting thing is that Rawls would agree with Stout that this is how you engage with others, although in private settings and sometimes in the *informal public* as well. Taking up Rawls’s point of view, the obvious response to Stout would be that this way of arguing with one another is not a plausible way for the state to engage with its citizens and justify its decisions. It is neither a *feasible* way for the state

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<sup>223</sup> Stout, *op. cit.*, p. 73.

<sup>224</sup> Rawls, *Political Liberalism*, p. 228f.

<sup>225</sup> Rawls, *op. cit.*, p. 215.

to engage with its citizens, nor an appropriate way for the state to engage with citizens. The state must rely, first and foremost, on the legal rules and policies compatible with acceptable terms of cooperation that should guide its decisions. To the extent that that is not enough to justify, say, a particular interpretation of a legal rule, then it must appeal directly to the terms of cooperation. The more difficult case is the citizen who argues for a coercive legal rule to be imposed. This person seems to belong within the bounds of public reason on Rawls's view, and not for bad reasons. Yet Stout would insist that this is the kind of case that he is talking about, and he is right too that this person does not obviously treat his fellow citizens with disrespect—he offers them reasons that they can accept and understand. Only, he does not offer them the same reasons.

This is the kind of case that I will focus my own argument around in the last chapter, pressing the point against Stout that this person, at least in particular circumstances, nonetheless ends up guilty of treating his fellow citizens with disrespect, and not merely *Y* and *Z* then, but *X* as well. Although one may certainly state whatever reasons one has for believing that the state should take a particular action, not all reasons have the right kind of force to justify the exercise of coercive power. I agree with Rawls that this force comes from the reason being part of reasonably acceptable terms of cooperation. However, this is not in itself an argument for the duty of civility.

I shall return to Stout's criticism of the idea of public reason because I believe that he is right on some very central questions. One concerns the second point of elaboration, that is, the formulation of the bounds of public reason, which I have not touched upon much yet. Stout does not accept the way in which these bounds are delineated. The problem is that persons' religious commitments inevitably inform their moral and political beliefs, and more strongly so the more important a matter is. Thus, there are reasons to think both (i) that agreement on these particularly important questions will be even more difficult to reach and (ii) that it is particularly important for religious citizens to rely on their religious beliefs as premises in their reasoning.<sup>226</sup>

I do not believe that one should give much weight to (i). Rawls does not mean that people do agree or that they *should* agree on what *political program* best realizes some particular reasonable conception of jus-

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<sup>226</sup> Stout, *Democracy and Tradition*, p. 72.

tice. He means that their agreement should concern fundamental constitutional principles and that they should rely on a particular class of reasons when they argue for the program that they support. The extension of this class of reasons is determined by a family of reasonable political conceptions of justice. The point is not that there will be agreement on *some particular* conception of justice in the sense that all will think that some such conception is the right one. Rather, the idea is that there can be several conceptions that, if allowed to organize the basic structure of society, will organize it in a way acceptable to all no matter their social position.<sup>227</sup>

As for (ii), it clearly illustrates a very important problem with the duty of civility. This problem is one of the integrity of persons' religious beliefs. Since these religious convictions will often be the source of a person's moral beliefs, they are required to refrain from giving their *actual* reasons in their public reasoning. As such, the duty of civility is incompatible with the spirit of both the freedom of expression and the freedom of religion.

Rawls grants that this would be the case were the duty of civility understood as a legal rule;<sup>228</sup> thus understood the duty of civility would be incompatible with the freedom of expression, and thus deprive citizens of important social primary goods: basic liberties, surely, but also, and by extension, the social bases for self-respect as these bases are intimately connected to the distribution of the basic liberties.<sup>229</sup> An unequal distribution of the basic liberties would effectively communicate, from the point of view of the terms of cooperation, the lesser value of religious points of view compared to secular ones. Stout's claim is that one does not avoid this issue simply by making it a moral rather than legal requirement. I believe that Stout is right, and I believe that Rawls ought to have seen this as well. He comes close to making this point himself when, considering how to formulate his principle of restraint, he notes that it cannot extend only to government officials of different sorts and to members of political parties. It must cover citizens' discussions with others as well as their internal deliberations on how to cast their vote in elections. Otherwise, too much of a divide might develop between the public and the non-public domains, and public reasoning

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<sup>227</sup> This is implied by Rawls's talk of there being a "number of reasonable political conceptions" and a "family of reasonable though differing liberal conceptions" of justice. See Rawls, *Political Liberalism*, p. xxxvi.

<sup>228</sup> Rawls, "The Idea of Public Reason Revisited", p. 769.

<sup>229</sup> Rawls, *Justice as Fairness: A Restatement*, p. 60.

might turn out insincere.<sup>230</sup> However, as I have already noted in my chapter on Rawls's idea of public reason, this line of thought creates other kinds of problems. It is not entirely clear what the duty of civility requires of ordinary citizens (that is, as opposed to public officials, for instance). What kind of duty do they have to rely on public reason only, and under what circumstances? These worries seem similar to Stout's, except that they are expressed from the political point of view. Rawls thinks that this line *must* be drawn in one way or another and he considers how to draw it without undermining stability. It appears to me as if he is unsuccessful.

Another point is that whereas the duty of civility more reasonably constrains discourse when imposed on speech in the formal public sphere based on the speaker's role—as citizen *as such*, citizen *as voter*, or, say, *government official*, this too has its share of problems. The main problem is that the distinction between a citizen *as such* debating some political issue while remaining in the background culture and thus outside of the demands of the public, and the same citizen considering how to exercise their share of political power (deciding how to cast their vote, for instance), can only ever be artificial. This point does not suggest that one should not draw the distinction at all; it is not problematic in itself. The point is merely that the distinction is not strong enough for this particular purpose.

## The Secularization of the Public Sphere

One of Stout's arguments against the idea that persons should restrain themselves from relying on their worldviews when speaking in public is that it drains the public sphere of nuance and creativity. Faced with the vast plurality of different worldviews we tend to retreat to common ground rather than simply learning about others' patterns of reasoning. As Stout points out, too, it is a very common supposition that traditions are incommensurable and thus that inter-traditional discourse is simply impossible. For some authors it is even the starting point of their theoretical endeavour.<sup>231</sup> In what follows, I agree with Stout that retreating to common ground is not the best response to pluralism. The plurality

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<sup>230</sup> Rawls, *Political Liberalism*, p. 215.

<sup>231</sup> Stout, Jeffrey: *Ethics After Babel: The Language of Morals and Their Discontents*. Princeton University Press, Princeton, NJ, 2001, p. 1f.

of different views that necessarily characterizes democratic societies is, generally, an asset to democracy. That this is so should not be taken to render the duty of civility superfluous, however, because the duty of civility is not so intimately connected to this search for common ground as it might seem at first glance. As such, I shall contend that the assumption of the commensurability of different traditions is not a reason counting against the duty of civility.

The general question, it seems, is how to navigate the plurality of ethical traditions. On what grounds can persons expect to communicate despite the rivers of tradition flowing between them? How can citizens reason together when there no longer exists a point of departure that can be *presupposed*? Stout's suggestion is that they become immanent critics. However, for a very long time the public sphere has been increasingly secularized in the sense that public speakers, in seeking to ground their expressions in commitments that form part of a public culture, leave their religious commitments at home. One sign of this secularization is the decrease in references to the Bible in parliamentary discussions after the Reformation. No longer was there an agreed-upon interpretation of particular passages that could be appealed to in order to settle political matters.<sup>232</sup>

Although retreating to a (rapidly decreasing) stock of common commitments is a tempting response to pluralism, Stout insists that the right way to go is instead to saturate the public with tradition-soaked speech.<sup>233</sup> We should agree with Stout, but only up to a certain point. First, if nothing else, engaging with one another's views provides important educational opportunities. Stout writes:

In a religiously plural society such as ours, it is even more important than in other circumstances to bring into reflective expression commitments that would otherwise remain implicit in the lives of the religious communities. Members of a religious communion can benefit from such expression by learning about themselves and putting themselves in a position to reflect critically on their commitments. Outsiders can benefit from listening in, so as to gain a better grasp on the premises that our fellow citizens rarely have an opportunity to articulate in full.<sup>234</sup>

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<sup>232</sup> Stout, *Democracy and Tradition*, pp. 93f

<sup>233</sup> Stout, op. cit., p. 112f.

<sup>234</sup> Stout, op. cit., p. 112.

This is essentially what fuels the public political culture of democratic societies with values and commitments for political liberalism to build from. A dried up, impoverished “background culture” is of no use to anyone. Stout also brings another important point to the table. On Rawls’s view, justice as fairness, or whichever other political conception of justice provides the set of reasonably acceptable terms of cooperation, serves as a common ground for negotiating citizens’ various claims on one another. The underlying assumption is: citizens *need* such a public basis for justification. The question is why? I suspect that one of the reasons that Rawls, and even more so those following in his wake, believe that common ground in this sense is required because of the incommensurability of the traditions that make up the plurality of worldviews so characteristic of democracy. Disagreement goes all the way down and there is no point of contact, such that no common measure for comparison or evaluation is possible.

It does not seem as if Stout thinks that this is true. He seems to think that although divided by their different traditions, persons will be able to communicate with one another. If persons’ disagreements about the good and about the right and morality in general actually went all the way down, with no common ground to speak of, they would not even know that they were disagreeing.<sup>235</sup> I quite agree with this. To speak of incommensurability is to say that communication between two points of view is impossible, that there are no common measures for comparison. Now, I do not believe that either Rawls, Laborde, nor Quong are committed fully to distinct worldviews being incommensurable, but they still seem to believe that inter-traditional communication will be too cumbersome to be meaningfully pursued.

To consider some examples, when developing her first principle of minimal secularism, Laborde makes some statements that suggests that an idea of incommensurability is part of the principle’s rationale. In particular, contrasting accessibility with intelligibility, Laborde says that intelligible reasons require one to have knowledge of a speaker’s particular epistemic context to understand what that speaker is saying. Intelligible reasons are not *generally* accessible. Quong seems to be more deeply committed to the incommensurability thesis. For instance, one line of argument is that political liberalism is unable to explain what is so special about justice that disagreement about it is either unreasonable or not as serious as disagreement about the good, when, in fact,

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<sup>235</sup> Stout, *Ethics After Babel*, p. 19f.

disagreement about the former is just as vast as disagreement about the latter. Quong's response is that the difference between justice and the good lies not in the subject matter, but in the nature of the disagreement. He distinguishes between foundational and justificatory disagreement. Foundational disagreements go all the way down such that there is no point of contact. Justificatory disagreements possess some kind of common ground. The state must be neutral where disagreements are foundational because the disagreeing parties do not share any premise whatsoever.<sup>236</sup>

Quong gives an example of two persons discussing recreational drug use. One of the discussants believes that "recreational drug use is immoral because it involves seeking pleasure for pleasure's sake—it follows from a hedonistic view of what makes a good human life."<sup>237</sup> In other words the argument that because life is given to persons from God, persons should be devoted to his service. The other discussant "believes that the concepts right and wrong do not apply to purely private acts: they only apply to the category of what we owe to other persons."<sup>238</sup> To use drugs recreationally is in itself, neither right nor good, but is a morally neutral act. This is an example of foundational disagreement. There is no common ground, no place for the two to meet.

I do not think that there is anything like a truly foundational disagreement. In this particular case, Quong gives too much importance to our worldviews. It is right, of course, that the two different analyses of the morality of recreational drug use do not intersect, but experience does. Even someone who does not think that recreational drug use lends itself to moral evaluation can frown upon it. They may not think that it is immoral, yet still think that it is not an activity one should be engaging in, or at least understand how it comes to be that some persons think that way. Similarly, someone who thinks that humans are morally obliged to devote their lives to the service of God will not necessarily be insensitive to the reasons that favour the other approach. Such a person is not by definition a zealot who judges all those who think differently as hideous heretics, and neither person will be oblivious to the existence of different views, because they live in societies characterized by a plurality of such views. Even if they are oblivious to this fact, that

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<sup>236</sup> Quong, *Liberalism Without Perfection*, pp. 192f.

<sup>237</sup> Quong, op. cit., p. 204.

<sup>238</sup> Quong, op. cit., p. 205.

still does not make the communicative gap impossible to bridge. Consider Stout's thought experiment:

Imagine that we have just returned from several years of anthropological fieldwork in two social groups, each of which has now spent many generations essentially isolated from the outside world. One group, the Old World Corleones, keeps alive the ethos of ancient Sicily, as depicted in the novels of Mario Puzo. Unlike their American cousins, the know nothing of cosmopolitan ways. The other group, the Modernists, descends from a band of Kantian explorers who got lost in the jungles of Brazil in 1831. The Corleones go on at length about purity, honor, and role-specific virtues and obligations. The Modernists do not exactly dissent from propositions employing such concepts. They do not even entertain such propositions. Instead, their moral talk is all about human rights, respects for persons, freedom, and what individuals (not strictly identified with their social roles) morally ought to do.<sup>239</sup>

Suppose for the sake of argument that the situation in Quong's example mirrors this thought experiment—perhaps one can replace the Corleones with descendants of a group of lost Christian missionaries. Instead of employing moral concepts like purity and honour, these missionaries speak about our moral duties to God. These moral communities have not been exposed to different frameworks for interpretation of our moral experience, and their different frameworks represent moral experience from different points of view. First, I expect that the modernists would not be without language to speak about the badness of things without deeming them immoral, just as the Christian missionaries can approve of things that are not divinely commanded. Likewise, to the extent that the moral language of either group is not rich enough to express moral experience in any appropriate way to begin with, it will develop the tools to do so over time. Languages are not static.

Similarly, if the two groups were to come out of isolation, they would, again, over time, find a way to translate between their different languages—unless one group speaks of experience that the other group that is so radically different that it cannot be interpreted by the other. For two languages to be truly incommensurable the speakers must be speaking of different worlds. They must speak about such radically different things or about common things in so radically different ways that there is no way to make sense of the one from the point of view of the

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<sup>239</sup> Stout, *Ethics After Babel*, p. 61-62.



other. However, in these cases, it is not clear that either could even identify the other as a language in the first place.<sup>240</sup> Of course, to translate a language from scratch is an immensely difficult process of trial and error, of trying to find out what sentences the others assent to. Instances of untranslatability, it has been suggested, might appear where two languages are built around different ontologies.<sup>241</sup> Such instances would be untranslatable, however, only in the sense of being unable to find matching words or concepts. But translation is not necessarily confined to the enterprise of finding words in another language that match those of one's own. If one can provide a plausible *interpretation* of a sentence in another language, one can consider oneself successful.<sup>242</sup> Given the full conceptual range of the English language, or any other natural language for that matter, interpretation and communication should not be under threat. Stout makes this same point.<sup>243</sup> The important thing is that the truth-conditions are preserved so that the two sentences are true of the same state of affairs.

The trouble with Stout's thought experiment above, illustrative as it is, is that one cannot simply isolate the concepts and terms associated with a particular practice from the rest of the language. (I am quite sure that Stout would agree with me on this.) In this sense, the "language of morals" is, importantly, *not* a language at all but just a selection of the conceptual tools that we humans entertain, expressed through a given language and put to a particular use: in this case, for speaking about and evaluating human behaviour. Our different worldviews do this in their own particular ways, relying heavily on some concepts, like virtue, duty or right, at the expense of others, or simply organizing these concepts into a more or less coherent whole in different ways. Such organizing will certainly affect the meaning of the different concepts, although not to the extent that persons who are part of different worldviews are hopelessly incapable of communicating with one another. Such persons are connected on the one hand through the moral experience that humans share, and on the other through a language whose vocabulary extends

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<sup>240</sup> Davidson, Donald: "On the Very Idea of a Conceptual Scheme", *Inquiries into Truth and Interpretation*. Clarendon Press, Oxford, 2001, pp. 185ff, in particular, p. 192 and p. 195.

<sup>241</sup> Quine, Willard V. O: *Word and Object*. MIT Press, Cambridge, Mass, 2013, pp. 25ff, especially, p. 47.

<sup>242</sup> Davidson, Donald: "A Coherence Theory of Truth and Knowledge", *Subjective, Intersubjective, Objective*. Clarendon Press, Oxford, 2001, p. 244.

<sup>243</sup> Stout, *Ethics After Babel*, p. 63f.

well beyond any one of the particular worldviews that expresses itself through it (and is not, of course, confined to a particular language either but can be expressed in a variety of tongues).

Returning to the problem that invited this little excursion into the philosophy of language, Quong introduces the distinction between foundational and justificatory disagreements to justify the asymmetrical treatment of the former. He wants to defend the contention that disagreements about the good, which are mostly foundational, can be justifiably contained by a principle of restraint such as the duty of civility. When disagreements about the good are not foundational, no restraint is required, and in those cases where the disagreements about justice turn out to be foundational, then one should leave those reasons out to observe one's duty of civility. I have argued that Quong's attempt to justify the asymmetrical treatment, not of the good in relation to justice, but of foundational and justificatory disagreements does not work because no disagreement can actually go *all the way down*.

Bringing this line of thought to a close, any reason to impose discursive constraints like the duty of civility on public discourse should not have anything to do with the communicative possibilities between traditions. Such possibilities are bound to vary in relation to the secularization of the public sphere and the degree to which our response to pluralism is to retreat to common ground. The more familiar persons are with the views of their fellow citizens, the better they will be at interpreting their speech and arguing with them.

## Conclusion

The central question for this chapter, once again, is how one should understand the challenge posed to Rawls's understanding of public reason: this time by Stout and his argument against the duty of civility as Rawls understands it. This is a criticism that, although it culminates with the duty of civility, takes its point of departure in the third point of elaboration: the rationale of public reason and its connection to the overarching framework of political liberalism. Stout begins by calling into question Rawls's conception of social cooperation and the idea of reasonable persons. He finds that they are too tightly connected to the contractarian project and the ambition to try to find principles that all citizens can agree to, despite their different collateral commitments, is

in vain. A common morality of that kind must develop slowly and by sincere dialogic engagement among persons in political and ethical discussions. It cannot be arranged contractually. Rawls's duty of civility is a very good example of the shortcomings of contractarianism, as it seeks to purge the public sphere of dissenting views in order to force agreement and condemns religious or non-liberal voices to silence. This is not explicitly Rawls's view, but follows from it. Whereas Rawls argues that the state and its officials must restrain themselves from relying on non-public reasons, this obligation clearly extends to ordinary citizens as well, even if it is not intended to do so. Similarly, whereas Rawls thinks that religious reasons are appropriately excluded from reasoning on constitutional essentials and matters of basic justice, this class of reasons are allowed when lesser matters are discussed, it is precisely when it comes to constitutional essentials and matters of basic justice that one's religious view matters the most. The duty of civility thus unjustifiably burdens religious citizens' possibilities for democratic participation. Both these arguments are important and I will return to them in the final chapter. First, Stout's argument targets the first point of elaboration and makes it clear that public reason is not sufficiently public. Secondly, it targets the second point of elaboration by challenging the bounds of public reason and its application to constitutional essentials and basic justice only.

I also continue to sketch an answer to the question of how one can formulate a more plausible conception of the idea of public reason. When Stout takes issue with Rawls's contractarianism, he thinks that Rawls puts the cart before the horse. Rawls thinks that the right must be established "before" society in the original position, thus establishing a framework within which citizens can lead their lives. Citizens are cooperative—*reasonable*, that is—when they are prepared to comport themselves in accordance with and also propose such principles as could be agreed to by other reasonable and rational citizens. As is clear from my chapter on Rawls, this amounts to what could be agreed on in the original position. As Stout sees it, such a framework cannot be decided in such a way. A common morality must be developed piecemeal by citizens sincerely engaged in developing the ethical life of their society. These citizens are divided, of course, by very different conceptions of what that ethical life should be, and it is only through discursive processes that the ethical life of their societies can be developed. In these discursive processes, citizens both express their own views and

engage with the views of others as immanent critics. Accordingly, persons are not reasonable when they are ready to propose and to act according to principles that others who are similarly disposed could accept, as Rawls thinks. Instead, they are reasonable when they can be expected to behave epistemically responsibly—that is, according to their epistemic entitlements as given by the various social practices in which they participate.

I do not believe that this conception of social cooperation and the reasonable is sufficiently stable. It cannot ground a conception of political legitimacy and authority, because some citizens will always be epistemically entitled to behave contrary to some rules or fundamental principles, and Stout does not seem to provide any way for the democratic epistemic context to take precedence over more particular and sometimes religious ways of speaking and thinking about one's society. For Rawls, whether speaking of persons or political principles, the reasonable is a fundamentally political concept that does not lend itself very well to other contexts. Stout's conception of epistemic responsibility is, on the contrary, politically unhelpful, and the same goes for the epistemic contextualism that it is paired with.

Turning to the duty of civility, I do not find Stout's alternative convincing, especially as it does not provide a good alternative to the duty of civility. It is a perfectly plausible conception of ethical discourse, but it is not fit to regulate the state's interaction with its citizens at all. It might be that Stout does not believe that it has to. What is important to him is citizens interacting with one another to develop the ethical life of their societies, an ethical life that, I suppose, will come to be reflected in the state's action in due time. But this is not enough, I think. This "ethical life", understood as a society's culture, its tradition, and particularly its political culture—its way of talking and thinking about matters, in particular, political matters—is certainly necessary, as it provides the many concepts and ideas that a political liberalism can cling to. However, the many competing worldviews that exist in this society, even when citizens act as immanent critics, do not generally provide good reasons to exercise coercive power. Despite this, it is important that political discourse is not construed as a retreat to common ground. A rich political culture is absolutely necessary, else it might lack the concepts around which a political conception of justice could form.

## Chapter 4: The Self-Defeat Objection

In this chapter, I turn to Steven Wall and ask, for the final time, how one should understand the challenges posed to Rawls's understanding of public reason. This time, the challenge is the "self-defeat objection", as it has come to be called in the literature. The claim is that Rawls's principle of liberal legitimacy is self-defeating because the conditions that it raises for evaluating political powers end up applying to itself. As the principle of liberal legitimacy cannot meet the conditions that it itself raises, the principle defeats itself. In the two first sections, I engage with this argument. In the first section, I present Rawls's principle of legitimacy and Wall's argument against it. In the second section, I argue that Wall's argument misses its mark because it misinterprets the structure of Rawls's principle and the way it fits into his political liberalism. This does not mean, however, that Wall does not raise important concerns that must be taken into consideration. In the remaining two sections, I provide a revised interpretation of Wall's argument and consider some responses.

One such revised argument focuses on Rawls's fundamental ideas. The claim is that Rawls simply appeals to beliefs that are widely and deeply held by the members of the citizenry. Wall argues that there are no commitments that could attract something even remotely resembling a consensus that are also sufficiently substantial in content. Moreover, Wall points out that even if there were any such noncontroversial commitments, their being widely and deeply held does not, on its own, count in their favour. In the final section of this chapter, I turn to the ideal of the reasonable person: what is a reasonable person, and what is their theoretical role? I shall argue that Rawls's view evades all these arguments.

## The Liberal Principle of Political Legitimacy

Perhaps the central issue for the liberal principle of legitimacy as Rawls formulates it is the concept of reasonable acceptability. Reasonable acceptability is the central normative component in this principle and others like it,<sup>244</sup> but it is unclear exactly what reasonable acceptability means and thus how it is supposed to help distinguish legitimate arrangements from illegitimate ones. One particular difficulty for the liberal principle of legitimacy is the charge that it is self-defeating: that if the conditions for legitimate exercise of political power are correct, then they apply to the principle itself and, unfortunately, the conditions cannot be met. If we look specifically at Rawls's conception of political legitimacy, it reads:

[...] our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational. This is the liberal principle of legitimacy.<sup>245</sup>

The principle is concerned with the *exercise of political power* and applies to the making of political decisions. This means, I assume, everything from the making of legal rules and regulations to their application in court decrees and the actions of officials of various sorts. As the principle states, such decisions are *proper* when in accordance with a constitution, which, in turn, is proper when in accordance with a family of reasonable political conceptions of justice. Rawls also takes the property of being "proper" to imply justifiability (as the inferential expression "hence" indicates). Proper exercise of political power thus means that the exercise of political power is defensible by appeal to a distribution of liberties and social and economic resources necessary to guar-

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<sup>244</sup> See for instance Larmore, *What Is Political Philosophy*, p. 160; Nagel, Thomas: *Equality and Partiality*. Oxford University Press, Oxford, 1991, pp. 33-34.

<sup>245</sup> Rawls, *Political Liberalism*, p. 217. There is an alternative formulation of this principle which reads that "political power is proper and hence justifiable only when it is [...] acceptable to our common human reason" (*Political Liberalism*, p. 137. This formulation might avoid some of the difficulties associated with this principle's invocation of the concept of "reasonable and rational persons," but in doing so it also loses the normative punch that these concepts carry. Nor does this alternative formulation avoid the core challenge in any obvious way, so all things considered there is nothing to win by looking at this formulation instead.

antee the fair value of those liberties and observes the specified legislative procedures. These are examples of the constitutional essentials. These, in turn, must be defensible by appeal to principles and ideals that all reasonable and rational persons can accept.

Before I turn to explaining Wall's argument, I need to make some brief comparative remarks. In Wall's analysis, proponents of the public justification approach to political legitimacy believe that it is "[a] necessary condition of legitimate coercive political authority that it be reasonably acceptable to each person subjected to it."<sup>246</sup> He calls this "the public justification principle." First, the logical connective "only when" (equal in meaning to "only if", I will assume) in Rawls's principle suggests that the consequent in the conditional statement is indeed, as Wall too supposes, a necessary (although not sufficient) condition. This means that unless this condition is satisfied, the exercise of political power is not legitimate, and if the condition is satisfied still further conditions are required for the exercise of political power to be legitimate.

Secondly, I expect that "reasonably acceptable" in Wall's interpretation of the principle means the same thing as Rawls's formulation that it be "acceptable to persons as reasonable and rational". I similarly assume that Wall's "coercive political authority" is deliberately vague so as not to discriminate between the different principles that he tries to capture with his reconstruction. It can refer to a government, just as well as a constitution. Lastly, I will not consider the "all subjected" clause in Wall's formulation to be of much importance in my comparison with Rawls's principle, for two reasons. The first is that Rawls assumes that the society he considers is a closed one. All citizens enter the society only by birth and leaves it only by death.<sup>247</sup> Thus, those subjected to the exercise of political power are the same as the society's citizens (unless it is a question of foreign policy, but I will not consider such cases here). It is true that any plausible conception cannot merely be applicable to the domestic politics of a closed society, but this requires further investigation.

The second reason is that the reasonable person is an idealization. If a bill is acceptable to reasonable persons, then it ought to be acceptable to all subjected persons even if they are not members of a closed soci-

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<sup>246</sup> Wall, Steven: "Is Public Justification Self-Defeating?", *American Philosophical Quarterly*, Vol. 39. No. 4. 2002, p. 386.

<sup>247</sup> Rawls, *Political Liberalism*, p 12.

ety, independently of whether this means that either they are not members of this society but some other, or that the society is not a closed one, or (preferably) both. With these points in mind, one can plausibly read Wall's reconstruction as stating that it is "a necessary condition for the legitimate exercise of political power that it be acceptable to persons as reasonable and rational." Still, I do not believe that Wall's public justification principle is equivalent to Rawls's liberal principle of legitimacy. On Rawls's view, the exercise of political power is legitimate only if, firstly, it is in accordance with a constitution that, secondly, *actual citizens* can be expected to endorse, since, thirdly, the constitution is in accordance with a conception of justice that could be accepted by all persons as properly idealized. This is substantively different from Wall's reconstruction of the public justification approach to political legitimacy. To Wall, the legitimacy of the exercise of political power depends directly on its acceptability to reasonable and rational persons.

Wall's argument takes issue with the requirement of *reasonable acceptability*: that is, the requirement that legitimate exercise of political power is acceptable to citizens as free and equal persons. Particularly, it is the *reconciliatory rationale* that he takes issue with, along with the principle's grounding in a political culture of democratic societies. The idea is that where the exercise of political power is legitimate citizens will have good reason to voluntarily participate in the maintenance of society and its institutions.<sup>248</sup> It is important that these reasons be available to the society's members from the particular points of view of their own commitments, and thus an appeal to the political culture of this and similar societies is introduced. If citizens take hold of ideas prominent in such political cultures, then they would have sufficient reason to accept even decisions that they do not agree with. Indeed, the requirement is not mere acceptance but acceptance by persons who are reasonable and rational. Similarly to how Stout explains Rawls's idea of the reasonable person as someone who is prepared to reason from the ideas expressed in the social contract, Wall points to particular interpretations of the values in the political culture that Rawls seems to consider the commitments of reasonable persons.

To Wall, reasonable acceptability seems a much too strong condition, and the aspiration that underlies it to reconcile citizens to decisions with which they might not agree turns the principle against itself. As he explains, one cannot require *only* of the exercise of political power that

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<sup>248</sup> Wall, "Is Public Justification Self-Defeating?", p. 387.



it be reasonably acceptable, but the liberal principle of legitimacy with its requirement of reasonable acceptability must be reasonably acceptable as well, which it is not. Wall argues that Rawls relies too heavily on *particular interpretations* of the ideas found in the public democratic culture. While there might be reasonable agreement around the general ideas, they become controversial as soon as they are given more specific meanings.<sup>249</sup> It is these ideas that motivate the acceptability requirement as well as the reconciliatory rationale, which, in turn, requires not only that political authority be publicly justified but that these particular interpretations of the ideas of the public political culture be so justified as well. Wall writes:

... some proponents of [the public justification principle], most notably Rawls, attempt to anchor [the public justification principle] in considerations that they claim are embedded in the shared political culture of modern democratic societies. They justify [the public justification principle] by appealing to a principle of equal respect that they claim can, in fact, be publicly justified to people in these societies because it is derived from or based on beliefs embedded in their shared political culture. The content of this principle includes, among other things, the Kantian (or neo-Kantian) idea that it is wrong to coerce a person to do something for which one can give him no reasonably acceptable justification.<sup>250</sup>

I therefore understand Wall's interpretation of the idea behind the public justification approach to political legitimacy with its acceptability condition to be roughly as follows:

- (1) It is a widely and deeply held belief in modern democratic societies that people ought to be treated only in ways that can be given a reasonably acceptable justification.
- (2) If it is a widely and deeply held belief in modern democratic societies that people ought to be treated only in ways that can be given a reasonably acceptable justification, then political power ought to be exercised only in ways that can be given a reasonably acceptable justification.
- (3) Thus, political power ought to be exercised only in ways that can be given a reasonably acceptable justification.

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<sup>249</sup> Wall, op. cit., pp. 390f.

<sup>250</sup> Wall, op. cit., p. 390.

However, independently of whether there are instances of exercise of political power that could meet this ideal, those instances would not be examples of legitimate exercise of political power because:

Even if everyone in modern democratic societies accepts or has reason to accept the principle of equal respect, it does not follow that everyone has reason to accept the particular interpretation of this principle that is needed to ground [the public justification principle]. This interpretation packs the Kantian idea referred to above into the content of equal respect; but this idea is surely as reasonably contestable as other ideas which proponents of [the public justification principle] routinely characterize as those that can be reasonably rejected [...].<sup>251</sup>

First, I take Wall's formulation "reasonably acceptable justification" to express the same idea as Rawls's condition "acceptable to reasonable and rational persons." It is not obvious that they do express the same idea, however. Rawls's principle states that the exercise of political power is "proper and hence justifiable" only if it is in accordance with "principles and ideals acceptable to reasonable and rational persons". On Wall's interpretation, on the other hand, the exercise of political power is legitimate only if it can be given a reasonably acceptable justification. The two interpretations of the principle thus overlap in the following sense: reasonably acceptable justifications can be provided for the proper exercise of political power because reasonably acceptable justifications, just like the proper exercise of political power, are acceptable to reasonable and rational persons.

Moving on to take a closer look at Wall's interpretation of the public justification approach and his argument against it, the first premise in the above argument expresses a rather particular conception of respect and proposes that it is widespread in democratic societies. The problem, Wall points out, is that the conception of respect is not widespread in this sense. Moreover, even if equal respect in this Kantian sense is a widely held value in democratic societies, there are many kinds of conceptions of that general idea, and contrary to what the second premise suggests, its being widespread in democratic societies has nothing to do with its plausibility. So, because this principle, with its acceptability condition, takes upon itself to reconcile citizens to instances of exercise

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<sup>251</sup> Wall, *op. cit.*, p. 390. One should note here that Wall seems to keep separate what is reasonably acceptable and what can be reasonably rejected. As I will argue below, the extensions of the two concepts are more or less the same (see the section "The Indeterminacy of the Reasonable", below).

of political power, the liberal principle of legitimacy (just like the public justification principle) must be able to meet those demands itself—but this Wall claims, it cannot do.

I do not accept this argument. My objection, however, is not that Wall's critical remarks are not on point, but rather that he leaves out important considerations. A rejection of the idea that political authority needs to be reasonably acceptable (or rather, as Rawls puts it, endorsed in the light of reasonably acceptable principles of justice) is not merely a rejection of the liberal principle of legitimacy but a rejection of the most fundamental assumptions of Justice as Fairness that inspire it.<sup>252</sup> If this is the case, there is a problem with Rawls's entire theory, not merely his conception of political legitimacy. Certainly, this possibility cannot be ruled out. My point is merely that the ideas of reconciliation and reasonable acceptability are not *introduced by* the liberal principle of legitimacy, but rather that it is those ideas that imply the principle—or a principle like it. Thus, as far as I am concerned, it seems odd to claim that the problem lies with *the principle* being self-defeating.

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<sup>252</sup> Following Emil Andersson (*Reinterpreting Liberal Legitimacy*, pp. 152f), I see important similarities between the principle of liberal legitimacy and the four stages of removing the veil of ignorance in the original position. In the first stage, the parties are supposed to decide the terms of cooperation that ought to guide their cooperative endeavour. Here, they are completely under the knowledge-constraints that the veil imposes on them, as opposed to the second stage, where they are supposed to draw up a constitution from the conception of justice they have chosen. To do so, they are allowed some further information about their society. At the third stage they are to make legal rules that are in accordance with the constitution. To be able to make good laws the veil is lifted even further to allow even more information. The fourth stage, then, removes the veil entirely and citizens go on and lead their lives applying their laws in accordance with the constitution and in the light of the terms of cooperation—the principles and ideals—they chose to begin with (Rawls, *A Theory of Justice*, pp. 171ff). Contrary to Andersson, however, I believe that this speaks in favour of the liberal principle of legitimacy. One might perhaps say that the liberal principle of legitimacy makes explicit what is implicit in this sequence. The point is not that the parties in the original position would or would not choose such a principle (Andersson argues that they would not), for what the liberal principle of legitimacy states is that the exercise of political power is legitimate only when it is exercised in accordance with the constitution that was drawn up in the second stage of the four-stage sequence of the original position. Political power means everything from the particular statutes that were chosen in the third stage to all the particular decisions and interpretations that will have to be made when the veil is lifted in the fourth and final stage.

## The Structure of a Self-Defeating Claim

To see why this objection seems strange, consider first the notion of self-defeat. Claims of self-defeat come in many forms. The most obvious examples are propositions of a form similar to the proposition: “this statement is false”. Such statements are self-defeating because their truth implies their falsity (and in this particular case, the other way around as well). In this example, the problem is with the semantics or the logics of the proposition,<sup>253</sup> but this is not the only kind of appeal to self-defeat that there is. As it seems to me, the first formulation of the categorical imperative points to another sort of self-defeat: “So act as if the maxim of your action were to become, through your will, a universal law of nature.”<sup>254</sup> Consider the following scenario:

[A person] sees himself pressured by distress into borrowing money. He knows very well that he will not be able to pay, but he also sees that nothing will be lent him if he does not firmly promise to pay at a determinate time. He wants to make such a promise; yet he has conscience enough to ask himself: “Is it not impermissible and contrary to duty to get out of distress in such a way?”<sup>255</sup>

The answer is indeed that it is contrary to duty. The distressed person in the example would have to rely on a maxim that allows them to lie and thereby assumes that others will take their word for it that they will pay back the money they borrow (which requires that truth is the communicative default), although they already know that they will be unable to. This maxim that allows at least sometimes for telling lies relies for its success on the fact that others will trust the actor, and thus the maxim could not survive universalization, as universalization would remove the presumption in favour of sincerity and, by extension, truth, on which the acts of promising and lying both depend.<sup>256</sup> The point is not that the maxim refers to itself and somehow manages to contradict itself, like the sentence in the liar-paradox. The problem is rather that it makes certain assumptions that it cannot itself meet. Moreover, one should note that whether or not a requirement applies to itself “is not a

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<sup>253</sup> Putnam, Hilary: *Reason, History, and Truth*, Cambridge University Press, Cambridge, 1981, pp. 7-8.

<sup>254</sup> Kant, Immanuel: *Groundwork for the Metaphysics of Morals*. [Translated by Allen W. Wood]. Yale University Press, New Haven, 2002, p. 38.

<sup>255</sup> Kant, op. cit., p. 39.

<sup>256</sup> Kant, op. cit., p. 39.

matter of straightforward content.”<sup>257</sup> The claim that the exercise of political power is legitimate only if it is acceptable to reasonable and rational persons invokes a particular rationale—a *reconciliatory* rationale, in Wall’s terms—internal to the acceptability requirement, a requirement that does not stop at the legal rules the requirement evaluates but stretches further to include the principle itself.<sup>258</sup>

Indeed, the obvious first response to Wall’s objection is that the liberal principle of legitimacy, as it is itself not an instance of exercise of political power but a moral principle regulating such exercise, does not have to meet the standards that it raises for the exercise of political power.<sup>259</sup> This is a plausible claim. Wall, however, expects it and stands ready with the reply just mentioned, appealing to its rationale. The reason for invoking this principle is to reconcile persons to the way in which political power is exercised: to “remove the frustration” citizens might have in complying with decisions that they dislike.<sup>260</sup> One wants the citizens to see that even though they might not agree with some particular decision, the decision is in accordance with ideals and principles that they reasonably ought to find acceptable. Wall’s claim is that the principle cannot be reconciliatory unless the principle itself (and not merely the decisions it applies to) can meet with the approval of all subjected.<sup>261</sup> How could the principle remove any frustrations against the exercise of political power if some of this frustration is directed against or even caused by the principle itself?

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<sup>257</sup> Enoch, David: “The Disorder of Public Reason”, *Ethics*, Vol. 124. No. 1. 2013, p. 172.

<sup>258</sup> David Enoch writes the following: “Think, for instance, about the theory ‘controversy undermines the goodness of any theory.’ This theory applies to itself because it itself is a theory and so self-defeats, in the sense that it says of itself that it is not a good theory. Gaus, I take it, would agree. But now think of another theory, the theory that says ‘controversy undermines the goodness of any theory, so long as it’s not a theory about theories.’ This theory does not, as a function of its content, apply to itself for it is a theory about theories and so is explicitly excluded from the scope of theories about which it speaks. But concluding that no problem of self-defeat is relevant here would be too quick. The real question is what the rationale is for thinking in this toy example that controversial theories are not good theories. If this rationale applies also to theories about theories, then the danger of self-defeat is just as alive as it was with the first theory above.” Enoch, “The Disorder of Public Reason”, p. 172.

<sup>259</sup> One example of this reply to Wall can be found in: Bajaj, Sameer: “Self-Defeat and the Foundations of Public Reason”, *Philosophical Studies*, Vol. 174. No. 12. January 2017, pp. 3140ff.

<sup>260</sup> Rawls, *Justice as Fairness: A Restatement*, pp. 3-4.

<sup>261</sup> Wall, “Is Public Justification Self-Defeating”, p. 388.

I accept the *spirit* of this rejoinder. The conditions expressed in the principle are not merely appropriate for the proper exercise of political power but also permeate Rawls's political theory. Recall the voluntarist ideal that I mentioned initially. However, this point is also the key to countering Wall's self-defeat objection, for the argument relies on a certain structure of the principle and the theory. As mentioned earlier, in Wall's interpretation, the public reason account of political legitimacy considers it a necessary condition that the exercise of political power be reasonably acceptable to each person subjected to it. Wall assumes that this principle invokes a reconciliatory rationale, so that it is also a necessary condition for the correctness of any principle that has bearing on the correctness conditions of the exercise of political power that it be reasonably acceptable to each person subject to it. But this is not the structure of the liberal principle of legitimacy.

Rawls's principle of legitimacy depends on the existence of principles and ideals acceptable to reasonable and rational persons. The principles and ideals Rawls has in mind are his principles of justice and principles of public inquiry. That these principles are acceptable to reasonable and rational persons is demonstrated by the argument from the original position. To be legitimate, then, the exercise of political power must be in accordance with a constitution, and the essentials of this constitution must be acceptable given the principles of justice. I do not see that this principle is self-defeating. As just illustrated, the acceptability condition is appealed to twice: in the one instance there is an appeal to principles and ideals acceptable to reasonable and rational persons; in the other, the appeal is to constitutional essentials acceptable to actual citizens in the light of the principles of justice.

One issue remains: perhaps my argument against the self-defeat objection has merely moved the goalpost from the liberal principle of legitimacy to the fundamental ideas of political liberalism. Perhaps, even if the principle of legitimacy is not self-defeating, Rawls's entire philosophical project is, because it, too, depends on the assent of reasonable and rational persons. To ward off the self-defeat argument, I must address this possibility too. The first problem with this line of argument is that there is no explicitly formulated acceptability condition on the level of the fundamental ideas, only one implicit in the idea of society as a system of social cooperation and the idea of the well-ordered society. In the latter, the idea is that it is a test for justice that principles of justice can win the assent of reasonable and rational persons. As for

social cooperation, the idea of acceptability is such that in a system of social cooperation, political power lies in the hands of the members of that society who have an equal share in its exercise. For a better view, one can perhaps attempt to formulate a principle of social cooperation:

A political society is organized as a system of social cooperation only if political power is distributed equally among the members of this political society and exercised reciprocally.

This is not self-defeating in any obvious way. Of course, it does not express the acceptability requirement in any obvious way, either. The implicit assumption is that exercise of political power is acceptable if all citizens have an equal share in it and if political power is exercised reciprocally, such that burdens and benefits are distributed fairly. Consider the idea of the well-ordered society as a test of justice instead:

The terms of social cooperation for a political society are plausibly considered to be just, only if reasonable and rational persons could willingly participate in their maintenance given the assurance that all others are also prepared to do so, and the basic institutional structure could satisfy these principles and be known to do so.

This principle does not seem self-defeating, either. At no point does this readiness to comply with principles of political society apply to this condition itself, nor does rejecting this test for justice in any way imply rejecting the principles of justice. It also seems as if this principle adequately captures the idea of acceptability as I have understood it—that is, requiring only that reasonable and rational persons *could* accept a specific decision and not that they *must* accept it, or could not reject it, or similar. This formulation of the idea of the well-ordered society also includes a reciprocity condition: not one that exhausts the idea of reciprocity, but nonetheless one that states that willing participation is only expected (under ideal conditions) if all others are also prepared to participate in the maintenance of the principles with all the burdens and benefits that come with them.

Thus, it seems as if Wall's argument becomes stronger if one detaches it from the self-defeat argument and considers the idea of public reason as its target, rather than merely the liberal principle of legitimacy. Interpreted as such, Wall's claim is that these ideas, in any form abstract enough for an overlapping consensus to take shape around them, are *too* indeterminate to yield anything of any substance, and that

as soon as these ideas are given content, they become too controversial. In what follows, I interpret Wall's two primary arguments that he gives in support of the self-defeat objection from this new angle. The first takes issue with the grounding of the idea of acceptability in deeply and widely held values found in the public political culture of democratic societies. The second targets the idea that it is only to persons who share these commitments that the exercise of political power must be justified. I will engage with each in turn, arguing that although the argument is made stronger by the new angle outlined above, it still does not apply to Rawls's political liberalism. However, Wall raises important concerns about political liberalism and public justification that must be taken into consideration.

## The Indeterminacy of the Reasonable

Wall suggests that Rawls is committed to the idea that one must start from certain stipulated commitments found in, and fundamental to, the political culture of modern democratic societies.<sup>262</sup> As Wall explains, political liberals in general and Rawls in particular have tried to ground the idea of public justification on the assumption of a strong and general commitment to a particular understanding of respect, according to which it is wrong to coerce someone unless they can be given a reasonably acceptable justification.<sup>263</sup> Recall Wall's interpretation of the justification of the requirement that political power be acceptable to reasonable and rational persons. The first premise states the assumption that it is a shared commitment in modern democratic societies that people should be treated in ways that can be justified to them. The second premise expresses an inference from this assumption to the conclusion that political power should only be exercised in such ways that could be justified to them. It is not obviously the case that this understanding of respect *is* widely and deeply held in contemporary democratic societies,<sup>264</sup> and even if it is, "[t]he fact that a value commitment is deeply

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<sup>262</sup> Wall, "Is Public Justification Self-Defeating?", p. 390. This is what Wall, in "The Pure Theory of Public Justification", pp. 210ff., calls the combined indexing proposal. The justification of the exercise of political power is justified to persons with particular stipulated commitments that are also specified to be deeply held beliefs.

<sup>263</sup> Wall, "Is Public Justification Self-Defeating?", p. 390.

<sup>264</sup> Wall, *op. cit.*, p. 390.



held tells us nothing about how rational the person is in affirming it.”<sup>265</sup> In other words, Wall claims both that the first premise is false and that the inference expressed in the second premise is bad.

Against (1), Wall argues that the understanding of respect as requiring reasonably acceptable justifications is a controversial position. To many persons, he points out, treating others with respect means “treating them as they ought to be treated,” but the Kantian conception turns things around so that treating people correctly means treating them with respect.<sup>266</sup> The two views differ to the degree that in the former case, “respect” is defined by the meaning of right treatment (according to this particular worldview), whereas in the latter case, respect has determinate content that defines what it means to treat others rightly. Since the first view too is “clearly a reasonable one”,<sup>267</sup> the Kantian account of respect is susceptible to reasonable disagreement.<sup>268</sup>

This is an important point, but not well made. Wall overstates the impact of the different places that the concept of respect is awarded in normative theories, for one could put the Kantian point in Wall’s preferred terms without any change in meaning. For example: one could agree with Wall that treating someone with respect means treating them justly, and believe that treating someone justly means not coercing them unless one can offer them a justification they could reasonably accept.<sup>269</sup> It seems to me that the real controversy here is not so much a question about how to understand respect, but rather a question about how to understand the relation between the right and the good—the priority of the one over the other. I shall try to make this point a bit clearer. As a perfectionist, Wall believes that it is perfectly fine to exercise political power in ways that rely on some substantive conceptions of the good human life in order to eliminate choices that would be bad for citizens (given some determinate theory of the good). It is not necessary (although it is desirable) that this exercise of political power be justifiable

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<sup>265</sup> Wall, “The Pure Theory of Public Justification”, p. 213.

<sup>266</sup> Wall, Steven: “Perfectionism, Reasonableness, and Respect”, *Political Theory*, Vol. 42, No. 4, August 2014, p. 473.

<sup>267</sup> Wall, “Is Public Justification Self-Defeating?”, p. 390.

<sup>268</sup> Of course, whether Wall’s conception of respect is clearly reasonable depends on one’s notion of reasonableness.

<sup>269</sup> There is of course also the difference that “respect means treating others justly” allows for many different kinds of substantive conceptions of respect, whereas “respect means to act so as to never treat others merely as a means but always also as an end in themselves” is much narrower and will conflict with some other substantive conceptions.

to them.<sup>270</sup> As Rawls has noted, teleological ethics equates the right with the good, so treating citizens as they ought to be treated might involve coercively dissuading persons from doing some things that go contrary to some idea of human flourishing, merely for the reason that those things are incompatible with such an ideal. That is, the state might take coercive measures for which there is no justification available that each person subjected to the exercise of political power can accept, not even under sufficiently idealized circumstances. In deontological ethical traditions (such as the Kantian tradition), however, the right and the good are understood as separate and the right as lexically prior to the good. The result is that some political actions that would further some good are excluded because it would not be right to exercise political power in such a way (to continue with the current example). To justify the exercise of political power, it is not sufficient to show that some action would be good: it must be shown that the action would be right. This is indeed a controversial position.

Against (2) then, Wall argues that whether legitimate exercise of political power must rest on a reasonably acceptable justification ought not to have much to do with whether this conception of respect (or whatever value is at the centre) is widely and deeply held. That is, independently of whether (1) is true, a move is not warranted from that assertion to the conclusion that legitimate exercise of political power relies on such a conception of respect (nor on any other moral commitment). Any relation between the antecedent and the consequent in (2) is likely to be merely incidental. They are not directly related. So, to the extent that Wall's reconstruction of the public justification approach sufficiently resembles Rawls's view, the public justification argument fails.

As I see it, the political culture is not invoked to justify the values from which Rawls constructs his political conception of justice. Political liberalism is not foundationalist, but its values and ideals are justified to the extent that they can form a coherent whole with the rest of the ideas that makes up the theory. The political culture is merely a *source* of ideas. I say "merely" simply to emphasise that the political culture's role is not justificatory. "Merely" should not be taken to indicate that the political culture has no important role to play. I elaborated on this point in the previous chapter. To recapitulate Rawls's view, he supposes that persons of different traditions will, while in the informal

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<sup>270</sup> Wall, "The Pure Theory of Public Justification", p. 223f.

public, and mainly intra-traditionally, I believe, engage with the ideas that are floating around (as a figure of speech) in the overarching culture. They will provide their own justifications and criticisms and under ideal circumstances endorse reasonable ideas. It is important to point out again that this culture does not play a justificatory role. It provides stepping stones as well as obstacles in terms of presuppositions and expectations for our commitments and our reasoning.

This political culture is by no means one that points clearly in any particular direction. Political liberalism, or rather, justice as fairness, rests on liberal values like social cooperation, respect for persons, the freedom and equality of persons, and the fact of reasonable pluralism. Yet this list does not exhaust the ideas of the political culture. For long periods of their development, our societies, even our secularized societies, have been permeated by religious comprehensive ideals. Some societies still are, both in the sense that the majority of citizens strongly identify with a religion, and in the sense that the state is associated with a religious view, sometimes in a vicious way. Of course, this religious permeation has affected the contemporary political culture, and many other factors have, too. One central implication, at least when dealing with actual societies and their non-ideal circumstances, is that often enough, the political culture is not characterized by the values that one would want to build from.

Concerning the commitments of reasonable persons, Quong suggests that they will accept the conception of society as a system of cooperation, the freedom and equality of persons, and the burdens of judgement.<sup>271</sup> This suggestion is not without its problems: while these three ideas will quite surely be acceptable to reasonable persons, one would still be reasonable in rejecting them. There is at least a logical possibility that these ideas are not those that best bring out the meaning of the political values that they are supposed to give expression to, and that there is another set of ideas that does this better. This possibility means

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<sup>271</sup> Quong, *Liberalism Without Perfection*, pp. 138ff. Quong first explains what it means to justify something to someone (op. cit., p. 141-142). On the view that Quong rejects, political liberalism must be justified to *actual* persons in actual societies. In Quong's view, it is not ordinary persons that matter but idealized persons. On his view, therefore, justifiability to persons' background moral beliefs does not mean justifiability to the background moral beliefs of actual persons, but justifiability to the beliefs of reasonable persons. What reasonable persons believe, then, is that society is a system of social cooperation, that persons are free and equal, and that the development of a plurality of reasonable comprehensive worldviews is the long-term outcome of the exercise of human reason under free institutions (op. cit., p. 144).

that reasonable persons can reject the ideas. It is thus problematic to say that unreasonable persons must reject at least one of them as these ideas seem to make the extension of the class of reasonable persons much too narrow, and I believe that any similar criteria must do so as well. The only conclusion is that evaluations cannot be made by applying some straightforward conditions, but that one must proceed on a case-by-case basis from a plausible yet idealized conception of practical reasoning. The problem might appear to be merely analytical, but it is worth being taken seriously because it opens the door to objections like Wall's. Instead of making a list of commitments that one assumes reasonable persons have, one should go deeper. Perhaps one could emphasize, with Rawls, their willingness to engage in practical discourse with others and to propose principles one sincerely believes that other reasonable persons could accept to guide the common cooperative project. Indeed, so on this view, the reasonable comes rather close to being understood in terms of the content of the three ideas, but it would still not be defined by acceptance of them.

Another misunderstanding that seems to influence many of Rawls's critics is a failure to appreciate the difference between what is reasonably acceptable on the one hand and what is reasonably rejectable on the other. Rawls is often understood as equating the two concepts and giving both the much stronger meaning of the latter.<sup>272</sup> As Wall seems to understand Rawls, being reasonably rejectable implies that a value, belief, ideal, or similar can be reasonably rejected if it runs contrary to citizens' deeply held points of view and their desire to determine fair terms of cooperation to regulate their political life.<sup>273</sup> The same goes, I assume, for the exercise of political power. Thus specified, such a value, or, in the case of the exercise of political power, such a political decision, comes very close to being obligatory. This is not to say that holding such a value or making such a political decision simply stands to reason, but rather that, given certain deeply held beliefs and values that members of contemporary democratic societies tend to share, rational and reasonable persons will accept the decision. I want to linger on the difference pointed out above—between what can be reasonably accepted and reasonably rejected—and the related distinction between

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<sup>272</sup> Stout, *Democracy and Tradition*, pp. 68, 70; Wall, "Is Public Justification Self-Defeating?", p. 385.

<sup>273</sup> Wall, *Liberalism, Perfectionism, and Restraint*, p. 39.

what *can* or *could* be accepted (what is acceptable), and what *would* or *will* be accepted, and to explicate the logical relations between them.

Rawls comments on the latter distinction in a lecture on John Locke's conception of political legitimacy. As Rawls explains, for Locke, "[a] political regime is legitimate if and only if it *could* have been contracted into during a rightly-conducted process of historical change".<sup>274</sup> This is not the same as what reasonable and rational persons *would* agree to. The latter way of putting things depends not merely on what is reasonable and rational, but also on all the agreements made prior to this current one. What *would* be contracted to depends on the particular institutional structure of the society, what kinds of legal rules are already in place, and various aspects of the society's culture and legal history. What *could* be accepted by reasonable persons, however, relies only on what is compatible with those persons' reasonableness and rationality, which, assuming that these criteria are not too strongly specified, is open to a number of possible arrangements. It extends first and foremost to such arrangements as are morally obligatory, but also includes such arrangements as are permissible but to which there exist permissible alternatives. Then there are what could and would be *rejected*: again, by reasonable and rational persons. Neither formulation differs much in meaning from its positive counterpart. First, most arrangements that *could* be accepted can also be rejected, so as a condition, this denotes all arrangements that are not obligatory, and also includes such arrangements as *must* be rejected. What reasonable persons *would* reject are simply all those acceptable decisions or arrangements that are excluded considering current arrangements, culture and history. Similarly—adding negations to these sentences—what reasonable persons could *not* reject is equivalent to what they *must* accept, and what they could *not* accept is identical to what they must reject.

The point I wish to make is that it seems as if critics like Stout and Wall interpret Rawls as claiming that what is acceptable to reasonable persons—that is, what reasonable persons *could* accept—is the same as what such persons *must* accept on pain of unreasonableness. I simply do not see any other interpretation that can make sense of their critique. When Stout says that he expects that Rawls has underestimated what

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<sup>274</sup> Rawls, John: *Lectures on the History of Political Philosophy*. Belknap Press, Cambridge, Mass, 2007, p. 128.

can be reasonably rejected because he has underestimated the importance of persons' collateral commitments,<sup>275</sup> he must assume that there is no overlap between what reasonable persons can reject and what they can accept. Wall, in turn, explicitly states that the difference between what can be reasonably accepted and what cannot be reasonably rejected is not important enough to worry about.<sup>276</sup> This misinterpretation is one that gets important things very wrong. Several problems should be noted here. The view that Wall objects to implausibly understands the settled convictions in the political culture as justified simply because they are settled and holds that one cannot depart from these supposedly settled convictions. This is not a plausible view, but nor is it Rawls's.

First, as I have argued just above, Rawls does not think that everyone must prefer the same set of principles of justice. It is necessary that all can accept the principles of justice and be prepared to comply with those principles and with any rules that are enacted and are harmonious with them. But this does not mean that everyone must find the set of principles to be the most just alternatives. There can be other principles that they consider to be better but that could not establish a consensus. Secondly, and quite similarly, I do not think that one should imagine the political culture as made up of already determinate ideas. The conception of equality with which one may begin is a very loose one. The same goes for respect for persons and for social cooperation, and for the other ideas as well. These ideas are then put together and shaped to fit well together. In trying to reach reflective equilibrium, one must try to shape these ideas to match one's intuitions and one's considered judgments, and sometimes it is the intuitions that must be fine-tuned to match the theory. The process is one of trial and error, moving back and forth between intuitions and theory. One might then have to add more ideas or concepts, and the shaping and reshaping resumes. What this means is that two persons who begin with similar sets of political values can end up with two quite different, yet both reasonable political conceptions of justice.

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<sup>275</sup> Stout, *Democracy and Tradition*, p. 70.

<sup>276</sup> Wall, "Is Public Justification Self-Defeating?", p. 385.

## A Justificatory Constituency of Reasonable Persons

Another worry is that the Rawlsian idea of the reasonable person is too exclusive. The liberal principle of legitimacy seems to lead to a conception of political legitimacy according to which the exercise of political power can meet with the assent of persons who have certain liberal background moral beliefs. In the previous section, one of the problems I mentioned was that even reasonable persons could not come to an agreement on what ideas from the political culture should be relied on, and even when they could come to such an agreement, they could not agree on the particular interpretation of the ideas they had agreed to. Here, the problem is instead that it does not seem plausible that only reasonable persons should count.

Consider again Quong's view, in which the justificatory constituency consists of reasonable persons: persons who are committed to the fundamental ideas of political liberalism.<sup>277</sup> Wall objects that the strategy of basing the success of the liberal principle of legitimacy on whether or not persons who are sufficiently moral would accept some particular moral claim is doomed to fail. Although it is a popular strategy, it betrays its moral foundation. That foundation "is the requirement to respect the rational agency of those who are subject to political arrangements", and since "those who do not have the stipulated commitments are persons with rational capacities, they too are owed respect."<sup>278</sup> Thus, respecting the rational capacities of persons cannot mean only to respect those who have certain moral commitments. One should note that this formulation of respect refers to the same Kantian conception as that discussed above, although put in a slightly different way. In respecting someone's rational capacities, one respects their capacities to reason and to make decisions for themselves, which is just what is respected when refraining from exercising coercion where no reasonably acceptable justification is available.

David Enoch clarifies the argument as follows. The main motivation behind the ideal of public reason and the liberal principle of legitimacy is a voluntarist one, although it is an ideal that is sensitive to the unfortunate fact that political societies can never come close to being voluntary: the costs of leaving one's society are much too high. Following this realization, the ambition instead is to ensure that the exercise of

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<sup>277</sup> See p. 155n271 in this thesis.

<sup>278</sup> Wall, "The Pure Theory of Public Justification", p. 212.

political power is public, such that there are good reasons to believe that one's society is organized such that its citizens could freely agree to it, were voluntariness only a realizable aim. But as actual persons in actual societies unanimously agree on nearly nothing, in trying to force agreement one has to resort to some kind of idealization. One common path is to suppose that although some proposal is not acceptable to everyone, all persons *would* accept it were they "fully rational and placed in the right choice situation."<sup>279</sup> Another common way, and the one that brought us to this point, "restricts the set of people to whom the acceptability-requirement applies—perhaps, for instance, what we seek is just the consensus of all the reasonable, or all those adhering to a reasonable comprehensive doctrine."<sup>280</sup> The problem, Enoch notes, is that

[...] a crucial step is missing—for the idealizing move to be legitimate, it has to be shown that the idealization is consistent with the underlying motivations for the view, the considerations that led us down the path of tying the relevant normative phenomena to people and their responses.<sup>281</sup>

As such, Enoch distinguishes between two ways to reach an ideal consensus. On the one hand, persons can accept political arrangements because they are reasonable in the sense that they are fully rational and placed in the right choice situation. I suppose that the argument from the original position is one example of this idealizing strategy. On the other hand, one can try to reach consensus by restricting the set of people whose voices should count: for example by saying that persons are reasonable because they have certain reasonable commitments. This alternative is that which Quong chooses. The problem being that if we care about what persons have to say about the proper exercise of political power (the reason for taking this voluntarist route in the first place), then we cannot idealize away those who are not liberals. To simply exclude some persons from the justificatory constituency does not seem consistent with the underlying idea of equal respect. If this is how the concept of the reasonable person works, then it runs contrary to more fundamental ideas and should be rejected.

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<sup>279</sup> Enoch, "The Disorder of Public Reason", p. 164.

<sup>280</sup> Enoch, op. cit., p. 164.

<sup>281</sup> Enoch, op. cit., p. 165.



Quong calls his theory “the internal view of political liberalism.”<sup>282</sup> The idea is that the justification of the view is directed only to reasonable people. Unreasonable people are excluded from the justificatory constituency, so Quong says himself. As he explains, his “internal view”

[...] presents us with an account of political justification that is appropriate for citizens in a well-ordered liberal society. [...] It is thus a theory of political justification addressed only to citizens who are reasonable: citizens who are willing to propose and abide by fair terms of social cooperation, provided others are likewise willing, and who accept the burdens of judgement and the consequent fact of reasonable pluralism.<sup>283</sup>

This is only a problem, however, if there is actually a corresponding group of unreasonable persons that the state, or anyone else for that matter, is entitled to treat worse than they should treat anyone else. It is not clear to me that employing the idea of the reasonable person as such must have such exclusive implications. It is not as if the introduction of the veil of ignorance in Rawls’s original position, which, in a sense, turns the parties into reasonable and rational persons,<sup>284</sup> automatically creates a corresponding category of unreasonable persons who are thereby excluded from the justificatory constituency simply because they are not given an equal voice. As long as the idea of the reasonable person is treated as purely hypothetical, it is not exclusive. Since no actual society is well-ordered and no actual persons are reasonable in this sense, one must assume that Quong has such a hypothetical society in mind and that he is trying to say something about what things *should*

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<sup>282</sup> Quong, *Liberalism Without Perfection*, pp. 290f

<sup>283</sup> Quong, op. cit., p. 290. One should note that Quong oscillates between an ethical conception of the reasonable where reasonable persons accept the fundamental ideas of political liberalism and a more Rawlsian conception of the reasonable understood as reasonable persons being socially cooperative. Compare his understanding of the reasonable expressed in this quote with that expressed in Quong, op. cit., p. 144.

<sup>284</sup> Indeed, the persons under the veil of ignorance are not strictly speaking reasonable persons, but as I have said in chapter one, the constraints on the parties’ reasoning that the veil of ignorance impose are a representation of the reasonable. In the original position and under the veil of ignorance, the parties are portrayed as merely rational beings who are forced to think reasonably. What the original position does, I think, is that it provides an interpretation of practical reason untouched by the corrupting influence of envy, akrasia, pride, and other moral afflictions that haunt us ordinary persons. In this sense, the original position is also an interpretation of the practical reason of a reasonable person.

be like.<sup>285</sup> This is fair enough and should not raise the concern that political liberalism excludes a particular group of persons, namely, unreasonable persons. Yet one might worry that I am in the wrong here, for if this interpretation of Quong is correct, why should he, or Rawls for that matter, have to say anything about the place of unreasonable persons in their theories? Their discussions of how the state should treat unreasonable persons and stop their unreasonable views from spreading seem quite unnecessary.

To see this, consider Nussbaum's discussion of this same matter. She worries that by including epistemic criteria in his conception of the reasonable, Rawls makes epistemically unreasonable, yet ethically unproblematic views a viable target for the state. I think that Nussbaum's worries are misguided. As Nussbaum argues, the problem with conceptions that employ epistemic standards in understanding what a reasonable person or worldview is, is that they allow the state to criticise or act against doctrines that do not meet those standards. When epistemic standards are involved, the state might criticise or act against ethically harmless views simply because they are epistemically silly.<sup>286</sup> As she states, "[u]nreasonable' doctrines may be denigrated, and the state is permitted, perhaps required, to incorporate principles that denigrate [those doctrines]."<sup>287</sup> Nussbaum is here concerned with non-ideal theory. The state, she continues, must be allowed to criticise those doctrines that endorse slavery, or the oppression of women.

Many things are unclear about Nussbaum's view. For instance, what does "the state" mean in the quote above? Admittedly, I too use "the state" equally haphazardly, and often it works perfectly well, but the current discussion calls for more accuracy. Another question is what it means for the state to "denigrate" a particular view or the behaviour that expresses such a view. "The state" can refer to a system of legal rules, a set of political and legal institutions, a particular territory, a government, a parliament, or public officials. Often it refers to all of these things at the same time. I will consider a few possibilities here. It seems plausible that what Nussbaum has in mind is "the state" as a system of legal rules. If that is the case, then she is wrong in saying that the state could somehow be in the right to "denigrate" other views, even unrea-

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<sup>285</sup> Quong, *op. cit.*, p. 144.

<sup>286</sup> Nussbaum, "Perfectionist Liberalism and Political Liberalism", p. 28.

<sup>287</sup> Nussbaum, *op. cit.*, p. 29.

sonable ones. Of course, a system of legal rules makes certain behaviours illegal, and often enough such behaviours will be connected with or an expression of unreasonable worldviews. Laws against hate speech are one example; anti-discrimination legislation another. It makes sense to call the behaviours that these rules target unreasonable, because, given the background power structures of our contemporary societies, those behaviours are clearly in violation of *any* fair terms of cooperation. Yet not all coercively enforceable rules rule out behaviour that is, on its own, unreasonable, and one might even expect that in many cases it is the enactment of a legal rule that introduces the possibility of being unreasonable where the category did not exist before. Certain traffic regulations are could work as an example. Driving at a speed of, say, 100 km/h is unproblematic on many roads, but the speed limit could be set to a lower speed making it illegal to drive faster. Although violating traffic regulations might itself be considered unreasonable, speed limits do not target obviously unreasonable behaviour. Perhaps that is sufficient to say that this system of rules “denigrates” the behaviour that it renders illegal, but I am not so sure that that is a plausible understanding of what it means to denigrate someone.

This reasoning applies even if “the state” does not refer to a system of rules but to the parliament or other legislative assembly. Just as a system of rules does not take aim at unreasonable behaviour, nor do those people that make those rules. There might be many reasons to enact legal rules that are not aimed at containing unreasonable behaviour, although they are concerned with ensuring cooperation in different ways.

Perhaps “the state” should refer to the government instead? Could the government be required to criticise unreasonable views and behaviour? Well, certainly it could. However, the government—or, more precisely, the political party or parties currently in government—might also rightly criticise views that are not unreasonable too, and might seek to legislate against behaviour that is not unreasonable. Consider the discussion of physician-assisted suicide in chapter one, for instance. Members of parliament, representatives of the government, and citizens alike must be able to argue with one another about what to do. Yet, as I have said, neither alternative seems to be in violation of the terms of cooperation and thus neither position is unreasonable.

Another aspect that requires some clarification is what Nussbaum means by denigration. Sometimes it seems that she simply means “criticising”. If that is the case, however, I cannot see how she can be right. For as just stated, citizens, just like members of parliament, and the government must be able to argue with one another and criticise each other for the views they hold. This is particularly important under non-ideal circumstances. And again, it must be possible to legislate in such a way that behaviour that is not unreasonable is made illegal: see the previous discussions. Another possible meaning of “to denigrate” is to insult or belittle. This meaning does not help Nussbaum, however, in any way. I cannot see that the state, whatever “the state” denotes, could rightly denigrate another view. It thus seems to me that that unreasonableness has no important role to play in legislative decisions and other state action. It seems therefore as if Nussbaum need not worry that epistemically unreasonable views would be denigrated simply because of their unreasonableness.

## Conclusion

In this chapter, I have answered the question of how one should understand Wall’s challenge against Rawls’s theory of public reason. Wall’s argument focuses on Rawls’s liberal principle of legitimacy and claims that it is self-defeating because it raises conditions for the legitimate exercise of political power that inevitably end up applying to itself as well. I respond that this argument misinterprets the liberal principle of legitimacy. Properly understood, the principle is not vulnerable to this argument. There seem, however, to be two different arguments that are implicit in the self-defeat argument but that can be reconstructed as arguments in their own right. These two arguments seem to be stronger when disconnected from the claim to self-defeat. It turns out, however, that Rawls’s conception of the liberal principle is vulnerable to neither argument, although other accounts of political liberalism clearly are.

The first argument claims that Rawls grounds his political liberalism on ideas widely and deeply held in the political culture of democratic societies without providing them with sufficient justification. As it stands, Wall claims that this strategy creates three different issues for Rawls’s view. First, any values around which a consensus could form are not specific enough to have any determinate content, and any values

that have determinate content are too controversial. Secondly, simply saying that some moral commitments are part of the political culture of political societies does not mean that the legitimate exercise of political power must be compatible with these values. That these values should guide the exercise of political power must be justified. Rawls does not do this. Finally, the requirement that the exercise of political power be reasonably acceptable, as it specifies what is morally obligatory, is much too strong. I argue that all three claims misunderstand Rawls's view, although they seemingly apply to other contractarian conceptions or political liberalism.

The first issue is countered by Rawls's suggestion that one should *start* from loose descriptions of our political values that reasonable comprehensive views could all converge on. These values are then to be given more determinate content as the political conception of justice is developed. How these values come to be understood depends on what other values are added to the conception and how they are specified. The political conception is developed in a process of reflective equilibrium, moving back and forth between and shaping and reshaping the values until the conceptions stabilize in a more or less coherent theory. The second issue does not take into consideration that the political culture is not invoked by Rawls to *justify* political liberalism, but works merely as a source of values. These are values, however, thought to be suitable to organize society. They are then justified in the process of reflective equilibrium. Finally, on Rawls's view, what is reasonably acceptable is not equal to other formulations of the acceptability requirement, such as the much stronger formulation "not reasonable to reject." Rawls's requirement does not imply that all citizens must believe that a particular political decision is the right decision to be reasonable, but only that they be prepared to accept that decision as legitimate.

Turning to the second argument, it suggests that by requiring that reasonable persons accept the exercise of political power as legitimate, unreasonable persons are undemocratically and illiberally excluded. Of course, in a democratic society, the voices of unreasonable citizens should count as well, in virtue of their being citizens. This argument, too, misunderstands Rawls's view. First, relying on an idealization is not in itself a disqualifier. To ask what would be acceptable to persons unburdened by the shortcomings of real-world practical reason is not problematic in itself; it depends on the particular idealization—how it construes their reason. For Rawls, the role of the idea of the reasonable

is to test whether particular principles could win the assent of human reason unburdened by the many afflictions to which reason is subjected under non-ideal conditions. In this role, the reasonable is not vulnerable to the above critique. Unreasonable persons are not excluded in any sense that matters; the idea of the unreasonable should have no important theoretical role to play at all.

## Chapter 5: A Revised Theory of Public Reason

In this thesis I have set out to critically analyse John Rawls's theory of public reason and three critics who have challenged this theory in different ways, all to the effect that Rawls's theory is not as public as he claims it is. These challenges provide strong reasons to doubt that public reason as Rawls understands it makes for a plausible theory. Neutrality often turns out to be the status quo in disguise; the duty of civility is biased against religious worldviews; and the liberal principle of legitimacy, it has been claimed, is self-defeating. Given this problem, I have formulated three purposes in the form of three questions that I seek to answer. Firstly, *how should one understand Rawls's theory of public reason and its relation to political liberalism?* Secondly, *how should one understand the challenges that the three critics pose to Rawls's understanding of public reason?* Thirdly, *how could a plausible theory of public reason be formulated?*

I have proceeded to analyse and interpret Rawls's theory of public reason and its relation to social cooperation and political liberalism. I have similarly analysed the critique directed at each component, considering the strength and the relevance of each argument and interpreting them in such a way that they are as strong as they possibly can be. I have tested the arguments and to what extent Rawls's theory is vulnerable to them. Considering these arguments and their effects on Rawls's theory, I will now try to develop a theory of public reason that better resists the arguments posed by these three critics.

I shall briefly present the answer to my three questions as it stands thus far. I have suggested that the idea of public reason be structured along four "points of elaboration". These are matters on which any theory of public reason must elaborate. The first point is what it means for a reason—a way of formulating and prioritizing ends—to be public. According to Rawls, there are three aspects to a reason's publicness: it

should be distributed equally between the reason of the society's members as a corporate body; it should be oriented towards fair social cooperation only; and it should express the content of a political conception of justice. The three components of public reason—neutrality, the duty of civility, and the liberal principle of legitimacy—contribute to explaining how these three aspects of a reason's publicness should be understood. First, it seems that all three aspects of publicness must be neutral. If political power lies in the hands of a society's members to an equal degree, then political power cannot be exercised in a way that is biased either for or against particular doctrines. Similarly, when political power is directed towards no other final end than fair cooperation, non-neutral ends are ruled out, and in being required to express the content of a political conception of justice, the exercise of political power can only be justified by neutral reasons. Secondly, the liberal principle of legitimacy requires that political power be acceptable to reasonable and rational persons, which locates political power in the hands of the citizens. Thirdly, the duty of civility imposes a moral duty to rely only on political values and in this sense public reason expresses the content of a political conception of justice.

The second point of elaboration is the bounds of public reason. As I put it in the introduction, this means the questions that public reason should be concerned with and who falls under its constraints. According to Rawls, public reason applies to matters of constitutional essentials and basic justice, meaning such supremely fundamental questions as the distribution of basic liberties, the form of government, and the shape of decision-making procedures. Public reason also applies to the general principles for the distribution of social and economic distribution (these being questions of basic justice). It is, then, primarily the state and its employees that should comply with public reason. Yet as public reason is public partly in virtue of its placing political power in the hands of the citizens, its constraints inevitably extend to ordinary citizens as well.

The third point of elaboration is the relation between public reason, its components, and its rationale—the reasons for exercising political power in harmony with the bounds of public reason. This rationale, I have argued, is expressed most clearly by political liberalism and its idea of social cooperation. This relationship is not difficult to account for, because society is a system of cooperation when the shape of society lies in the hands of the citizens. Therefore, explaining what makes



a reason public automatically connects it to the justifying rationale of social cooperation. The fourth point of elaboration, in turn, I have said I will not focus explicitly on. Yet, of course, elaborating on the three first points will to some extent develop this final one as well.

Returning to the three components of public reason, I turn first to Laborde's analysis and critique of the criterion of neutrality. Laborde's objections focus on the stiffness and narrowmindedness of the standard egalitarian liberal analyses of neutrality. The problems with neutrality arise because its objects—religion and its analogues—are so multifaceted that they cannot be properly grasped by these one-dimensional approaches to neutrality. As such, Laborde proposes that the legal category of religion be “disaggregated” into its constituent parts and paired with an analysis of what neutrality requires in this specific context. I have argued that Laborde's response is insufficient. Although it improves on egalitarian liberal conceptions of neutrality, her alternative theory raises some additional concerns. In this chapter, I argue that one does best to abandon the concept of neutrality entirely.

The duty of civility, Stout argues, is problematic because its constraints impose unjustifiably disproportionate demands on religious citizens. Moreover, the search for principles—terms of cooperation—that all citizens can accept is both naïve and misguided: there are no such principles that are acceptable to all, nor is searching for them how one should go about establishing fair political relations between citizens. Stout is also critical of the bounds of public reason, criticizing primarily the distinction between, on the one hand, questions regarding constitutional essentials and basic justice, and on the other, questions of lesser importance, for it is on the former questions, he says, that a person's religion (or for that matter secular worldview) speaks the loudest. Stout also explicitly targets Rawls's conception of social cooperation: public reason's connection to the rationale that should be justifying it. The problem, according to Stout, is the conception's contractarian structure: he thinks that social relations cannot be specified in a contract, even a hypothetical contract, but must develop dynamically by those involved in social interactions with one another. I have largely agreed with Stout about the bounds of public reason. Yet I believe that there are good reasons to maintain the duty of civility, although I think it can be made more permissive. In this chapter, I set out to propose a revised account of the bounds of public reason and a less strict conception of the duty

of civility. This account should be able to meet the arguments that Stout makes.

According to Wall, the liberal principle of legitimacy is self-defeating. The conditions that it raises for the exercise of political power to qualify as legitimate inevitably end up applying to the principle itself in virtue of invoking a reconciliatory rationale. It seems, however, that no reconciliation is possible unless not only the exercise of political power but also the principle itself fit within this rationale. Unfortunately, the principle does not fit and it cannot therefore help reconciling citizens to the exercise of political power that they disagree with. I argue that Wall's argument fails. Wall's analysis of Rawls' view does not hold, and his argument depends on this analysis. Nonetheless, it seems that Wall's argument can be reinterpreted omitting the claim to self-defeat, in which case the argument becomes stronger. Getting rid of the claim to self-defeat reveals two arguments: one that takes issue with Rawls's appeal to the political culture and another one that turns on the treatment of unreasonable persons. I have found both arguments to be lacking persuasiveness. Thus, I argue that the liberal principle of legitimacy should be endorsed without any revisions.

## Fair Social Cooperation Between Free and Equal Persons

In the introduction to the thesis, I said that several structural features of persons and societies are needed. These are certain philosophically important aspects that help focus the discussions. Regarding societies, I mentioned, firstly, their culture, in particular their political culture; secondly, some idea about coordinating the behaviour of the society's members; and thirdly, a way to test whether this coordination of behaviour is proper. For Rawls, these structural features are made up of a political culture characterized by reasonable pluralism; society as a fair system of social cooperation; and the well-ordered society. The function of the political culture is as a *source* of ideas from which the political conception of justice can take form. This political culture is a heterogeneous culture that includes a variety of ideas and concepts to cling to. Some of these ideas are perhaps best ignored because they are not conducive but rather contrary to justice, whereas others could be formed

into a reasonable conception of justice. These ideas and concepts generally belong to different traditions of thought and different worldviews (understood as particular interpretations of these traditions). Not only is it the case that different concepts belong to different traditions or worldviews, but also that the same concept may be developed in quite different ways.

It is important to distinguish between the political culture and the background culture. The background culture is more or less the personal sphere and the informal public, where citizens lead their personal lives and where they meet their fellow citizens. These spheres can be political, of course, in that persons can be politically interested and involved. They might read the newspapers and discuss the state of the world and of their societies with their families and friends. They might participate in political events like protests, campaigns, or debates. They might be doctoral students who write about political philosophy. But this is not what Rawls means by the political culture. Political culture, for Rawls, is the culture of a society's institutions, including the procedures for making decisions, and to some extent, the values that make their way into these procedures. This distinction is not waterproof. Debates in the informal public and indeed even in the personal sphere sometimes make it into the political culture. This is just as it should be, however.

When Rawls locates the idea of society as a system of social cooperation in the political culture and claims that this idea of cooperation is widely and deeply held in democratic societies, he cannot mean that precisely this idea that he develops is shared by citizens and present in an actual state's democratic practice, for no actual state is a system of social cooperation in the strong sense that Rawls has in mind. Rather, Rawls takes hold of an aspect, a feature, of democratic practice, puts it in the centre, and develops it. He does the same for other ideas like equality and liberty and, soon enough, he has arrived at his theory: justice as fairness.

The idea of society as a system of social cooperation is, as Rawls puts it, the central organizing idea of justice as fairness. The other fundamental ideas must conform to its demands in the search for reflective equilibrium. This idea involves cooperation as a means to social coordination. It means essentially that political power lies in the hands of the citizens. It is the members of a society who decide what principles, what terms of cooperation, should organize it. As such, these principles need not conform to the demands of God, nor must they reflect a moral

reality, unless the citizens are convinced this is what is required. Yet even when citizens are so convinced, the reason to exercise power in accordance with God or a moral reality should not be to obey these authorities, but rather because this is how citizens think political power should be exercised. Society is not a system of cooperation unless all citizens share equally in the exercise of political power and that political power is exercised reciprocally, such that burdens and benefits are distributed in collectively agreed-upon ways and citizens have adequate space to advance their own good. Doing their part, from the point of view of society, must not take up all their time and energy.

Citizens in turn are understood as they must be, given this idea of social cooperation. In the introduction, I mentioned, drawing on Forst, some different ways that humans have been understood and some specific human capacities that have been emphasized in philosophical thought. In developing a *political* conception of the person, one cannot rely on just any such capacities, however, but only those that seem particularly salient from the political point of view, for instance, the capacities necessary for persons to be fully cooperating members of society: the two moral powers. To be sure, these must not contradict a plausible conception of human persons from the point of view of psychology and other disciplines concerned with studying our human species, but for now, we are interested not in humans as such, but in whether the conception of political society is feasible given a particular conception of persons. Given that society is considered a system of social cooperation, one must choose capacities that are implicit in the idea of cooperation. Persons cooperate, it is assumed, because they have ends that they want to pursue and they can pursue them better in concert with others than in competition or in conflict with them. However, cooperation also requires that persons be prepared to abstain from pursuing some ends or to weaken some claims when these are incompatible with cooperation or others' pursuits.

Accordingly, Rawls formulates two "moral powers", as he calls them. Persons have a capacity for having a conception of the good that enables them to define and prioritize ends that they will want to pursue. These ends should be understood in the broadest possible sense, as whatever it is that one wants in one's life that is part of one's conception of the good. In virtue of having this capacity, persons are taken to be self-authenticating sources of valid claims, meaning that the ends that

they want to realize are taken as important in their own right and persons are given the responsibility for the realization of these ends. Rawls's second moral power is a capacity for having a sense of justice. Persons recognize they are not the only ones who have ends they want to realize, nor the only ones whose ends and claims are important in their own right.

The final fundamental idea, that of the well-ordered society, invokes the acceptability requirement as a necessary condition for the terms of social cooperation and explains how the two previous conceptions—of society and of persons—should fit together. In a well-ordered society, citizens are prepared to comply with the terms of cooperation given the guarantee that all others will as well. They believe in the basic institutional structure to satisfy these same terms of cooperation and know that others share in this belief. These requirements are conditions for well-orderedness, because a society that meets them would be stable in a very particular sense. Such a society is, regarding the first condition, regulated by principles that would win the assent of its citizens were they reasonable and rational, such that the citizens would willingly participate in the principles' maintenance. It is also stable in the sense that the principles could be strictly complied with and remain well-ordered. Suppose that initially, social arrangements are fair, but as persons lead their lives in this society, these circumstances begin to change, and they do so in such a way that the fairness of the social arrangement begins to deteriorate. For some principles of justice, this will be the inevitable result when they are allowed to organize society's basic structure over time. Principles that can well-order a society are not only attractive at first glance, such that they can win the assent of its citizens, but also ensure that social arrangements remain fair over time.<sup>288</sup>

From these fundamental ideas, a freestanding conception of justice starts to form. A conception of justice is freestanding when it can be developed without reference to a particular worldview. The idea of social cooperation is central to its being freestanding: conceiving of society as a system of social cooperation means that its principles cannot be grounded in the particular perspectives of a specific worldview or tradition, because the shape of society should lie in the hands of its members. As such, acceptability as a criterion for rightness is invoked as well. How does one expound a conception of justice without relying on any particular worldviews? As with the fundamental ideas, one turns to

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<sup>288</sup> Rawls, *Political Liberalism*, pp. 265-268.

the political culture of one's society. Many of the ideas and concepts one finds in the political culture of a society have entered it from particular worldviews and traditions, but as they have been incorporated into the political culture, into the workings of a society's institutions, these ideas attain a life of their own. So, one takes hold of these ideas—not the specific ideas as they are understood in a particular society but the general concepts—and develops them such that they fit with all the other ideas that the political conception should be made up of. The institutional focus is essential. The terms of cooperation are not concerned with developing citizens' characters nor their personal relations. The focus of a political conception of justice is the society's basic institutional structure and it seeks to regulate the conduct of these institutions as the primary subject of justice.

Stout takes issue with this conception of social cooperation because, he says, Rawls tries to settle contractually what must develop dialogically and dynamically, and by focusing on the framework, the institutional structure, Rawls forgets the society's inner ethical life. Further, this idea of a freestanding conception is deeply connected to the search for common ground, which, in turn, weakens the ethical life of societies. We are deprived of knowledge of other points of view, and thus our moral thinking and language is narrowed along with our understanding of other persons and how they reason about matters political and moral. This, too, is deeply problematic. I see what Stout is going for, and on the latter point I have explicitly agreed with him. The general approach is not mine, however.

As Stout sees it, pointing to our discursive practices, society is already a system of cooperation. There is no need to specify from above a normative framework coordinating this cooperative endeavour. People will work it out by themselves; the rules of the game will develop organically from within the social practices themselves. In chapter three, I worried about conventionalism regarding Stout's conception, because certainly it is true that rules concerning social interaction will develop as persons go about interacting with one another. In this sense, the terms of cooperation need not be settled. There is no guarantee, however, that these rules will be morally appropriate. Stout proposes two solutions. First, sincere and respectful discourse is discourse in which participants treat one another as equals, are personally involved themselves, and treat one another as individual participants to whom they have justificatory obligations. This proposal imposes, one might

say, procedural constraints on the discourse, ensuring a fair outcome. As long as one observes these constraints one can go about deliberating from one's own point of view: expressing one's own view and engaging with others from within that position. Secondly, social practices will develop rules conducive to their ends. The worry here is how to determine which ends a practice should be conducive to, and one can only hope that these ends yield rules characterized by fairness and respect. This concern is somewhat mitigated by the discursive constraints imposed by the first proposal. If equal standing is required, some ends are eliminated from the purview of legitimacy. Supposing that the development of a social practice is coordinated discursively, then no end can be legitimately pursued that is not consonant with the constraint to treat others as equals, and no rules can be established unless they are similarly consonant.

Stout says that this practice should be allowed to develop dynamically and discursively, a process that he thinks is threatened by Rawls's contractarianism. As Stout puts it, the social practice of democracy should not be contractually settled. I do not believe that such an analysis gets things entirely right. It is not the social practice, something that might be located in the background culture of a society, that Rawls is interested in settling contractually. He is interested in contractually formalizing the norms implicit in the social practice and in developing institutions to regulate these norms. Moreover, settling the terms of cooperation contractually means only to impose acceptability as a normative constraint and to expect due compliance with the principles assented to. Now, I do not believe that understanding the basic structure of society as a system of social cooperation rules out understanding the ethical life of a democracy in similar terms. Charles Larmore, for instance, complements his theory of political legitimacy, not with a theory of justice about which there is too much controversy, but with a minimal morality centred around the value of respect. It is this value, he points out, that makes us engage cooperatively with one another in the first place.<sup>289</sup> It is because citizens respect one another—perhaps even *to the degree* that citizens respect one another—that democracy is possible at all. Stout's discursive constraints, one might say, spell out this idea: Stout's view explains what is involved in treating others respectfully as persons engage over the bounds of tradition. It is not clear, however, that the same

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<sup>289</sup> Larmore, *What Is Political Philosophy?*, pp. 153, 157.

constraints should regulate both the informal coordination of our cooperative engagements in our social life and the formal constraints that regulate political decision-making procedures.

As such, I do not believe that the idea of the social contract, and settling the terms of cooperation contractually, stands contrary to allowing these terms to develop dynamically. As I see it, the terms of cooperation are developed dynamically because, although settled, they are drawn from the informal public sphere which *is* developed dynamically, into the political culture and there worked into a political conception of justice. It is not possible to describe this process in detail without describing the political system of a specific society, for the way in which the endorsement of particular values is expressed necessarily differs between societies (as, of course, do the values themselves). Rawls mentions the Preamble to the Constitution and Lincoln's Gettysburg Address as expressions of the culture of American political institutions, as they deeply influence the way these political institutions work.<sup>290</sup>

I have now presented the idea of social cooperation between free and equal persons that I, following Rawls, will be working with. I have also, I believe, defended it against the arguments directed at it that I have reviewed in this thesis. To the extent that I will consider further arguments against social cooperation, I have deemed those arguments to be part of arguments against the components of public reason. In the next section, I shall try to explain how the idea of cooperation between free and equal persons and the idea of the well-ordered society make up a point of view from which we can evaluate principles, judgements, and decisions as well as reasons and arguments for those things. This is what I have called the political point of view, and from this point of view, we deem principles, judgements or decisions to be not true or correct but *politically reasonable*.

## The Politically Reasonable

Many pages of this thesis have been committed to analysing the concept of the reasonable. In Rawls's works, the idea of the reasonable is a particularly difficult one to decipher because it is supposed to apply to a variety of things: persons, beliefs, values, principles, conceptions of justice, traditions, and worldviews. Interpretations of Rawls's conception

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<sup>290</sup> Rawls, *Lectures on the History of Political Philosophy*, p. 6.



of the reasonable, just like attempts to develop alternative conceptions, often fall into one of two categories: they are either an ethical view or an epistemic view of what it means to be reasonable. On the ethical views, reasonable persons have certain moral commitments in virtue of which they endorse the moral equality of all persons.<sup>291</sup> Here, the reasonable is extended to principles and worldviews and judgements more generally, in the sense that principles and worldviews are reasonable because they are assented to by reasonable persons, and judgements are reasonable because reasonable persons make those judgements.

Wall argues that the ethical view must suppose that respect for persons or the fundamental ideas of political liberalism is non-controversial and actually endorsed by most persons in democratic societies. This, he points out, is not a plausible assumption. To be widely endorsed, these commitments must be so loosely specified that they lack substance, because if they are given determinate content they will not be able to be widely shared by the citizenry. I have objected to Wall's argument, arguing that it fails for two reasons. The first reason is that Wall misunderstands the role of the political culture. One should start from very abstract ideas in the political culture that are supported by the main traditions of thought and conceived of in different ways by particular worldviews. These ideas should be developed into *political* ideas that could be endorsed independently of tradition or worldview (given that the worldviews and traditions are reasonable, of course). The second reason is that the particular ideas and values, although acceptable to all, need not be those that all prefer and consider the best ideas or values. The requirement is only that all *could* accept them.

The main problem with this conception of the reasonable is that it renders the idea of the reasonable superfluous. It states that those who endorse a given set of ideas are reasonable. Either they affirm a particular conception of respect for persons, as Nussbaum argues that reasonable persons do, or they accept the idea of society as a fair system of cooperation, the freedom and equality of persons, and the burdens of judgement, as Quong proposes. In either case, the concept of the reasonable becomes something of a detour without any real purpose, be-

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<sup>291</sup> For some ethical conceptions of the reasonable, see: Boettcher, James: "What is Reasonableness?", *Philosophy and Social Criticism*, Vol. 30. Nos. 5-6. September 2004; Nussbaum, "Perfectionist Liberalism and Political Liberalism", p. 33; and Quong, *Liberalism Without Perfection*, p. 166.

cause starting with those commitments one need only ask what principles, worldviews, and judgements are compatible with them. “The reasonable” becomes only a label that does not do any philosophical work. I believe this to be a sufficient reason to reject the purely ethical conception of the reasonable.

What about the epistemic conceptions of the reasonable person? Both Stout and Wall provide an analysis of the reasonable person that emphasizes their capacities to reason rather than their proneness to endorse liberal values. As Stout says, reasonable persons can be expected to act in accordance with the epistemic responsibilities imposed on them by their epistemic context. On Wall’s view, reasonable persons excel at dealing with evidence. They know how to interpret information, weighing different considerations against each other and drawing correct conclusions.<sup>292</sup> Persons are reasonable, not necessarily because they believe what is true, but because they comport themselves in such a way that they only believe what they are justified in believing. If they believe something that turns out to be false, it is through no fault of their own.

My central issue with epistemic conceptions of the reasonable is simply that they do not do what I want the concept of the reasonable to be doing. Epistemic conceptions construe reasonable persons as persons that respond correctly to reasons. They believe what they are justified in believing, reject what they are justified in rejecting, and otherwise abstain from passing judgement, and they come to their conclusions through appropriate reasoning processes. To justify a decision to an epistemically reasonable person means to give arguments for that decision’s correctness. Part of the problem that political liberalism is a response to, is the formation of just and stable political relations between citizens divided by different worldviews. As such, what I want the reasonable to be doing is explain when it is proper to conform to the demands of a political decision and let one’s behaviour be regulated by it.

Larmore’s view is a good illustration of this difference. He understands the reasonable epistemically, to account for the fact that intelligent persons can reach different conclusions about many things, both practical and theoretical—in other words, for the existence of reasonable disagreements. These disagreements are not reasonable because

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<sup>292</sup> Steven Wall, “The Pure Theory of Public Justification”, p. 215ff.

they are somehow more readily reconcilable than other kinds of disagreements are. They are reasonable disagreements because each of the disagreeing parties is justified in the position they hold and defend. It is not possible to explain away the disagreement by saying that only one party can be right and the others must have made a mistake or are not very competent reasoners. Of course, only one party *can* be right, and surely, it might be the case that some wrong turns has been taken, but as things stand, there is no way to say who took the right turns. In this sense, the epistemic conception of the reasonable seems to be better at keeping persons apart than at bringing them together.

One could surely object that as reasonable persons are prone to revising their views in light of sufficient evidence, epistemic reconciliation can be achieved only by providing a good enough argument to sufficiently epistemically responsible persons. The problem with this response is that it misses the point of the idea of reasonable disagreement. The point is that at the particular time of the disagreement, there exist no argument whose force all reasonable persons would have to acknowledge and thus change their minds. Instead, Larmore invokes the idea of respect for persons as a moral idea that stands independently of the idea of the reasonable, although it surely resembles the idea of the reasonable that Nussbaum endorses. Now, *this*—the idea of respect—is what helps reconcile persons and what explains what persons should allow themselves to be reconciled with. As Larmore explains, it is because persons respect one another that they seek to settle their differences dialogically and democratically rather than forcing one another to endorse a particular comprehensive view. It is because persons respect their fellow citizens that they are ready to accept as legitimate decisions that they do not believe to be right and to go on to criticize those decisions rather than oppose them with force.<sup>293</sup> At least as long as the decisions are compatible with this idea of respect for persons.

On Wall's epistemic account, however, two alternatives are available as a solution to the reasonable disagreement above. First, one might try to resolve the stalemate by making the reasonable persons currently in disagreement change their minds. That is, one can try to adduce an argument to make them see that they were wrong to oppose the decision and that they should instead endorse it. However, to determine a decision's rightness or wrongness, one has to move beyond the political domain, one cannot rely on the values of political justice, and the values

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<sup>293</sup> Larmore, *What Is Political Philosophy*, pp. 153, 157.

of public reason, to convince reasonable persons of a decision's *correctness*. In attempting this, one has to engage their whole comprehensive view. On the other hand, one might simply go through with the decision even though some does not accept it, this is legitimate it seems as long as the decision is in accordance with a *correct* theory of justice—one that is conducive to human flourishing, that is.<sup>294</sup>

This discussion raises two points. First, the relevant sense of acceptance for reconciliation is that reconciliation should not have to be brought about by persuasion. Second, the idea of the reasonable as applied to persons therefore should be understood as their readiness to accept as legitimate those decisions that are compatible with reasonable terms of cooperation. It follows that reasonable principles and decisions cannot be stipulated to mean the decisions or principles that reasonable persons accept, for such a view would be viciously circular. That is, if reasonable persons should accept reasonable terms of cooperation (and decisions compatible with these), and those principles and decisions are reasonable when assented to by reasonable persons, then we are caught in a circle. As such, I shall be proposing an entirely different conception of the reasonable: one that is *constructed* from the three fundamental ideas of political liberalism.

I believe that the conception of the reasonable should be located somewhere in between a conception of persons as citizens (a political conception of persons, that is); a conception of society (as a system of social cooperation, preferably); and some idea about when this society is working properly (when it is well-ordered, and consequently stable for the right reasons). These conceptions must, of course, make sense on their own. A political conception of the person must, although idealized, say something about actual persons. It should not be a full philosophical anthropology, of course, but need only spell out those aspects of persons actualized by their participation in public life. To be able to do this, a conception of society is necessary that lays out the principles for our living together. A conception of society is not yet a conception of justice, but it specifies what a conception of justice should be doing. In political liberalism, it should lay out the terms of social cooperation.

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<sup>294</sup> Wall, "The Pure Theory of Public Justification", pp. 223f; Wall, "Perfectionism, Reasonableness, and Respect", pp. 471, 478-479. It seems that Wall believes that treating persons as reasons-responsive agents capable of changing their mind in view of good reasons is sufficient for treating them respectfully. Thus, sometimes, when the pursuit of justice requires, the state is right to pursue, say, perfectionist policies for comprehensive reasons. Wall is not, that is, ready to pay the costs of political liberalism.

Lastly, the well-ordered society is an idea about how to evaluate the fairness of a conception of justice without measuring it against other standards of justice. In political liberalism (at least the Rawlsian strain), a society is well-ordered—that is, works properly—when citizens could willingly participate in its maintenance and when strict compliance with those terms of cooperation does not undermine the cooperative endeavour. All, of course, given a particular conception of persons.

So, the material for the procedure of construction consists first of the two moral powers: that is, the capacity to have, form, pursue, and revise ends, and the capacity to see others as persons in their own right, having ends and interests they want to realize that *prima facie* weigh the same as one's own ends in the overall balance of reasons. Society, then, is regarded as a system of social cooperation. This means that the shape of society lies in the hands of the citizens, for if it did not, it would not be a system of cooperation but of centrally coordinated action. Such a system could of course still involve social cooperation, but it would not *be* a system for social cooperation. Next, we need to propose success conditions fit for a system of social cooperation: a system for social cooperation is well-ordered if and only if the terms of cooperation could win the assent of reasonable persons, and if the terms of cooperation, when strictly complied, with do not undermine itself. I have suggested that these three fundamental ideas make up a political point of view, and from this point of view, principles, persons, and success conditions can be judged to be reasonable.

This suggestion means, for instance, that the reasonable as applied to persons is not understood as a willingness to accept certain ethical commitments, nor specifically as general epistemic responsibility. Following from the two capacities, persons are reasonable when they are ready to propose and to comply with principles that they expect that all others can accept considering the implications for their ends and interests.<sup>295</sup> This conception of the reasonable makes use of both capacities. First, the focus on persons' ends and interests draws on persons' capacity for a conception of the good. Secondly, the idea that persons care to accept only those principles that they expect to be acceptable to others given *their* ends and interests generalizes this concern in accordance with their capacity for a sense of justice. One could add that reasonable

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<sup>295</sup> Compare to Jürgen Habermas's "universality principle". See Habermas, Jürgen: "Discourse Ethics: Notes on a Programme for Philosophical Justification", *Moral Consciousness and Communicative Action*, Polity Press, Cambridge, Mass, 1990, p. 65.

persons also have the intellectual capacities to understand and to apply, and to generally reason from, the terms of cooperation. This conception of the reasonable as applied to persons thus fits well with the idea of social cooperation that has been suggested. It places the exercise of political power in the hands of the citizens, focusing on the fair distribution of burdens and advantages of the cooperative endeavour between society's members. Reasonable terms of cooperation are, as such, acceptable from the point of view of persons' two moral powers. Similarly, this conception of the reasonable is harmonious with the idea of the well-ordered society, connecting the fundamental ideas to justice.

The same procedure applies to selecting reasonable terms of social cooperation. On the one hand, are the terms acceptable to persons as understood above? On the other, do they guarantee that the distribution of the benefits and burdens of social cooperation remain acceptable to persons as they lead their life, pursuing their ends? If yes, then the principles of justice are reasonable. Similarly, the idea of the well-ordered society is reasonable to the extent that it provides plausible conditions of success for the terms of social cooperation: for instance, that they remain stable over time and that they are able to win the assent of society's members.

The reasonable is thus supposed to yield a conception about what is needed (from either society's members or its institutional structure) in order for social cooperation to reproduce itself over generations and continue to win the assent of citizens. It can do so in many ways. Rawls's theory of justice as fairness is but one theory that is likely to be able to well-order a society. In what follows, I consider what this conception of the reasonable means for the three components of Rawls's theory of public reason. I first recapitulate Rawls conception and then the critique directed at it and my discussion and evaluation of this critique. I then revise the theory of public reason to meet these challenges. I suggest that the idea of neutrality is superfluous, and that it should be abandoned and focus shifted to values like equality from which the ideal of neutrality is derived. The duty of civility, I suggest, should be revised to accommodate some of Stout's criticisms. Finally, I intend to defend the liberal principle in its current form. I have already said that Wall's arguments against it are unsuccessful. Below, I elaborate on why I believe they are mistaken and try to illustrate how the principle is supposed to work.

## The First Component: Rejecting Neutrality

In the previous chapters, I have shown how egalitarian liberals in general, and Rawls in particular, are committed to some ideal of state neutrality. Either the state must not make decisions that directly favour a particular worldview, or it must not justify its decisions by appeal to any such worldview, or it should take care to be equally accommodating of different worldviews. Rawls ascribe to the first of these three senses of neutrality, although rather reluctantly. What is important to him is that the terms of cooperation could be accepted by all reasonable and rational persons, which they could not be if they were biased either for or against some particular worldview—in other words, the terms of cooperation must be neutral in aim. For the same reason, the terms of cooperation also cannot be justified by appeal to particular worldviews, as reasonable and rational persons will come to endorse different views and will not consent to political power being exercised according to any particular one. Of course, the terms of cooperation could turn out to be those proposed by any one such worldview (as long as those terms are neutral in aim, that is), but only if those terms are freestanding and can be presented without appeal to a particular worldview. Now, surely, this sounds much like a conception of neutrality. The problem, I have suggested, is that this connection between what is acceptable to reasonable and rational persons and what is neutral (in aim and in justification) only holds in a well-ordered society. Under such circumstances, however, the concept of neutrality is not necessary because the idea of reasonable acceptability is readily available, and this idea is the moral core of neutrality. A principle of neutrality helps only if it can help distinguish between arrangements that are reasonably acceptable and those that are not. That is, a principle of neutrality is of help when circumstances are less than ideal. Under less than ideal circumstances, however, it seems that principles of neutrality do not do their job but end up serving the status quo instead.

Another (although related) problem for neutrality is that all the different ways of understanding the concept seem to yield counterintuitive results.<sup>296</sup> To take one example, neutrality of justification, considers policies to be neutral that are justified by appealing to considerations that

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<sup>296</sup> Cordelli, “Neutrality of What?”, pp. 36–48. It has been argued that neutrality of effect, justification and aim all yield such counterintuitive results in different ways. In her article, Cordelli argues that Patten’s view, neutrality of treatment does no better.

are not part of any particular worldview. Whereas, on this view, the state could not justify a decision as generating the highest net amount of happiness, the state could appeal to a value such as public order or health or liberty. While this might seem perfectly fine in some circumstances, however, it will stand out as seriously counterintuitive in others. Laborde takes up the question of the French ban of the hijab in schools and other government buildings. This ban, which is also sought to be justified by an appeal to purportedly neutral values,<sup>297</sup> does not seem to be properly called neutral. This problem with neutrality just pointed to is another example of why neutrality (in anyone of its common interpretations) is not fit for dealing with the non-ideal circumstances of the real world. If there is a plausible conception of neutrality, it must be much more dynamic, it seems to me.

Turning to Laborde, it is her explicit aim to develop a theory of neutrality fit for these non-ideal circumstances. The central point is that one cannot simply do with one conception of neutrality; rather, the concept must be actualized in quite different ways for different problems where it applies. For instance, some issues pertaining to citizen-state interactions are solved by the state providing sufficiently neutral justifications for its decisions. Other times, however, this is not enough because another dimension is being actualized by the matter at hand. The hijab ban is a good example. From the point of view of Laborde's minimal secularism, the problem with the hijab ban is not that it cannot be justified by appeal to sufficiently neutral reasons. The dimension of religion that is actualized by the ban is not religion as an inaccessible doctrine, but religion as a vulnerable social group. The ban amounts to a symbolic distance-taking from religious groups generally—as not only the hijab but “ostentatious” religious symbols and clothing regardless of religion are banned—and from Muslims in particular because they are disproportionately affected.<sup>298</sup>

Laborde's theory has some clear advantages. It is more responsive to the complexities of the real world, as I think the above example amply illustrates. Yet it lacks some important ingredients. In chapter two, I pointed out two central problems with Laborde's minimal secularism. I wanted a way of identifying which dimension of religion is actualized in any given case. The judgement made in the above example relies on

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<sup>297</sup> Laborde, *Critical Republicanism*, p. 34, 39.

<sup>298</sup> Fredette, Jennifer: “Examining the French Hijab and Burqa Bans Through Reflexive Cultural Judgement”, *New Political Science*, Vol. 37. No. 1. January 2015., pp. 51-52.



nothing else than what seems intuitively right. Surely it is a plausible judgement (or so I would say); yet in other cases these kinds of judgements will not have our intuitions in their favour but will seem quite ad hoc. I have mentioned one such an example: secular education. Should the state be required, in the name of neutrality, to teach creationism as a supplement to or even instead of the theory of evolution?

Laborde engages with this issue in dialogue with political theorists and legal scholars Christopher Eisgruber and Lawrence Sager. Neither side suggests that the state should teach creationism, but for quite different reasons. Eisgruber and Sager conclude, following a discussion of relevant legal cases, that “[t]o mandate the teaching of creation science as either a supplement or a replacement of evolution is tantamount to requiring that the book of Genesis be taught as a fact.”<sup>299</sup> Creation science, they argue, is not simply an alternative scientific theory but is intimately tied to a specific reading of the Bible. For instance, creation science relies on the story of Noah and the flood to conclude that scientific methods for estimating the age of organic material are unreliable. Requiring that the book of Genesis be treated in this way, Eisgruber and Sager continue, “is not much different from a school prayer ceremony or displaying a crèche in the town square: it affiliates the government with a particular religious view and so violates the Equal Liberty reading of the Establishment Clause.”<sup>300</sup>

If the state taught creation science, Eisgruber and Sager argue, the state would have to associate with a particular interpretation of Christianity, thereby treating non-creationists as less than equal citizens. Laborde is not convinced. She thinks Eisgruber and Sager’s argument will come back to haunt them, that the same could be said for the teaching of Darwinian evolution—that is, that teaching the theory of evolution implies that the state is siding with science.<sup>301</sup> It matters, I believe, that Eisgruber and Sager expect that only about 10% of Americans are non-creationists, and that about 40 % endorse creationism in its strongest form, believing that “God created human beings pretty much in their present form within the last 10 000 years or so.”<sup>302</sup> This is why they consider the state’s endorsement of creationism, but not its endorsement of science, to go contrary to equal treatment. It is not simply because

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<sup>299</sup> Eisgruber, Christopher, & Sager, Lawrence: *Religious Freedom and the Constitution*, Harvard University Press, Cambridge, Mass, 2007, pp. 189-190.

<sup>300</sup> Eisgruber & Sager, op. cit., p. 190.

<sup>301</sup> Laborde, *Liberalism’s Religion*, p. 90.

<sup>302</sup> Eisgruber & Sager, *Religious Freedom and the Constitution*, p. 185.

the state would have to endorse the truth of a particular controversial doctrine, a reasoning which aligns well with Laborde's own principle. Nonetheless, in order to save science as a neutral ground, Laborde suggests that it is really another dimension of religion and its secular analogue that is being actualized here. This time, it is not religion and its analogues as vulnerable social groups, but rather a religion and its analogue as bodies of knowledge, in which case science is superior and the state is under no obligation to be neutral.<sup>303</sup> My question is: *how do we know this?* Although this kind of move is not implausible, it is quite easily construed as suspicious and ad hoc. Some kind of principle for identifying the appropriate dimension is required, especially when there is more than one dimension being actualized—is it religion as a vulnerable social group, or is it religion as a body of knowledge?

It is likely that such a principle can be properly worked out, so this problem is not a reason to reject Laborde's minimal secularism. The second central problem, I shall argue, does provide such a reason. Essentially, the question is: *why religion?* It seems to me that Laborde's focus on religion (rather than, say, human social interaction generally) is arbitrary. The egalitarian liberal focus on worldviews and traditions of human thought and practice is not a way of analogizing religion, as Laborde puts it. From the political point of view, it is not as if there are religions on the one hand and their secular analogies on the other. Laborde is, of course, well aware of this, as follows from her response to the critical religion-school's semantic critique. Egalitarian liberalism is concerned with conceptions of the good (and some such conceptions are what we call religions), she argues, not with religion as such.

Given all this, it does not seem like neutrality should be concerned primarily with the relationship between religion and the state: the fact that it is a minimal *secularism* that Laborde proposes and that her disaggregation approach is directed against *religion* as a legal category bears against her theory. It is true, of course, that the religion-state relationship is significant for historical reasons and has deeply affected our political relations. The same is true, however, for many other kinds of categories and relationships to which one may expect that considerations of neutrality should apply. Gender, sexuality, and race are a few examples. Importantly, it is not merely as analogues to religion that neutrality applies to these categories. A response to this argument is to say that these different categories should be treated just like religion:

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<sup>303</sup> Laborde, *Liberalism's Religion*, p. 91.

that they too must be disaggregated along the different dimensions that each category interact with the state. For each category there then exist a number of dimensions along which different kinds of neutrality are required. The categories are united in being (at least potentially) vulnerable social groups, but the other dimensions need not be the same. For instance, not all categories give rise to comprehensive and, in Laborde's terms, "inaccessible" reasons, as religion does, and each category might give rise, in turn, to its own unique dimensions. This is a plausible response, I think, but it has to go deeper.

Laborde says that her theory of minimal secularism is supposed to protect the moral powers. I have argued that it does not protect them very well, simply because its focus on religion leaves out many aspects of the ways in which human persons interact with the state that are either protection-worthy or that the state should protect others from. This line of thought leads us back to the alternative that one should disaggregate further categories, but I think perhaps that it is not the many different legal categories that should be disaggregated in the first case, but the moral powers themselves: the kind of protection-worthy activities that they give rise to as well as the activities they imply that the state should protect others from. There are quite a few more or less successful attempts at doing this floating around in the political culture already. The Universal Declaration of Human Rights is one example, and later rights catalogues are such examples as well. Rawls's primary social goods is another example, and yet another is the capabilities approach developed by Nussbaum and Amartya Sen.

So, if the disaggregation approach when applied generally to the sphere of human activity yields a selection of social goods, rights, or capabilities for the state to distribute equally, and neutrality requires the state not to favour or disadvantage any particular pursuits, it seems that neutrality simply amounts to a conception of equality. It amounts to treating persons equally. Specifically, it means not taking sides between different persons, particularly in relation to their various ends and affiliations. Of course, a distinction between equality and neutrality is often suggested in the sense that equality means ensuring a particular outcome whereas neutrality means not treating persons differently—treating them neutrally, that is.<sup>304</sup> In this sense, a policy of gender *equality* is

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<sup>304</sup> For one example of this distinction as applied to housing policies see: King, Peter: "Housing, Equality, and Neutrality", *Journal of Housing and the Built Environment*, Vol. 15. No. 2., 2000, p. 124.

taken to mean to, say, hiring as many men as women, whereas gender *neutrality* means ignoring gender in favour of some other trait, such as merit or desert. However, that distinction is not self-evident. For instance, the notion of equality suggested here seems very similar to the idea of neutrality of effects. On this understanding, neutrality is achieved when the effects are the same in all relevant cases, such as the balance between men and women in a workplace. Similarly, the term neutrality, in the distinction just outlined, could be construed in terms of neutrality of justification or aim, such that any specific distribution between men and women is justified by the pursuit of a legitimate interest, in this case hiring the most competent person.

Another benefit that comes with this critique of neutrality is that it shows why the different understandings of neutrality end up being counterintuitive. The problem seems to be that the different conceptions of neutrality end up equalizing the wrong thing in the wrong way. For instance, neutrality of effect is problematic because equality rarely means that the outcome should be the same for everyone. As Dworkin has contended, equality does not mean that everyone should be treated *equally*, but that all should be treated *as equals*.<sup>305</sup> Of course, sometimes being treated as an equal implies strictly equal treatment, but not always. In the case of the French hijab ban, neutrality of justification and neutrality of aim seem counterintuitive because, whatever the value of a secular public sphere, it does not justify the inequalities that come along with it (supposing of course that the ban is a reliable way of achieving this aim).

Rejecting neutrality thus seems to be the best way forward. The disaggregation approach has its virtues and is, I think, applied successfully by Laborde. Still, liberal philosophy is better off focusing on equality rather than neutrality because, when it yields acceptable results, a principle of neutrality is simply equal to a principle of equality applied to the right kind of things in the right kind of way. Through the disaggregation approach, Laborde has provided a tool for analysing where liberal philosophy tends to go wrong and why. It seems to me, however, that what her analysis gives rise to is not an improved analysis of neutrality, but a tool to improve our analysis of what it means to treat persons as equals in different settings.

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<sup>305</sup> Dworkin, *Taking Rights Seriously*, p. 273.

## The Second Component: Revising the Duty of Civility

The aim of the duty of civility is to ensure that the exercise of political power lies in the hands of the citizens. The state and its officials are not to make decisions that cannot be justified by public reasons (where public reasons are reasons not specific to a particular worldview) but raise claims to the agreed-upon terms of social cooperation. As such, decisions that are justifiable by public reasons are decisions that appeal to such matters as are already acknowledged to be important to the cooperative enterprise of the political society. Of course, that reasons are public does not mean that they are decisive, nor that they are good. The constraints on reasoning that public reason invokes on political deliberation through its duty of civility are thus neither biased in favour of particular (liberal) decisions nor conducive to legitimacy. Just as the veil of ignorance should remove from discussions about justice such considerations as are injurious to our judgements about justice, the duty of civility is supposed to remove from the purview of political discussion those considerations that could not adequately ground judgements of the proper exercise of coercive (political) power.

Given this, Stout's main challenge to Rawls is that there is no need to exclude from the discussion arguments that are grounded in different worldviews. Persons can engage with each other's arguments without trying to force agreement around particular principles that then serve as a basis for deliberation. Stout suggests that the way persons actually go about engaging with one another's views—that is, by presenting their own position, making it available for scrutiny, and then engaging in “immanent criticism” of the other's position—is the most reasonable way for persons to engage in discourse with one another. Giving one person reasons for endorsing a particular law or policy that one can expect them, but not another, to be able to endorse is by no means a sign of disrespect towards the other person as long as one is ready to present different reasons tailored to be persuasive from that other person's point of view. I admit that this is a perfectly plausible way to approach discourse between persons when they discuss political issues among themselves. The problem with this approach, however, is that it does not translate very well to the kind of discourse that Rawls's theory of public reason is tailored to fit. As I have argued, Rawls is interested not primarily in the discourse between citizens in the informal public sphere,

but in the communication that goes on between the state and its representatives on the one hand, and the members of that society on the other. Put differently, the central concern for Rawls's theory is the reasons for which the state exercises coercive power over its citizens. The two approaches meet as the two spheres come together and seem to overlap, and this is where the problems start to pile up.

Rawls's account of public reason makes use of several distinctions, two of which are absolutely central to the duty of civility. These distinctions are first, the distinction between the formal and the informal public (in his terms, the public sphere and the background culture); and second, the distinction between matters of constitutional essentials and basic justice, and everyday political questions. The duty of civility applies only to political discourse in the public sphere and only to questions about constitutional essentials and basic justice, *not* to everyday political issues. With the public sphere, Rawls has in mind especially those discourses that are part of formal decision-making procedures: general elections and legislation, the decisions of government officials and court judgements, and the deliberations and reasoning that give rise to these. What I have referred to as the *formal* public. According to Rawls's second distinction, discussants are bound by the duty of civility only when a political issue concerns basic liberties, the democratic system, or the form of government—not when they are deliberating about, say, whether to raise or lower taxes.

I challenged the first distinction in chapter one, where I pointed out that Rawls seems to want to include at least some aspects of the informal public within the bounds of public reason. For instance, he says that ordinary citizens should conduct themselves *as if* they are under the constraint of the duty of civility, which means in practice that the constraint applies to them as well. Stout challenges the second distinction. By limiting the application of the duty of civility to constitutional essentials and basic justice, Rawls means to make it less invasive. As Stout points out, it is on these especially important political questions that a person's worldview speaks most strongly. So, this restriction really produces the opposite of Rawls's intended effect. I agree with Stout that Rawls's second distinction, like his first, does not work, and I accept Stout's contention that Rawls's duty of civility is too strong. However, I do not believe that Stout's alternative works either, simply because it is unfit for the formal public. Stout's view is unfit because it is impracticable for the state to engage in immanent criticism with each

citizen when justifying its decisions or even in immanent criticism directed at the main political doctrines endorsed in the specific society. Also, I believe that Rawls is right that some reasons cannot properly justify the exercise of political power. So what kind of principle is it that I am looking for?

First, the principle should not only apply to the formal public but also reach, to a certain extent, into the informal public. It should primarily concern democratic procedures but also concern some aspects of citizens' deliberations between one another. Second, the principle should not discriminate between constitutional essentials and matters of basic justice on the one hand and everyday political issues on the other, as Rawls proposes, but rather should apply to all kinds of political issues. All this follows from my agreement with Stout and the critique I directed against Rawls's duty of civility and its bounds. Third, the duty of civility must express the ideal of fair social cooperation between free and equal persons. I shall assume that it does so best by requiring that citizens "be able to explain to one another [...] how the principles and policies they advocate and vote for can be supported by the political values of public reason."<sup>306</sup> Yet, fourth, it must not be too restrictive.

Given these four points, it seems to me that a principle expressing the duty of civility should be formulated thusly:

Any person engaged in the exercise of political power is under a moral duty to rely on public reasons only.

Two points should be elaborated on. The first point to consider is who is engaged in the exercise of political power, and the second point is what exactly is involved in the idea of a *public* reason. Firstly, then, the most obvious party to the exercise of political power is the state, by which I mean all those involved in the formal processes of making laws and applying these laws when speaking or acting in virtue of their role. Ordinary persons are sometimes engaged in exercising political power—most clearly, when voting and engaged in deliberations on how to cast their vote, or making up their minds about current political issues. In these cases, it might be that no clear line can be drawn and that we must exercise our judgement for our own part, and call upon others to fulfil their duty of civility.

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<sup>306</sup> Rawls, *Political Liberalism*, p. 217.

Turning to the idea of public reasons, the duty of civility is an expression of the ideal of fair social cooperation because it requires that the exercise of political power can be justified by appealing to considerations that are fit to ground coercively enforceable decisions—that decisions appeal to the terms of cooperation. A society's public reason, Rawls suggests, is public in three ways: it is public because it is the reason of the public as a corporate body, which means that the exercise of political power is in the hands of the citizens; it is public because it has no ultimate end other than fair social cooperation, such that it is not directed at obeying the commands of a deity or devoted to the pursuit of human excellence; and it is public because it can be presented independently from the commitments of a particular worldview. Public *reasons*, that is, the considerations that are fit to ground coercive power, should, in virtue of their publicness, mirror these three senses and are thus connected to the idea of society as a system of fair social cooperation.

All three senses rule out different aspects of worldviews. For instance, the idea that political power should lie in the hands of the citizens, and express their will as a corporate body, rules out any appeal to the will of God, or to some particular interpretation of a moral reality, because in such cases, political power is made into an exegetical question. That political power should be directed at no other ultimate end than fair social cooperation rules out appeals to perfectionist ends like human flourishing. Finally, that the exercise of political power should be freestanding rules out appeals to comprehensive worldviews. But what does this mean?

I want to suggest that there are three kinds of reasons that could qualify as public. Appeals to the terms of social cooperation are the primary category and that which is most clearly considered to be public. If justice, however, is also subject to reasonable disagreement, then there are alternative terms of social cooperation that could qualify as reasonable, which might be constructed from alternative interpretations of a given set of values or from different sets of values entirely. So, the whole range of political values qualify as public. As political values are formed from abstractions of comprehensive concepts, it seems that at least some comprehensive interpretations of, say, equality or liberty, could be appealed to.



The question for proponents of public reason—like myself—is why the duty of civility should be imposed? What kind of problematic political argument is it that we want to exclude from political discourse? The common answers are not satisfying. The one that leaves the most to wish for is the idea that one must rely on reasons that all can understand. I have argued, following Stout, that there are generally no obstacles to understanding one another except for a lack of trying. Perhaps a full grasp of a particular worldview other than one’s own (if even that) is too much to ask, but the divides should not be so wide nor deep that they prevent communication. Laborde’s argument seems to be of this sort.

Another common response is to shun what is controversial, at least in those most fundamental issues such as the constitutional essentials. Larmore’s political liberalism provides an example, and so does Rawls’s.<sup>307</sup> I do not think that one should take this path either. Disagreements are not to be feared, not even when they concern the terms of cooperation and constitutional essentials. The argument supporting this claim greatly resembles the previous argument. For just as one can learn different languages, one can come to understand different worldviews and see the world from other points of view. It is precisely because we live in the same world, because our utterances are about roughly the same things and account for roughly the same relationships and happenings in the physical world as well as within ourselves, that we can interpret each other’s utterances. So persons should be able to communicate well between worldviews. From this point of view, however, disagreements about fundamental matters do not seem less resolvable than do disagreements about everyday matters. Just as it is from this assumed shared world that we can begin to interpret each other’s expressions, it is also from here that we can begin to see where our beliefs converge and where they come apart. This means that there are no truly *fundamental* disagreements: no disagreements where there is no common ground in sight. Similarly, public reason does not require that disagreements be resolved—not even, I dare say, disagreements about constitutional essentials and the terms of cooperation. It is sufficient that decisions on these matters are *acceptable* to reasonable persons—that the burdens and gains of cooperation are distributed fairly, and that deviations from fairness are corrected (by redistributing resources, say) in due course.

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<sup>307</sup> Larmore, “Political Liberalism”, pp. 341; Rawls, *Political Liberalism*, p. 9-10.

With both these considerations removed from the understanding of the duty of civility, and having revised its bounds too, one might want to reconsider the formulation of this duty. Recall argument (iii) against physician-assisted suicide that I reviewed in the first chapter. This argument states that all humans are created in God's image and that physician-assisted suicide signals that those human persons who would be eligible for the relevant procedures have lesser worth than other humans have. This argument is comprehensive in two senses: its appeal to humans as created by God in his image, and the more substantive conception of equality that follows from such a view. While this is a religious argument, its religiousness does not seem problematic. Although comprehensive, it is so clearly connected to a political value that it can be legitimately appealed to, even to justify the exercise of political power. Some utilitarian arguments are also good examples. The appeal to the happiness-maximizing consequences of a decision is intelligible to human reason, to speak in such terms, even if one does not accept the greatest happiness principle or any other utilitarian principle.

There is also a positive argument to consider in response to the question just posed: why should the duty of civility be imposed? I have said in disagreement with Stout that relying on one's worldview does not provide reason fit to justify the exercise of political power. The reason comes down to the idea of social cooperation, of trying to live together. Social cooperation, to be a genuinely cooperative enterprise, should be coordinated by the parties to the cooperative venture themselves. This revised principle is tailored to exclude only such reasons according to which citizens do not have much to say about the shape of society, reasons according to which this authority lies elsewhere.

To recapitulate, this discussion has resulted in three different changes to the idea of public reason as Rawls understands it. First, the distinction between a formal and informal public is abandoned. Placing the shape of society in the hands of the citizens renders the distinction, in this particular case, unnecessary. What is important to know is *when* we are engaged in exercising political power. Second, this is the case also for the distinction between matters of constitutional essentials and basic justice on the one hand, and everyday political issues on the other. My revised account of public reason relinquishes this distinction too. All exercise of political power should be placed in the hands of the citizenry. In these two senses, my revised account of public reason is stricter than Rawls's account because its bounds are wider: all citizens

are included when they exercise political power, and public reason applies to all political issues. The third change, however, focusing on the duty of civility, widens the range of reasons that could be appealed to. The widened range includes reasons appealing to political values not part of the current agreement or to what one might call borderline cases that are comprehensive, yet closely related to political values and considerations appealing to common human reason.

## The Third Component: Defending the Liberal Principle of Legitimacy

I have argued that Rawls's conception of legitimacy differs from the common understanding of political legitimacy endorsed by most contemporary liberal philosophers. For instance, he is not primarily concerned with the legitimacy of the state—his conception of legitimacy does not involve a right to rule on behalf of a political agent. Instead, Rawls is concerned with how political power is exercised. This does not mean that he focuses on the rightness of the particular statutes and policies that the state enacts. Rather, he is concerned with the procedures through which political power is exercised: legislative procedures count as such an exercise, and so do election processes, government formation, and court judgements and decisions. It all boils down to specifying the rules of these procedures: to the citizens themselves and their representatives, and to the terms of cooperation that they decide upon to regulate the basic institutional structure of their society. In this sense, if we speak about a right to rule, it is onto the members of society that this right fall. It is also, therefore, these same members that are to accept the terms of cooperation that “inspire” a constitution. So the liberal principle of legitimacy, as Rawls formulates it, states that a necessary condition for exercising political power legitimately is that the exercise is in concert with the constitution's essentials, which are in turn formulated in the light of terms of cooperation which all citizens can accept.

This structure is an important reason why the self-defeat argument fails. In Wall's analysis, a necessary condition for legitimate political authority is that it could be accepted by all reasonable persons. He calls this condition “the public justification principle”. The term “political authority”, I have said, is vague. It could refer to a particular political agent, like the government but it could also denote a constitution or

fundamental law. Wall suggests that on Rawls's view, this political authority and the public justification principle alike are acceptable to reasonable persons if and only if they rely on values found in the political culture of democratic societies. Only then could all citizens come to agree to the political authority. But this requirement of acceptability invokes a "reconciliatory rationale", as Wall calls it. Now, the reason for invoking the acceptability requirement is to make persons accept the political authority—to reconcile them to it, that is. It seems, however, that persons cannot be reconciled to a political authority and its exercise of political power unless they believe that the public justification principle is an appropriate constraint on such exercise: unless, that is, they are reconciled to the public justification principle as well. As such, the conditions that the liberal principle of legitimacy (as an instance of the public justification principle) imposes on the exercise of political power are also directed against itself. As this principle is not acceptable to all reasonable and rational persons, the principle is self-defeating.

My response to Wall is that his argument depends on the supposition that acceptability is invoked as a requirement by the liberal principle of legitimacy. If it is not, the principle does not impose any constraints that it has to meet itself, so it cannot be self-defeating. Acceptability is not, however, introduced by the liberal principle of legitimacy, but rather is central to Rawls's philosophical project and introduced as a part of what it means for society to be a system of fair social cooperation. From there, it is worked into the original position and is thus an essential part of the argument for the two principles of justice. The liberal principle of legitimacy simply states that to be legitimate, the exercise of political power must be in accordance with a constitution; that this constitution must in turn be in accordance with terms of cooperation; and that these terms of cooperation must be acceptable to all citizens as reasonable and rational. What the third condition really requires is the terms could be endorsed by the parties in the original position or a similar choice procedure that models the practical reason of persons.

Although the self-defeat argument is not successful, Wall's argument is not entirely defeated. The arguments that makes up the self-defeat objection have force of their own. As I see it, two distinct arguments can be developed. I consider them in turn. The first argument takes issue with the appeal to political values—values found in the political culture of democratic societies. This argument is proposed by

both Stout and Wall, although in different ways. Both believe that public justification—that is, the practice of reasoning *from* a predetermined set of principles acceptable to all reasonable and rational persons—is democratically unnecessary. Not only do neither Stout nor Wall believe that such principles exist (they would be either too specific to be accepted by all or so abstract that they lack determinative content), but they both also claim that the requirement to adhere to common principles is unnecessary. There are several important points to make against this argument. First, the political culture is not invoked to justify the political values, only to provide them. The values are justified holistically as an integrated part of a theory of justice that rests, so to speak, in reflective equilibrium. Secondly, as I have insisted many times throughout the thesis, these values are neither too specific to be endorsed by all reasonable persons nor too abstract to have any content to accept in the first place. On Rawls's view, the abstract concepts—say, equality or liberty—are found in the political culture and then developed into more specific concepts as the political conception of justice of which they are a part takes form. So, it is around the abstract concepts that an overlapping consensus should be able to form. The principles of justice that are the end result of this development of the abstract concepts should then be acceptable to all reasonable and rational persons.

One might object that it is false that all reasonable and rational persons will accept the terms of cooperation (whichever they turn out to be). Because reasonable pluralism about justice exists, reasonable and rational persons will not endorse the same set of principles. To this argument, I have responded that it is not necessary for a set of principles of justice to be the set that all prefer in order for it to be considered to be acceptable to all. This is a sufficient response. It raises the question, however, of what acceptability requires. One common view<sup>308</sup> requires acceptable decisions to be justifiable to reasonable and rational persons given their background moral beliefs, as Wall puts it.<sup>309</sup> The structure of the liberal principle as I have understood it, however, bypasses this interpretation. What it requires is that a decision be in accordance with a constitution that is harmonious with the terms of cooperation, and by extension, justifiable by public reasons. On Rawls's view, these terms of cooperation need not be justifiable to anyone's background moral beliefs, because these terms are assented to by the parties in the original

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<sup>308</sup> Quong's view is the most famous; see *Liberalism Without Perfection*, p. 144.

<sup>309</sup> Wall, "Is Public Justification Self-Defeating", p. 386.

position under the veil of ignorance. I shall consider what this would mean for resolving political conflicts in our societies.

Public reason does not say whether or not a particular decision should be made. What it does say is something about what considerations should be weighed and *how* they should be weighed. An argument for or against any political question must provide a reason for how the view that is endorsed better expresses the ideal of fair social cooperation than does alternative arrangements. For instance, opposition to physician-assisted suicide is often based in a concern that its legalization would lead to a devaluing of certain lives. Persons with disabilities or terminal illnesses might feel increasingly burdensome to society and feel pressured into requesting the treatment. By contrast, proponents are prone to justify their position by referring to a right to end the immense suffering that being required to go on living without prospects of pursuing any meaningful ends entails—often referring to this as a right to die with dignity. Proponents, therefore, would have to provide a proposal that attempts to address the opposition’s concern, perhaps by requiring strict inquiries to determine who should be granted the procedure. Similarly, opponents would have to show how palliative care could be improved so as to diminish patients’ suffering and feeling of meaninglessness. Importantly, whether a particular decision is plausibly and appropriately made depends, even under ideal circumstances, on the existing political arrangements. Perhaps a decision to either effect is likely to be destabilizing, such that the well-ordered arrangements will deteriorate.

The other argument against the liberal principle has more promise. The problem is the appeal to reasonable persons which raises the question: what should be done about the unreasonable? For, as Wall puts it, “[a]n account of respect for persons that includes an appeal to reasonableness should explain how ‘unreasonable’ persons are to be treated.”<sup>310</sup> How should the state act against citizens who endorse unreasonable worldviews—can the state legitimately act so as to discourage these views? Nussbaum worries that Rawls’s theory is unable to respond properly to this challenge because of involves theoretical criteria for reasonableness. Thus she proposes an ethical conception herself: it is not proper for the state to act against worldviews rendered unreasonable for merely theoretical reasons.<sup>311</sup> Nussbaum’s intuitions are on point, I

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<sup>310</sup> Wall, “Perfectionism, Reasonableness, and Respect”, p. 480.

<sup>311</sup> Nussbaum, “Perfectionist Liberalism and Political Liberalism”, p. 25f, 28.

think. For surely, the state has no right to act against a worldview or tradition simply because it is not sufficiently coherent or because it attributes magical significance to the planets' alignment or the breaking of a mirror. The problem with Nussbaum's proposal, however, is her thinking that the state is justified in acting discouragingly against unreasonable worldviews and the persons that hold them, simply in virtue of their unreasonableness. This objection, I am convinced, holds under both ideal and non-ideal circumstances, for two reasons. The first reason is that in ideal circumstances there are no unreasonable persons, and in non-ideal societies, the categories do not apply anyway. The second reason is that legislation (in well-ordered societies) should be concerned primarily with securing fair cooperation. I suppose that this is why Rawls says that the state must act to contain the unreasonable: because were unreasonable views to get a grip, even well-ordered arrangements could deteriorate rather quickly. In this sense, containing the unreasonable is a way of securing background justice, as Rawls would put it. However, I do not think that unreasonableness needs to have anything to do with it.

Consider the idea of the reasonable as I have proposed that it should be understood: as constructed from the fundamental ideas taken together. Reasonable persons are not, in this sense, persons who have certain ethical commitments or who are necessarily excellent reasoners—reasonable persons have rational, social, and intellectual capacities to the degree that they can participate in the cooperative endeavour that is society. For a society to be well-ordered, it must be assumed that the reasonable persons are prepared to observe strict compliance with society's rules. As they participate in society's democratic procedures, they will propose principles they believe that their fellow citizens could endorse as well, and they are ready to accept terms of cooperation that they believe are fair not only to them, but to the other members of society too.

So, legislation should seek to guarantee social cooperation in the present as well as over time. This requires that the terms of cooperation involve arrangements for redistribution, because over time, even through well-informed and voluntary actions, resources will end up being unequally distributed, thus undermining the prospects of further voluntary action because persons will be asymmetrically situated. One need not speak about containing unreasonable persons in relation to dis-

tributive arrangements; one need say neither that the terms of cooperation require such arrangements nor that constitutional principles or specific legal rules should specify such arrangements.<sup>312</sup> It is simply a question of coordinating the cooperative enterprise. Why should one consider other kinds of rules differently? I see two plausible and related reasons. First, when Rawls and Quong speak about containing unreasonable persons and Nussbaum speaks about the state being required to act against unreasonable views and their supporters, they are talking about imposing restrictions both on basic liberties and on other less fundamental—yet fundamental nonetheless—rights. The second reason is that it is not from the point of view of the original position that unreasonable views are thought necessary to be contained, but rather from a point of view all tangled up in the non-ideal circumstances that characterize the real world and our actual societies. At least, this is true for Quong and Nussbaum. Any reasonable terms of cooperation involve specifications for how the basic liberties are to be formulated such that they could be made into a coherent scheme of equal basic liberties for all. This implies that the liberties cannot be unconstrained. They must be specified such that arrangements do not deteriorate over time.

## Conclusion

In the first few pages of this chapter, I presented my answer to the first two questions that this thesis set out to answer. I now turn to the third: *how could a plausible theory of public reason be formulated?* I shall answer this question by following the structure provided by the three of the four points of elaboration I have said that I shall be focusing on. I turn first to the publicness of public reason.

I follow Rawls in claiming that public reason is public in three senses: it is public in virtue of expressing the political will of the members of a society as a corporate body; it is similarly public because it has no ultimate end other than fair social cooperation; and finally, it is public because it expresses the content of political conception of justice. Although I would preserve these three senses of publicness, I think that they are better expressed by a set of revised components.

Neutrality, I have argued, should be abandoned. Although Laborde's disaggregation of religion as a legal category and the revised theory of

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<sup>312</sup> Rawls, *Political Liberalism*, p. 265-269.



neutrality that she proposes do much better than does the standard liberal analyses, her theory is not without problems. The most important one is that her focus on religion does not seem justified; one would want to widen the analysis to human life and interaction more generally, as Laborde claims that she wants to protect persons' moral powers, yet ends up, through her focus on religion, protecting only a *part* of these moral powers. However, were one to disaggregate a person's rational and social capacities instead, one would end up with a list of human goods or capabilities rather than the eight salient dimensions of religion that Laborde comes up with. Moreover, such a list would make clear that what neutrality aspires to do is to provide an analysis of what treating persons as equals means in the context of the relationship between state and religion. It does not, therefore, seem like a principle of neutrality is needed. Neutrality is better analysed in terms of equality.

Indeed, I have said that all three senses of publicness express an ideal of neutrality. Political power that lies equally in the hands of all society's members cannot be non-neutrally exercised, because that would mean giving more or less weight to some citizens' ends than is given to others. Moreover, if the political exercise of power is to be directed to no other end than fair social cooperation, then non-neutral ends, such as a perfectionist pursuit of human flourishing, are ruled out from influencing political power. Finally, in expressing the content of a political conception of justice, comprehensive reasons do not count in the overall balance of reasons. What happens to these senses of publicness if the concept of neutrality is jettisoned? Rawls says that neutrality is equal to reasonable acceptability, and I want to take hold of that idea, to double back from neutrality to reasonable acceptability and thus, equality. In this sense, I do not think that much happens at all by rejecting neutrality, because behind it one finds an ideal of equality instead.

My revised duty of civility extends the idea of publicness in the sense that it widens the discursive constraints to include not only the content of a political conception of justice, but also political conceptions of justice more generally, and also to comprehensive considerations that nonetheless are accessible to our "common human reason", including comprehensive interpretations of political values such as some theistic understandings of equality. These more inclusive constraints should be acceptable to reasonable persons in a sense that Rawls's principle is not. So, these constraints are wide enough to include moral and theological reasons, and some perfectionist reasons as well. Yet those reasons that

would appeal to an authority external to human reason should still be excluded, and so public and reasonable acceptability remains the relevant evaluative standard. Thus understood, the duty of civility should not impose a disproportionate and unjustifiable burden on religious citizens, because it does not purge political discussion from theistic arguments. Reasonable acceptability is also what the liberal principle of legitimacy requires, which I have proposed does not need revision. To be properly in the hands of the citizens, political power must be exercised in accordance with a constitution which in turn is acceptable in the light of fair terms of cooperation.

The second point of elaboration concerns the formulation of public reason—its bounds. Here, I have suggested two major revisions. I accept Stout's argument that the distinction between questions of constitutional essentials and matters of basic justice on the one hand, and everyday political questions on the other, does not work. I suggest, therefore, that the distinction be dropped. In a similar vein, I suggest that public reason ignore the distinction between the formal and informal public spheres. This also seems in line with the idea that political power should be an expression of the will of the citizens, and thus, as long as citizens are engaged in exercising political power, they are within public reason. This narrowing of the bounds of public reason is plausible in light of the wider formulation of the duty of civility.

How does this connect to the wider *rationale* of public reason—that of political liberalism and its idea of social cooperation between free and equal persons? The central point in organizing a society as a system of social cooperation is that the shape of society is in the hands of the citizens. The fruits and burdens of cooperation must be distributed evenly among the citizenry: firstly, because citizens are taken to have a capacity for having a conception of the good that they will want to pursue (their rational capacity); secondly, because in virtue of their social capacity to respond emotionally to each other's behaviour—to feel guilt or responsibility, indignation and resentment—citizens will not assent to arrangements under which either they or someone else is treated worse than others.

To be in the hands of the citizenry, society should be governed by a freestanding conception of justice, because otherwise, politics is simply reduced to exegetics, to interpreting the commands of an authority that is not itself a part of the cooperative scheme, not itself subject to the laws it imposes. The idea of public reason fits well with this rationale

of cooperation, and it is, I believe, as an analysis of what social cooperation involves that the theory of public reason should be understood—in other words, as I have said previously, as a theory of democratic decision-making.

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