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Methods in Normative Political Theory/Philosophy

ARTICLES

Ruhi Demiray & Aaran Burns

Introduction: Methods in Normative Political Theory/Philosophy 3

Clayton Chin

Challenging Political Theory: Pluralism and Method in the Work of Bernard Williams 9

Avigail Ferdman

From Inevitable Establishment to Mutual Exclusion: The Challenge for Liberal Neutrality 29

Christopher Murphy

'What might Scheler say to Rawls?': A Schelerian critique of Rawls's Concept of 'the Person' 49

Luca Costa

Context Dependence in Gaus's Evolutionary Account of Public Reason 61

Boaz Ahad Ha'am

Deafness as Disability: Countering Aspects of the Medical View 79

M. E. Newhouse

In Defense of Liberal Equality 99

BOOK REVIEWS

Bernard Harcourt, *Exposed. Desire and Disobedience in the Digital Age* 109
Reviewed by Anda Zahiu

Introduction: Methods in Normative Political Theory/Philosophy

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This special volume of *Public Reason* consists of the papers developed out of the delegates' presentations in two subsequent ECPR Summer School on Methods in Normative Political Theory/Philosophy at Keele University organized in 2014 and 2015. They reflect the diversities of the problems and the richness of the discussions concerning the methodologies in contemporary philosophy, as they were discussed deeply in the foregoing events. In other words, they well illustrate the multi-layered and multi-dimensional problems of the contemporary political theory.¹

One fundamental debate in political theory is, of course, the one concerning what kind of normativity the political activity as such inheres. One can argue that the entire tradition of the political philosophy, starting from Plato, has rightfully presumed that politics is a normative activity and tried to figure out the nature of this normativity. Even Machiavelli, who raised his voice dismissively against the ancient tradition of political philosophy preceding him, was indeed not challenging the idea of politics as a normative activity, but the kind of moral normativity he thought mistakenly attributed to politics by others preceding him. Whether one likes it or not, the Machiavellian idea that politics has a normativity peculiar to its own would then be influential for the certain strands of western political thinking. These strands, which sometimes show themselves as radically left-wing (e.g. Marxist political theory) and sometimes radically right-wing (e.g. Carl Schmitt's political theory), deserve to be called "political realisms" by virtue of the Machiavellian inheritance they have. Interestingly, however, a particular contemporary strand of political theorists from the Anglo-American world employ the realist conception of politics from a liberal standpoint. Bernard Williams, one of the most influential figures in the 20th century British Philosophy, stands also as a representative of this liberal school of political realism.

Clayton Chin's paper, "Challenging Political Theory: Pluralism and Method in the Work of Bernard Williams," is concerned with the appropriate approach to theorizing about politics and examines the methodology of Bernard Williams in this vein. Chin offers a new interpretation of Williams's political work extracting resources from it

1] For a compact and systematic overview of the major problems in normative political theory, see Baiasu, Sorin. 2014. Normative Theory. In *The Encyclopedia of Political Thought*, edited by Michael T. Gibbons, Diana Coole, Elisabeth Ellis, Kennan Ferguson, pp. 2576-85. London: John Wiley & Sons.

that can be used to provide a significant challenge to “contemporary political thought’s treatment of method and pluralism.” Prior readings of Williams have emphasized his conceptual approach and his attempt to ground politics in stability, and Chin criticizes these ideas for over emphasizing stability to the exclusion of other elements. Chin reads Williams in the light of his work on Historicism and Naturalism the result of which is a mode of socio-political criticism of our present political practices and ideas which enables a thorough democratic pluralism.

While Chin draws on a strand of political theory that advocates for a specific form of normativity for political practice, Avigail Ferdman, in her article “From Inevitable Establishment to Mutual Exclusion: The Challenge of Liberal Neutrality”, can be argued to be going through the reverse direction towards a robustly ethical normativity for politics. She revisits the debate between liberal neutrality and perfectionism, which is indeed a debate about the possibility of drawing a distinction between ethical normativity and political normativity, with the intention of showing certain limitations of liberal neutrality.

As Avigail elaborates in her paper, the principle of liberal neutrality requires that the state not take a stand on matters of conceptions of the good life, and therefore no conception of the good is to be endorsed by the state based on its intrinsic value. The Principle is supported by some because failure of the state to observe it results in privileging the norms and values of select groups and ultimately in failing to treat all groups with respect. She draws a distinction between domains in which the principle might be thought applicable, namely, between domains in which rival options can coexist with one another and domains in which such options are mutually exclusive. She then argues that neutrality is plausible with respect to the former but “heavily restricted” with respect to the latter. This entails, she argues, that even if neutrality is morally required, it is conceptually impossible in mutually exclusive domains. That is, it is conceptually impossible for the state not to endorse some particular conception of the good when dealing with domains in which the options are mutually exclusive. She argues this by considering one kind of coexisting domain and one mutually exclusive domain – language regulation and spatial organization. Taking for-granted that language-regulation is compatible with neutrality, Avigail argues that spatial organization is different in ways that prevent the principle of liberal neutrality from being observed.

It is clear that in pointing out the limits of liberal neutrality regarding, at least, certain domains, Avigail’s argument has an impact that has to do with the communitarian critique of liberalism. Communitarian critique, which has come to the fore towards the end of the 20th century, raised against liberal thought the objection that it has a shallow and shaky ground for normativity. For the communitarians, not only the liberal understanding of political institutions and processes is deficient; but also liberalism cannot account for peoples’ deep commitments which make life meaningful for them. A recurrent theme in this critique is the “cold,” even “inhumane,” moral rationalism attributed to such founding figures of liberal philosophy as Immanuel Kant, who are alleged to recognize

no importance for feelings and emotions, which make us authentic beings. In this regard, Christopher Murphy's article "What might Scheler say to Rawls?" conducts an important discussion, for it seeks for an accommodation between Rawls's Kantian liberalism and the communitarian sensitivities concerning emotional attachments and commitments of human beings.

Murphy's work deploys Scheler's concept of the person both for a communitarian critique of Rawls and as a way to strengthen his philosophy by addressing a minor flaw in its foundation. We thus consider, what Scheler might have said to Rawls. Murphy ascribes to Rawls an analysis of the ordinary concept of a person – which Rawls says is devoid of metaphysical baggage. The analysis which Murphy gives to Rawls is one on which a person is "first and foremost a rational agent as opposed to an emotive agent". To this, Scheler would have argued that Rawls's picture of the person is simply inaccurate, and Murphy argues that there are two ways in which this Schelerian insight might interact with Rawls's philosophy. On the first, essentially negative, development of the issue, Scheler's insights can be used to straightforwardly criticize Rawlsian philosophy for presupposing a conception of the person devoid of all of its emotive aspects. Murphy favours a second means of understanding Scheler's insights: using Scheler's more accurate conception of the person to plug holes in the Rawlsian philosophy. This involves replacing Rawls's conception of the person with Scheler's own whilst retaining the bulk of Rawls's political theory in order to accommodate the criticisms of Rawls mentioned above.

As Murphy ponders on the possibility of a stronger relation between political theory and metaphysics, there is also the question of how political theory should be related to empirical sciences. Even though one might think that political theory concerns primarily principles and ideals which cannot be grounded on empirical facts, one might still contend that political theory should take into consideration empirical facts at the level of application. Otherwise, what the philosopher produces at the abstract level of pure theoretical construction would be mere contemplation in the Ivory Tower, which is not capable of providing orientation and guidance in the practical world. Luca Costa's "Context Dependence in Gaus's Evolutionary Account of Public" inquires for the possibility of a better use of empirical facts in normative political theory.

The paper by Luca Costa discusses Gaus' evolutionary account of public reason. Gaus has argued that individuals have a tendency to cooperate when enough others are already cooperating and to punish those who transgress social rules. Costa discusses the empirical support available for Gaus's thesis in several sections. The first aims to explain how it is that cooperating with others even when this means accepting rules not really in one's own interest can possibly be supportive of one's own ends. An individual who unconditionally adheres to social rules and punishes those who do not, even at a cost to themselves is dubbed a Rule-Following Punisher, and the explanation of the first section depends on the assumption that a sufficient number of us are in fact Rule-Following Punishers. In the second section, therefore, Costa begins to discuss the empirical studies conducted with the aim of testing this hypothesis. A brief sketch of each study and its conclusions is

provided in the second section, before Costa moves on to discussing their methodological soundness in the third and fourth wherein the main criticisms are developments of (a) the claim that the studies use unrepresentative sample populations to make generalizations about the human race, and (b) that the experiments conducted artificially isolate people from social factors which might otherwise have made a significant difference to the results. Despite these flaws, Costa concludes that Gaus's thesis has decent empirical support and that since any normative political theory begins with assumptions about what humans are like, future normative theory can and should take note of Gaus's thesis.

As Costa's paper indicates that political theory should be a kind of endeavour producing insights applicable to the existing social-political structures, there are debates concerning what fundamental normative orientation the political theory should have vis-à-vis existing social and political structures. One could say that on the one hand, many modern and contemporary strands of political theory, e.g., the Frankfurt School, share the conviction that the social-political theory should have a critical (progressivist or emancipatory) orientation towards the existing structures, which more or less reflect historical-cultural asymmetries produced by unjustified power inequalities, and thus forms of explicit or implicit subordinations and discriminations. On the other hand, however, there are also the strands of political theory, e.g., certain conservative variants of communitarianism, which seem to take the elaboration and justification of an authentic and integral way of life in a particular society as the main orientation of political-theoretical-activity. Boaz Ahad Ha'am's "Deaf in Need of Ideology," which questions the prevalent mind-sets and institutional structures producing explicit and implicit forms of injustice against deaf people in our contemporary societies, clearly follows the conception of political theory with an orientation to social-political emancipation.

Ahad Ha'am argues that deafness is not a disability. His argument has both a positive and a negative component. In the negative part, Ahad Ha'am explicates two arguments widely presupposed in the popular view that deafness is a disability. The first argument is one which claims that deafness is 'unnatural' for human beings and thus in need of medical treatment, or 'curing'. The second argument claims that deafness, regardless of whether it is natural or not, stops a person from properly integrating into society because it stops them from communicating effectively with people with hearing, and this puts them at a great social and practical disadvantage – it is a social disability. The arguments are related in important ways and Ahad Ha'am traces the relationship and offers a powerful critique of both. The positive stand of Ahad Ha'am's case appeals to 'the experience of deafness as an intimate existential condition utilizing sign-language' – an experience shared by many deaf people. He uses this to illustrate that people who are deaf are neither 'unnatural' nor social crippled by their deafness; they are doing perfectly well without being 'cured'. He concludes that despite all of this, the view that deafness is not a disability continues to be a minority one because it lacks 'a coherent set of ideas that provide political justification' or an 'ideology'.

In the final paper, Marie Newhouse reconsiders the debate between Rawls and Libertarianism in a novel way. She focuses on Rawls's much debated contention concerning the arbitrariness of the distribution of natural attributes within the political-society. On the one hand, this contention seems to ground Rawls's famous "difference principle," and thus his egalitarian liberalism. On the other hand, Newhouse argues, Rawls contention is usually misunderstood by Libertarians, as they seem to suppose that Rawls's claim is simply about a person's relationship to her own attributes. In her view, this is mistaken. Rawls does not mean that a person's relationship to her own attributes is morally arbitrary, but that social distribution of position within a society in accordance with natural assets is arbitrary. Having defended Rawls at the point he was targeted by Libertarians, Newhouse suggests that her reading has, at least, one important implication which makes visible the arbitrariness of Rawls' preference for a system of democratic equality over a system of liberal equality. Employing insights from the debates on "human capital externality" in economics, she contends that risk-averse individuals, namely maxi-minimalist rational actors in Rawls' original condition, would opt for a system of liberal equality consisted in distribution in accordance with market processes, rather than a system of democratic equality based on the difference principle. There is, yet, a proviso Newhouse emphasizes. It is that the risk-averse rational individuals would also opt for a social safety net which will function to safeguard social bases of self-respect. We would like to note that Newhouse's paper is not only thought-provoking as an argument on Rawls' theory, but also it illustrates well that methodologically relevant questions of accurate and fully-fledged elaboration of decision-deliberation models are as important as substantive premises concerning human beings and rationality in political philosophy.

All in all, we think, the reader of this special issue will find a glimpse of major methodological concerns in contemporary political theory provided by young and promising political theorists. We would like to end by thanking to European Consortium of Political Science (ECPR), ECPR Kantian Political Theory Standing Group, ECPR Political Theory Standing Group, Keele-Oxford-St Andrews Kantian Research Centre (KOSAK), which all contributed to the organization of the summer school events in the first place and thus to the coming out of the works in this volume.

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Challenging Political Theory: Pluralism and Method in the Work of Bernard Williams

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Abstract: This article focuses on the recent surge of reflection within political theory on methodological issues and the emergence of new approaches in that discipline. Situating itself in a discussion of New Realism and its critiques of/divergences from the ideal approach of “high liberalism”, it engages the dominant reading and use of the work of Bernard Williams in that literature. Illustrating how the framework of political realism in this reading is plagued by a narrowing of the political and exclusive focus on stability, it turns to a series of resources within Williams’s larger thought in order to draw out an alternative reading of his model of political theory. Focusing on his methodological reflections on naturalism and historicism, it illustrates a conception of political thought as a form of situated socio-political criticism which stands in stark contrast to the “conceptual analysis of the political” that he overtly offers and has been the central object of focus within recent discussions. Arguing that the former avoids the pitfalls the latter encounters, this article illustrates how Williams’s naturalistic and historicist conception of political thought is more thoroughly pluralistic, both methodologically and politically. Finally, it illustrates how this reading brings him much closer to another position within the current surge of methodological reflection within political theory that takes him away from new realism. Turning to James Tully’s “public philosophy” reveals a similar emphasis on the democratic and pluralistic conditions of political thinking.

Key words: Bernard Williams, realism, naturalism, historicism, criticism, James Tully.

Political theory is experiencing a great surge of methodological reflection. Whether in debates over the requirements of critique or the strength of “ideal” forms of normative reflection, there is a persistent turn to the broad question of the nature of the discipline and the appropriate approach to theorizing politics. Flowing from this situation, there is also the emergence of clusters of new approaches with their own priorities, methods and definitions of politics. Importantly, some of these new groups have broken traditional barriers between some of the dominant, and historically opposed, traditions of recent political thought. From the traditions of liberal normative political theory, pragmatism and Continental genealogy there is an emerging cluster of sub-trends which together constitute a *situated turn* prompted by a common set of problems and a common response to them (Chin 2016). This article examines the work of Bernard Williams, a key figure within the new realist trend emerging from within liberal theory, to address the various possible avenues of this methodological situation.

All of these recent groups confront, in some form, the *problem of justification* which has plagued political thought since the twentieth century. Various articulated as the problem of foundations or metaphysics (amongst others), this problem flows from the widely accepted premise that knowledge and validity are always linguistically, socially, and historically mediated. These debates have made it increasingly difficult to refer to context-transcending criteria in the pursuit of diagnostic and normative conclusions within political

theory. This is the problem of how to justify the explicit normative claims and implicit normative assumptions that guide both socio-political criticism and reconstruction. On the one hand, we are forced to recognize the historicity of knowledge and normative claims. On the other, we must be capable of political action in an increasingly globalized world; this requires being able to raise claims to the validity of those decisions and the critical and normative frameworks that serve them. In the post-war period within political theory this problem manifests particularly as a problem of pluralism. If absolute foundations and standards are unavailable, there seems little way to speak (specifically, to make justificatory claims) across the differences that characterize late-modern liberal democracies. Edward Said has dubbed this “the fundamental historical problem of modernism” (1989, 223). Western political thought has widely accepted the need to ‘take the Other seriously’, to speak politically to those from different systems of justification without merely prioritizing our own values and categories (Berlin 1999; Rawls 2005; Benhabib 1996).

In their critique of the ideal forms of abstract normative theorizing that characterize contemporary liberalism, the recent surge of realism focuses on the specific connection between these two issues. It criticizes the failure of ideal methods to take the problem of justification seriously. Further, it criticizes their understanding of the nature of difference and political contestation. Especially prominent in this literature is a rereading of the work of Bernard Williams that focuses on the methodological resources of his thought that can aid political thinking in coping with these lacunas. This article confronts this emerging literature by offering an alternative critical reconstruction of his work, one that exposes a different set of possibilities. Situating its discussion in a critical account of the dominant reading of Williams’s realism and its critiques of divergences from the dominant ideal approaches of “high liberalism”, it illustrates how the model of political thinking developed here constricts politics and political theorizing. The point here is not to undermine the “validity” of this reading but only to expose an alternative use of Williams’s thought that presents a more effective and significant challenge to contemporary political thought’s treatment of method and pluralism. Thus, in contrast, it reconstructs William’s late turn to political theory in light of the methodological insights of his earlier work (particularly his theorization of a *naturalistic and historicist political method*) to illustrate how his thinking can contribute to a mode of political theory as situated and pluralistic socio-political criticism, rather than realist as it is currently framed. This article bears out these positive possibilities by linking Williams’s resources to other methodological trends, specifically the work of James Tully, illustrating how the former might alternatively contribute to these ongoing debates within contemporary political thought.

I. LEGITIMACY AND JUSTIFICATION: NEW REALISM READING BERNARD WILLIAMS

In recent years, the identification of a rising tide of critical literature within liberal political theory has thrown that tradition into a period of sustained methodological discussion. Where previously the analytical ideal approach of normative political theory,

or “high liberalism” as William Galston has dubbed it, reigned relatively unchallenged in liberal political thought, presently there is significant contestation of its basic method for political theorizing. While there has always been external criticism of this tradition, “new realism” is a (partially) internal challenge that stems from the problem of justification and pluralism, discussed above, which bridges the different traditions of contemporary political theory. Initially, it is important to emphasize that new realism is very much an emerging movement that has yet to fully flesh out its perspective.¹ The work of Bernard Williams, whose realism is a starting point for many recent commentators and thus, along with Raymond Geuss, is one of the central points of orientation of the literature. Williams provides both one of the most fully fleshed out critiques of the ideal method and, at least implicitly, alternative sets of questions and concepts, a “realist political theory”. However, while his critique is an incisive application of the problem of justification to liberal normative thought, Williams’s alternative model fails to break with many of the elements for which he himself criticizes ideal theory. Further, many commentators within new realism have taken up his problematic projects around legitimacy and consensus. This section clarifies this reading and its dominance within this literature while the next shifts the attention to a set of methodological resources within Williams’s larger thought that push his political theory towards other responses to the problem of justification.

Williams’s model of political realism is prompted by a critique of analytical ideal theory. While he did make forays into politics at several points in his career, he only turned overtly to questions of political theory and its method in a final set of essays, posthumously published as *In the Beginning was the Deed* (Williams 2005c). Here he argues that the dominant approaches of liberalism all participate in the error of an “ethics-first” model of political thought. Both utilitarians and modern social contract theorists, in slightly different ways, give particular moral theories priority to politics resulting in a model of political theory that turns that discipline into ‘applied morality’. The charge here is that they both use moral frameworks as explanatory and normative schemas for understanding and assessing actual political situations, making “the moral prior to the political” (Williams 2005e, 1-3). This means that political acts, institutions, and ideas are understood only by the demands of morality and that the normative prescriptions that flow from these analyses are ultimately based on moral stipulations that are outside and prior to politics. For Williams this ignores the distinctive nature and conditions of politics and, as a result, turns political thought into a form of moral theory that attempts to evade or displace the human activity of politics. This argument, articulated by Williams well before the recent self-conscious identification of new realism, has been particularly influential in that literature and has been reiterated and developed by most of the major voices there (Galston 2010, 386).

1] Rather than a unified method or perspective, it is composed of a series of common themes and critiques that have been defined in recent years in the secondary literature (Galston 2010; Philp 2012; Rossi and Sleat 2014; Horton 2010).

While not generally framed as such, Williams critique of political moralism is a version of the problems of justification and pluralism, that is, of the critique of what is often called ‘foundationalism’. This wide term catches all positions that assume that society and politics are somehow grounded by principles that are 1) undeniable and immune to revision (i.e. universal) and 2) exterior to the realms of society and politics (i.e. transcendent, in some sense). These foundations assure stability in the social and political structures built on their principles. The issue Williams identifies, the critique of making the moral prior to the political, is the charge that the ideal analytic method assumes that moral categories are both universal and transcendent with respect to political activity; that they ground our politics. While it is not commonly articulated as an issue of foundationalism, Mark Philp has argued that the critique of moralism and turn to realism is a critique of philosophical foundationalism, of the idea of an Archimedean moral foundation to ground politics (Philp 2012, 7-8, 11-12). What is key here is a hostility to external standards (non-political ones) as measures for political analysis and normative reconstruction. Williams’s argument rejects ideal theory’s subordination of politics to foundational moral theories and asserts the autonomy of politics as a sphere and activity. Further, for Williams and realists, it is a sphere defined by the absence of rational moral consensus. Rather, the political is characterized by value pluralism, persistent disagreement, historical contingency and only pragmatic (temporary) stability (Williams 2005a, 77-78). While it is only implicit and emerging in these essays, there is a method within Williams’s reflections on political theory. Briefly, his focus was on providing a mode of political theorizing which gave autonomy to the political, while attending to the conditions of politics mentioned above. This, he hoped, would leave his approach untainted by the external normative standards liberalism relied on. It is important to emphasise that Williams’s reputation as a philosophical sceptic belies the fact that he was only sceptical of the manner in which the task of moral and political thought was pursued, not the task itself. Thus, he was committed to a true explanation of moral and political practice through conceptual analysis. As we will see in the next section, he only wanted to supplement this with other philosophical resources. His project remained a theorization of the political without external normative standards. As Matt Sleat has observed, “Williams sought to address this by engaging in what was in effect a conceptual analysis of the political, the conditions and claims inherent in there being such a thing as politics” (Sleat 2010, 494).² This is an important claim. Despite Williams’s noted emphases on naturalism and historicism (examined in detail subsequently), his method here is focused on making universal claims about politics. This is not to say that an attention to historical change is not present in these analyses, but that it is not the main architecture of this project. Instead, Williams tries to draw out a structure to the sphere of politics, one

2] Hence, the structure of Williams’s political essays in (Williams 2005a) is to move through various core concepts within Western Political Thought, attempting to rid them of their idealized notions and, through his historical conceptual analysis, ascertain their aporias and conditions.

attentive to historical development, and from that, to understand how normative claims about particular forms of politics can be made.

Principally, Williams pursues this through setting out a structure of politics within which historical and cultural variation occurs. Thus, for him, the ‘first’ question of the political is that of “the securing of order, protection, safety, trust, and the conditions of cooperation” (Williams 2005e, 3). This question has priority for Williams in the sense that it is a precondition of every other political issue. In fact, Williams builds from this to a reconstruction of the liberal theory of legitimacy that, rather than flowing from a moral conception of the individual, he claims flows from the conditions of the political itself. For him, if stability is the first question of politics, it is also a necessary condition for the legitimacy (LEG) of a state. As a result, Williams formulates what he calls the “Basic Legitimation Demand” (BLD), a test which determines legitimacy by whether the given state a) solves the first political question to a sufficient degree, and b) does so in a way that is acceptable to the given polity. The latter is an important contextualism that Williams inserts to acknowledge that the political question, as clearly seen in history, can be solved in a variety of ways. It is his acknowledgement that there is no special sense in which liberalism is more justified than any other mode of government, irrespective of context. This being the case, he does still argue for the particular legitimacy of liberalism in the present. Due to a series of social and historical conditions, including the manner in which modernity has undermined previous legitimations, for Williams LEG + Modernity = Liberalism. This sensitivity to historical context is something we will return to in the subsequent section. Presently, what is important are the problems these claims result in.

Two linked lines of critique have emerged from this framework in the brief time since its publication. First, several commentators have charged that while Williams clearly makes an insightful critique of liberal legitimacy, offering a realist reconstruction of that concept, his model seems to share many of the normative assumptions for which he criticizes political moralism. For example, it assumes a consensual view of politics. For Williams, the nature of politics demands that meeting the BLD “implies a sense in which the state has to offer a justification of its power to each subject” (2005e, 4). Such a requirement, like Williams critique of ideal theory, narrows the ground of politics to that which broadly would fit within the tradition of modern liberalism. In contrast, part of realism’s insight is to argue that a basic reading of political history and current political practice illustrates how quite a bit of political life does not assume this requirement and its absence, in many contexts, has engendered no claims to a lack of legitimacy (Sleat 2010, 496-97, 499-500; Freedman 2012, 5-7). Building on this, Williams assumes the presence of political consensus in modernity, despite his repeated and notable championing of pluralism. The only way LEG + Modernity = Liberalism, would be if modernity was a relatively uncontested period. However, a brief look at the diversity within which political theory has conceived the modern period (let alone the diversity of actual cultural, social and political practices) illustrates the myopia of this view.

Second, implicitly extending this, Bonnie Honig and Marc Stears have argued that Williams's positing of stability and order as the first political question constricts politics and his method for political theorizing. This represents a serious criticism of new realism which generally prioritizes the question of stability. For Honig and Stears, as in Williams figuring of modernity, his priority of stability contradicts his overt pluralism in a narrowing of political action. These two elements, pluralism and stability, for them constitute the main internal tension within Williams's work. Again and again in Williams's realism, then, the potential chaos of radical pluralism is anchored in an architecture of time and space that stabilises things and enables the priority of order prized by Williams (Honig and Stears 2011, 193). The result of this is a limitation of pluralism and a failure to attend to the manner in which it conditions our politics, and importantly our attempts for stability, in our contested modernity. What Williams essentially does, for Honig and Stears, is generalize one important feature of politics into its essence, ignoring how pluralism, change and disruption constitute the pole against which stability is always pursued. In this manner, this second criticism builds on the narrower first, revealing how Williams's realism fails to address the problem of justification and pluralism which he himself deploys against political moralism.

It is important to clarify that the above elements of his political realism have, by far, been the dominant objects of discussion within his reception in new realism. In fact many commentators there have taken up his project around conceptually outlining a realist understanding of the political, and focusing on issues around stability, legitimacy and consensus (Sleat 2013; Rossi 2010; Bavister-Gould 2011; Forrester 2012). While this is by no means a problem as such, as the next section reveals, this literature ignores important methodological resources that address these two lines of criticism around Williams's relation to pluralism in his realism, some of which have come from within their own ranks. Thus, presently, new realism suffers from a disproportionate focus on (and positive use of) what I would argue are the most problematic elements of his work. Instead, this analysis will now turn to these implicit resources and how they illustrate the possibility of an alternative path away from the problem of justification and pluralism.

II. WILLIAMS'S SUBTERRANEAN METHOD: NATURALISM, HISTORICISM AND POLITICAL THEORY

Running alongside the dominant concerns around stability, legitimacy and consensus within Williams's political realism, is an alternative possibility for political thought after moral foundationalism. This section argues that when you read his wider methodological arguments around naturalism and historicism and his later turn to the question of political theory in conjunction with the critique of foundationalism and problems of justification and pluralism, a conception of political theory as an embedded activity of socio-political criticism emerges. This model stands in stark contrast to the quasi-foundational activity of a conceptual analysis of the political we saw above and,

as the next section illustrates, brings Williams much closer to alternative responses to the contemporary surge of methodological debates in political theory.

Initially, it should be noted that this account builds significantly on the work of Colin Koopman, who has been offering thorough re-readings of Williams's historical method and its political virtues in recent years. In a series of publications, Koopman has illustrated Williams's genealogical and historical method, and its significance for an anti-foundational approach to political normativity (Koopman 2010; 2011; 2013, chap. 2). However, he has consistently ignored the naturalistic framework for this method, and the importance of that for making those normative claims within the context of political and social pluralism.³ As I argue below, this is necessary to identifying how Williams's thought addresses the problems of justification and pluralism. Nonetheless, the account below is indebted to his preceding work.

The hostility to external standards which stands behind Williams's critique of political moralism and its ethical foundationalism leads to the possibility of a very different understanding of politics and method for political thought within Williams's late work. What emerges here is a series of conditions or attributes of political life that Williams thinks pertinent to understanding the limits of political theorizing and the role it can have in both academic reflection on politics and within politics itself. There is no definite list here, however, a series of conditions are present. Thus, for him, our politics seem to be a product of our historical development; our beliefs, passions, and interests; our limited agency and judgement; persistent disagreement and contestation, especially in relation to claims to legitimacy, resulting from value pluralism; and the practices of normativity which are always embedded within our political practices. As several commentators have argued, what we are left with after this is a fairly inchoate potential methodology with several possible avenues of exploration. However, by looking back through two key themes of his larger work, and how they participate in this final political phase, an alternative methodology and project for political thought can be discerned within his final set of political essays.⁴ Specifically, the method for political thought Williams was offering was defined by strong commitments to *naturalistic* and *historicist* conditions on theoretical enquiry, and it is from within these that his conditions of the political must be understood.

Williams's method emerges from a balancing of naturalism and historicism. Together, these two themes set conditions and imperatives on the nature and capacities of a theoretical form of enquiry into the human social practice of politics. Williams's focus on history has often been noted in the philosophical literature on him. However,

3] Further, mainly embedded within debates within philosophy, he has also not sufficiently engaged his reading with recent debates in political theory. This is not so much a flaw but a limitation.

4] This method of fleshing out his method for political theory by reading this text in conjunction with his earlier contributions to moral philosophy is not unproblematic but it is necessitated by this reticence to overtly lay out a method. He preferred throughout his works to give examples of applying his approach rather than stipulating its key tenets.

while it is often acknowledged it is rarely engaged in any detail, especially in terms of its consequences for the methodology of political theory within recent realist reflections on him. The situation is only compounded with his naturalism which is entirely ignored within that literature. I will examine each of these themes in turn and their effects on his model of political theory.

For Williams, historical reflection has a distinct value for the explanatory and critical task necessary to political thinking.⁵ However, he did not always hold this position. Early in his career, Williams rejected history as irrelevant to the task of philosophy. Further, his later turn toward a historical method must be understood with one very important qualification. History does not replace philosophy. Rather, historical resources are necessary for the traditional philosophical project to prove fruitful. As briefly mentioned above, Williams's general notoriety as a philosophical sceptic often belies the fact that he was only sceptical of the manner in which the task of moral and political thought was pursued, not the task itself. Thus, he was just as committed to a true explanation of moral and political practice.⁶ His turn to history was not a rejection of philosophical conceptual analysis but a supplement to it in broad favour of its explanatory goals. His noted commitment to an understanding of truth and practices of truthfulness testifies to this. For him, "philosophy, in order to do its business, must move into history" (Williams 2002, 173; see also Koopman 2011, 15).

Yet, the question remains of what history offers philosophy. Why is a historical method special in relation to other humanistic or social scientific disciplines? The answer is found in its focus on temporal development. History, in its singular concentration on this development, gives us unique insight into the advance of our practices and concepts. It reveals to us their "developmental rationality", not from an ahistorical foundation but from the internal set of reasons that have moved our various shifts in practices. It is in this way that history helps us "make sense" of ourselves, a technical phrase Williams used to illustrate the internal, complex and contingent nature of our practices and their movement through time (Williams 2002, chap. 10). In this manner, historical enquiry in fact aids the project of conceptual analysis by revealing the development of our ideas up to and including their present place in the existing moment and its complexity (Koopman 2010, 10-11).

Already in the focus on the level of practice and its development, there is an implicit naturalism. Naturalism here is understood, not as a law-like model of the natural sciences, but as a situated account of the social practices of normativity and critique which understands them only as dependent on communal practices of justification and conversation. Williams approaches morality and politics as sets of practices to be

5] Williams follows Nietzsche in enquiring not into the truth of history but its value. The best example of this emphasis is in his genealogy of truth, which itself is concerned with the value of truthfulness not the nature of something called truth (Williams 2002).

6] A key point for distinguishing him from other noted "sceptics" like Richard Rorty, who had far more revisionary intentions in terms of the task and role of philosophical thought (Sleat 2007). However, against Williams own protestations, there are many points of accord between Rorty and his own thinking.

examined and bettered; and he does so from within a perspective that emphasizes their historicity. Further, throughout his career he consistently argued for the importance of culture in explaining the human condition.⁷ Culture is the source of human variation and complexity; it is also the origin of our unique ability to engage in reflexive development. For Williams, this centrality has important methodological consequences for theoretical disciplines. “We cannot be in a position to give a biological explanation of any phenomenon that has a cultural dimension, however widespread the phenomenon is, unless we are also in a position to interpret it culturally” (1995a, 81). “Making sense of humanity” in Williams’s terms, and its political practices, requires a turn to the social.

This results in an explicit attempt to develop a naturalistic perspective. The real insight here is Williams’s observation that while there is wide support for a naturalistic understanding of humans (at least from some philosophical corners), beyond seeing them as “being part of nature” in some sense there is very little agreement as to what this involves. Most theories tend either to rule out too much, reducing humans to biological machines (which excludes culture), or include too much, attempting to naturalize complex cultural ideas (e.g. ascribing a capacity to intuit the structure of moral reality to human nature). This *quandary of naturalism* is systematic for Williams. It tends either to include too much, and so become reductive, or so weak as to include nothing. The fault he claims is in the assumption that naturalism is a top-down approach “under which we are already supposed to know what terms are needed to describe any «natural» phenomenon” (Williams 1995b, 67). Instead, he offers a bottom-up naturalistic minimalism.

In response to this quandary, Williams turns to Nietzsche for a naturalistic attitude and set of injunctions.⁸ Considering the specific case of human moral psychology, the preconditions that allow humans to be moral creatures, he notes two aspects of this attitude. First, it must demand minimalism. The less traits ascribed to humanity to explain a human social practice, the better in this attitude. However, this seems only to repeat one pole of the above quandary; for without some sense of what materials *can* be included in these “economical interpretations” this minimalism risks meaninglessness. So, Williams turns to a second aspect of this attitude. Following Nietzsche, the strategy is to appeal to “what an experienced, honest, subtle, and unoptimistic interpreter might make of human behaviour elsewhere.” While he does not cast it as such, what Williams is offering here is a humble form of holism, whereby we judge our assumptions about humanity in relation to some practice by how that accords with other areas of behaviour. This results, for him, in a realistic and naturalistic perspective that is not “the application of an already defined scientific programme, but rather an informed interpretation of some human experiences and activities in relation to others” (Williams 1995b, 68).

7] In fact, it is an important feature of his naturalism that there is a human condition, but no human nature (Guignon 2009, 174).

8] This connection of Nietzsche and naturalism is not in fact uncommon within analytical spheres now. However, Williams, along with Rorty, pioneered both the reading of Nietzsche and such a naturalistic perspective (Rorty 1991a; Leiter 2002; Janaway and Robertson 2012).

These methodological injunctions, which are admittedly mostly negative in character, do constitute a “hermeneutics of suspicion”. However, he qualifies that while this method does call for suspicion, it is not suspicious of everything. Rather, implicitly following the fallibilism of such pragmatists as Richard Rorty, doubt and belief both require reasons for Williams (Rorty 2007).

It is important to emphasize here that Williams’s naturalism is explicitly opposed to scientific forms of physical reductionism.⁹ His question is not whether social and political elements are reducible to nature, but only whether they *can be explained in terms of* other aspects of our present set of experiences and practices (i.e. nature in some broad sense). The first is a transitive relation while the second is a strategic anti-foundationalism. Rather, Williams explicitly rejects such reductionism. For him, the significance of culture is how it has pervaded all aspects of our existence. As a result, we cannot divide living under culture (i.e. with an ethical system, a set of social practices, a language, etc.) from whatever capacities allow us to live under culture in general. Instead, we must engage in the type of naturalistic holism described above (Williams 2000, 150-53). Importantly, and this brings us full circle, this requires a historical form of enquiry.

For Williams there are several methodological and political virtues to this model of naturalistic and historical enquiry into the development of our concepts and social practices. Principle among these is an explicit rejection of reductionism. Rather, historical naturalism exposes the contingency of our ideas and actions. Importantly, this is not solely a matter of historical interest; it shifts our understanding of the present and its necessity. “Above all, historical understanding – perhaps I may now say, more broadly, social understanding – can help with the business, which is quite certainly a philosophical business, of distinguishing between different ways in which various of our ideas and procedures can seem to be such that we cannot get beyond them, that there is no conceivable alternative.” (Williams 2006, 492-93).

A historical mode of philosophical enquiry has the unique potential to help us understand the present, how we have come to it, and why it seems to be the limit to our experience and thought. Essentially, it helps us see the limits of our present sets of concepts and practices and how these participate in making our present social and political lives seem necessary. This gives us a unique, internal understanding of our present socio-political arrangements and the potential to criticize them.

It is important to be clear here. A historical and naturalistic philosophical approach is essential to Williams for both of the tasks essential to a critical socio-political theory: explanation (or understanding) and normative critique. While these elements are by no means discrete, they are both addressed by this approach. As I just argued, it helps us understand the development of our practices and ideas up to and including the present (explanation). This rich understanding of the complexity of those ideas and practices then serves as a basis for their evaluation (normative). In fact, Williams’s main critique of

9] This, of course, did not stop his critics from accusing him of this anyway, e.g. (Taylor 1985, 1).

analytical moral and political thought is that conceptual analysis is not a sufficient basis for these types of normative claims. Where moral life in history is seen to be complex, contextual and evolving, ideal theorists posit it as clear, simple, and reducible to a set of universal and transcendent principles. In contrast, a historical and naturalistic approach allows us to enquire into the concepts and practices that are such engrained parts of our lives that we simply lack the ability to question them (Koopman 2010, 12-15).¹⁰ While I would argue that this may not be a complete theorization of an approach to normative reconstruction, Williams is identifying an important necessary element here.

All of this has important consequences for how we go about thinking the nature of politics. As I mentioned, Williams came to specifically apply these methodological insights to political theory in his final essays. There, it is clear that a naturalistic understanding of humans and their social practices, and a historical understanding of development and contingency should shift our focus within political theory from the ideal, transcendent and universal to “what is platinudiously politics” (Williams 2005e, 13). This somewhat opaque phrase summarizes the level at which political explanation and normative reconstruction should occur. What Williams is indicating here is that political theory should “descend” to the everyday level of actual political practice and concept-use, to the historical situations we find political actors already engaged in. This is the meaning of his repeated use of Goethe’s Faustian maxim: in the beginning was the deed.

This phrase, which Williams gets via Wittgenstein, summarizes his bottom-up naturalism; it asserts the primacy of practice within moral and political thought, that it is the languages we use and the practices we engage in that should be the primary locus of critical and normative exchange in politics. Thus, rather than foundational moral standards, or universal conceptual conditions of the political, we work out from within particular socio-political situations and their specific sets of meanings and practices.

What the Wittgensteinian idea does mean for politics is that foundationalism, even constructivist foundationalism, can never achieve what it wants. Any such theory will seem to make sense, and will to some degree reorganize political thought and action, only by virtue of the historical situation in which it is presented, and its relation to that historical situation cannot fully be theorized or captured in reflection. Those theories and reflections will themselves always be subject to the condition that, to someone who is intelligently and informedly in that situation (and those are not empty conditions), it does or does not seem a sensible way to go on (Williams 2005b, 36).

Political projects are conditioned not just by intellectual but by historical conditions. However, this restriction raises a danger, especially in relation to pluralism. For Williams, the dominant reaction to this insight within the history of political thought has been conservative. The shift to social practices seems to suggest that political and social change is necessarily slow and piecemeal. Speaking and acting differently is a slow process which does not occur, until it occurs, to use Williams’s formulation. The language of what “makes

[10] His examination of the concept of truth and the moral will seem to be the best examples of him engaging in this type of analysis himself (Williams 2002; 1995b).

sense” within a context seems to embrace a conservative acceptance of whatever set of social practices currently exist and invalidate the entire project of a critical and normative form of philosophical thought.

Yet, for Williams there is a very significant mistake within this conclusion. Socio-political criticism is itself a practice, something we engage in, irrespective of philosophical foundations. “Practice is not just the practice of practice, so to speak, but also the practice of criticism” (Williams 2005d, 36). While Williams is somewhat opaque regarding this emerging idea, he is arguing that socio-political criticism should be understood, not as a philosophical discipline requiring grounding in universal and rational principles, but as a practice that does and has emerged from within our given set of languages and social practices. As such, it is conditioned by our contexts, by the set of resources available in its moment, and requires attention to these situations in order to be efficacious. This is why the previously mentioned holism is no conservatism and is in fact key to this model of political theory. On Williams’s reading one of the principle features of our late-modern condition is a pluralistic reflexivity that offers new capacities for social critique. In contrast to other moments (and places), modern ethico-political life is confronted with the diversity of past and present alternatives to its way of being. This offers a strong sense of the situated nature of our practices and ideas which undermines the idea that they represent any kind of privileged position.

Once the resultant picture of ethical thought without foundationalism is made historically and socially realistic, in particular by registering in it the categories of modernity, it provides a possibility of deploying some parts of it against others, and of reinterpreting what is ethically significant, so as to give a critique of existing institutions, conceptions, prejudices, and powers (Williams 2005d, 37).

Critique on this understanding, is a situated practice of deploying some practices and ideas, and plausible extrapolations from them, against widely accepted, though problematic, ones. It is a localized, naturalistic, and holistic practice of employing the possibilities within our historical situation against practices and ideas which were perhaps once unproblematic but have become harmful.

It is in this vein that Williams calls in these final essays for a “Left Wittgensteinianism” to take up the project of this non-foundational situated form of socio-political criticism. Importantly, it is a method that is responsive to its historical moment and the general condition of pluralism we live under within late modernity. This reading has exposed a series of resources within Williams’s model of political realism. Specifically, he offers the broad sketches of a naturalistic and historicist method for political theorizing that is fundamentally responsive to the contemporary condition of pluralism. Importantly, this implicit model pushes Williams closer to another contemporary tradition within political thinking that has also emerged as a response to the problem of justification. Further, engaging this version of Williams with this reading has the potential not only to clarify this dynamic within his theory but to advance their shared projects for the methodology of political theory.

III. CONTEMPORARY REVERBERATIONS: PUTTING WILLIAMS TOGETHER WITH TULLY FOR A DEMOCRATIC PLURALISM

This reading of Williams's naturalistic historicism and implicit model of political theory as socio-political criticism pushes him away from New Realism and toward an alternative model of growing significance in contemporary methodological debates within political thought: James Tully's "public philosophy". Along with David Owen, Paul Patton, and Amy Allen, Tully is part of a group of theorists employing genealogical resources in the critical discussion of fundamental questions within contemporary democratic theory. Further, in a much more overt way than his compatriots, Tully has formulated a methodology for political theory that responds to the problems of pluralism and justification, seeking to identify critical and normative capacities from within these conditions. He is linked to Williams in this method by an equal emphasis on a naturalistic and historicist model of socio-political criticism. This section bears out their similarities and the positive methodological advantages of Tully's theory in order to illustrate the potential of this reading of Williams to advance methodological trends inside and outside of New Realism. Particularly, it offers insights into how realists could draw on other methodological trends in political theory, similarly situated, to pursue developing alternative models to liberal moralism (Chin 2016).

Tully describes his public philosophy as a practical, critical and historical approach that focuses on the practices of governance experienced as problematic in the present. He rejects the foundational task of a normative theory of justice, equality or democracy and its imperative to identify background conditions that transcend the everyday world of politics.¹¹ Instead, his approach is a practical philosophy, a "way of living" oriented to the problematic aspects of the present. It attempts to establish the conditions of possibility of a specific practice in the present. Importantly, the purpose here is not just "thick" description, but "to characterise the conditions of possibility of the problematic form of governance in a redescription (often in a new vocabulary) that transforms the self-understanding of those subject to and struggling with it, enabling them to see its contingent conditions and the possibilities of governing themselves differently" (Tully 2008b, 16). Thus, the purpose of this method is to enable political actors. It redescribes a problematic practice, illustrating its contingency to expose the nature of the present set of limits and open up alternative manners of collectively organizing that form of cooperation. It does this through three elements. First, it asserts the primacy of social practices. This approach is a form of philosophical reflection that both begins by reflecting on practices of governance experienced as problematic in the present, and localizes its discussion (contestation and negotiation) in the past and present forms of this regime of practices. This leads to its second and third elements that comprise a two-step process of intervention. Second, this approach enacts a critical survey of the existing languages

[11] Implicitly rejecting the dominant reading of Williams in new realism too.

and practices in which the struggles arise and the various ways of addressing conflict and problems already existing there. The point here is to understand which forms of thought and action are already taken for granted in this realm and so function as the constitutive limits of present thought and action. Third, this initial enquiry is broadened into a history (genealogy) of the formation of these languages and practices. Together, these two surveys give us a manner to understand the nature and limits of a current language and/or set of practices, treating them as a kind of provisional bounded whole, allowing us to call them into question and raise claims to alternative modes of organization (Tully 2008b, 19-37). The point of this is to enable political actors to “think and act differently” and, importantly, within a framework that does not assume external normative or critical standards.

This admittedly brief characterisation of Tully’s approach reveals several points of contact that clarify the minority reading of Williams and, importantly, a few points of difference.¹² In the first instance, there is a clear connection between Williams’s bottom-up naturalism and Tully’s primacy of social practices. Both shift our attention to the sets of social practices and languages that communities actually employ. They work out from this base, the present socio-political world, in order to address political problems. What Williams distinctly offers is the potential of a significantly more developed understanding of that social-practice based naturalism, one that may serve to flesh out the tradition of public philosophy Tully sees as implicit within western political thought since the Enlightenment. It is in this sense that while Tully does not use the term, these approaches are linked in a common naturalism defined by, as Rorty has aptly observed, a rejection of the notion of politics as a bounded whole outside of which rest some set of absolute conditions or moral standards. Rather, politics is only “a set of indefinitely expandable social practices” (Rorty 1991b, 57). The consequences of this are both disabling (of a certain sort of approach) and, for these theorists, profoundly enabling (of an alternative). With Wittgenstein, they both take the notion that doubt and critique, once naturalized in this manner, cannot be “a suspicion of everything”. Rather, both focus on how capacities for critique and normativity reside within social practices and languages themselves. For example, for Tully, following Wittgenstein, while one cannot question all the rules of a language game at once, we can always bring particular rules and practices (spaces of freedom) into contestation (Tully 2008b, chap. 2).¹³

Both Williams and Tully also turn to history as a key resource for a political theory bounded by this naturalism. For Williams, history reveals the development of our thought and practices. This has the important consequence of revealing how the elements of our present that seem natural and necessary came to be, and of giving us critical distance to them. Tully too, in a slightly more nuanced and worked out fashion, employs history in order to de-naturalize a set of practices and ideas and to raise the possibility of alternatives.

[12] For a general look at Tully’s relation to realism, see (Honig 2014; Honig and Stears 2014).

[13] There are of course important differences too. Tully is much more suspicious of truth, as discussed below, and Williams is much more suspicious of Wittgenstein’s framework (Williams 2005d).

In both thus, it is a key resource for the critical and normative practice of socio-political critique. This has an important consequence only really identified in Tully's more overt method. Historicizing our practices in this manner democratizes them. It exposes them to contestation and agon, to a process of democratic exchange (in a variety of forms) that is explicitly obscured within ideal methods (Tully 2008a, 242). This is, perhaps, not a consequence Williams (especially the Williams of new realism) would support; prioritizing the question of stability as he did. However, the alternative, more pluralistic Williams would have endorsed this levelling of the epistemological and political fields.

This brings us to the question of the mode of political thought offered here. From this it should be clear that Williams and Tully are both offering situated modes of political theorizing, that work out from the present set of practices and languages, and reject external sources of standards. These approaches formulate strategies for drawing on the existing set of social practices and languages in order to deploy some part against others (in a naturalistic holism) that we seek to meliorate in light of their problematic natures.¹⁴ As we have just seen, this is profoundly democratic. Further, this *democratic naturalistic historicism* leads to a political theory that is also fundamentally pluralistic, both methodologically and politically. Tully bears this out. The historical method is intended to raise the possibility of "perspectival seeing" where alternative possibilities for some set of practices arise out of the enquiries into the present and past of this set of practices. Such perspectivism is the product of a naturalism that cannot rely on some set of absolute standards. This changes the nature of political theories, as well as other languages and practice regimes within our situated political contexts. All of these "are approached, not as rival comprehensive and exclusive theories of the contested concepts, but as limited and often complementary accounts of the complex uses (senses) of the concepts in question and the corresponding aspects of the problematic practice to which these senses refer" (Tully 2008a, 29; see also Tully 2014, 223). In this sense, both political theories and embedded political languages are sets of practices of reasoning that offer partial clarification of a range of concepts and practices, but never are able to exhaust that process or its possibilities. They are thus "conditional perspectives" situated within some set of claims and concerns. Such a position stands in stark contrast not only to the ideal method, but to the emerging approach of new realism, which as we have seen, despite its historicism, continues to attempt to universalize about politics from within a realistic account of the conditions of that sphere.

The product of these methodological shifts is a deep levelling and democratizing of the field of languages and actions. In this manner, Tully specifically, and Williams potentially, respond to the problem of justification not with the attempt to overcome its paradox but to work within its conditions. They provide for the possibility of a deep methodological

14] Tully's use of the Common-Law tradition to critique the more dominant tradition of Western Constitutionalism for its understanding of and relation to diverse groups is perhaps the strongest example of the potential of this method. It significantly affected the understanding of contemporary Multiculturalism after its publication (Tully 1995).

pluralism in contemporary political thought, where previously rival approaches can be framed within this non-hierarchical discursive field and paired in strategic combinations as needed for particular situated issues, and a deep political pluralism in contemporary democratic politics, where the process of political deliberation is not implicitly based on one group's practices or languages. In both spheres the principle question becomes, "how do we attend to the strange multiplicity of political voices and activities without distorting or disqualifying them in the very way we approach them?" (Tully 2008b, 89). While much of this is only implicit in Williams and his brief turn to political theory, his naturalistic and historicist methods, and his commitment to addressing the problem of foundationalism and the political problem of pluralism, make this a plausible extension of his thought. In this manner, his overt combination of these methods can advance current debates through Tully and the wider turn to situated forms of political theorizing.

IV. CONCLUSION

The history of contemporary political theory has struggled with the fact and idea of pluralism. From Berlin raising the question of value pluralism, Rawls re-framing it in a procedural distinction between the right and the good within liberal politics, and the fall of the Berlin Wall dramatically shifting our understanding of political divisions, political thought has repeatedly returned to the project of understanding the fractured nature of late-modern politics (Rawls 2005; Berlin 1999; Benhabib 1996).¹⁵ Just as these returns each resulted in intense methodological reflection, as political theorists attempted to equip their discipline with the tools to explain diversity and the conditions it sets for democracy, in recent years this pattern has repeated. Currently, new realism and the wider situated turn it is a part of are offering new ways of thinking pluralism in light of continued concerns around the universalist assumptions of the existing models. In this manner, pluralism (epistemic, ontological, political, etc.) continues to be the singular question of contemporary politics.

The reading of Bernard Williams presented above intervenes in this debate by offering a different potential within his work to the dominant reception it has received within recent literatures. These commentators have emphasized Williams's conceptual method, conception of politics as grounded in stability, and framework for questioning legitimacy, leading to a series of problems with the model of political thought this entails. New realism, amongst others, has criticized traditional ideal theory for relying on a moral foundationalism to ground its normative claims. However, as some critics have identified, William's conceptual approach to the political produces a model of politics focusing too much on stability to the exclusion of other elements. The result is a narrowing of political theorizing and action. These represent serious concerns that have not, as yet, been adequately addressed.

[15] For an analysis of these transitions, see Moon 2004.

In contrast, there remains a pregnant, and yet unacknowledged, alternative set of potentials in Williams's work. Reading his later political theory in conjunction with his explicit work on naturalism and historicism, reveals a set of resources to reframe political thought as a mode of socio-political criticism of our present practices and ideas. Confronting Williams with Tully bears out these positive methods and illustrates the type of direction a more thorough version of Williams naturalistic and historicist realism could take. This offers the important lesson to contemporary realism that a realist philosophy need not run roughshod over the problems of justification and pluralism that have structured recent political thought. Rather, the resources exist to frame a mode of political theorizing that attends to the real, to our actual situated languages and practices, without assuming external standards and returning to universalistic claims. Further, this potential method has the benefit of providing for a more thorough methodological and political democratic pluralism. In this way, political theory could once again become a discipline that speaks actively to the actual political world.

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From Inevitable Establishment to Mutual Exclusion: The Challenge for Liberal Neutrality

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Abstract: One of the challenges that liberal neutrality faces in diverse societies is how to maintain neutrality towards conception of the good life, when establishment of a particular conception of the good and exclusion of other conceptions is inevitable, as in the case of language regulation. A possible solution is to justify this establishment by appealing to universal reasons, thus refraining from endorsing the intrinsic value of the established conception. This paper argues that such a solution is limited, as it does not cover all inevitable-establishment domains. This is because there is a distinction within inevitable-establishment domains: domains in which rival options can coexist, such as language policy, and domains in which options are mutually exclusive, such as land-use policy. The paper argues that language policy is a coexistence domain, since it allows for a degree of personal agency, and it can refrain from making value judgments about the language that is endorsed by the state. Spatial organization and land-use policy, on the other hand, must rest on value judgments about the good life and cannot accommodate neutral justifications. The distinction has important implications for the scope of neutrality: neutrality turns out to be applicable in coexistence domains, and inapplicable in mutually-exclusive domains. Ultimately, it may be the case that neutrality may not be applicable even in language policy, since language policy exhibits characteristics of a mutually-exclusive domain.

Key words: liberalism, neutrality, multiculturalism, language policy, land-use, intrinsic value.

The principle of liberal neutrality has been subject to much criticism, both normative and conceptual.¹ The neutrality principle requires that the state not take a stand on matters of conceptions of the good life, and therefore no conception of the good is to be endorsed by the state based on its intrinsic value (Dworkin 1985; Rawls 1996; Klosko 2003).² One of the challenges that liberal neutrality faces is how to maintain neutrality when establishment of a controversial conception of the good is inevitable, as in the case of language regulation, or policies towards minorities. Liberal neutralists like Will Kymlicka and Alan Patten have been defending a version of neutrality that is grounded in the ability to justify establishment on universal grounds, even in inevitable-establishment domains (Kymlicka 1995; Patten 2003, 2014).

In this paper I argue that neutrality is not applicable in all inevitable establishment domains. Specifically, I argue that sometimes inevitable establishment cannot be justified on universal grounds, making neutrality infeasible in these cases. To demonstrate this, I

1] For normative criticisms see Arneson (2003), Hurka (1995) and Raz (1986). For conceptual criticism see Wall (2001). Steven Wall shows that when egalitarian ideals are concerned, the boundaries between neutrality of justification – generally the acceptable version of liberal neutrality – and neutrality of effects – generally opposed to in liberalism, collapse to a significant degree.

2] Conceptions of the good are treated here as overall views of what is valuable in life, whether they originate from moral, religious, philosophical or other beliefs (Klosko 2003, 168).

introduce a distinction *within* inevitable establishment domains: domains in which rival options can coexist and domains in which options are mutually exclusive. This distinction has important implications for the scope of neutrality: neutrality is feasible in coexistence domains, and infeasible in mutually-exclusive domains. I argue that language policy is a coexistence domain, whereas spatial organization is a mutually-exclusive domain. The upshot is that even if neutrality is a compelling moral principle, in mutually-exclusive domains, like land-use and spatial organization, it would be conceptually inapplicable. In turn, to the extent that the neutrality principle does not cover mutually-exclusive domains, we need alternative moral principles for such domains to replace the neutrality principle.

I employ a comparative method in order to gauge the relevant differences between language regulation and spatial organization, which will in turn justify why neutrality could work in the former and not the latter. A comparative approach could theoretically lead to any of the three possible outcomes:

(1) Language regulation and spatial organization have enough relevant commonalities. There already exists literature on language regulation which insists that neutrality is morally required and practically feasible in that domain (Patten 2003, 2009; Blake 2003; Weinstock 2003). Therefore, conceptually, if neutrality is feasible for language regulation it ought to apply equally well to spatial organization.

(2) Language regulation and spatial organization have enough relevant commonalities. Neutrality cannot be applied to spatial organization (for reasons discussed throughout this paper). Therefore, conceptually, if neutrality is infeasible for spatial organization we should not expect it to apply to language regulation (i.e., existing literature on the possibility of neutrality in language regulation is mistaken).

(3) Language regulation and spatial organization have enough relevant differences, so that even though neutrality might be applicable to language regulation, we should not expect it to apply to spatial organization.

In the first part of the paper I defend the third possible outcome. I will show that spatial organization allows for significantly less coexistence of competing options, compared to language regulation, and that therefore neutrality is much less feasible for the organization of spatial activities and spatial relationships. I choose to start with the third outcome because there already exists a body of literature insisting that language regulation is compatible with the requirements of neutrality. Since my chief aim is to show that neutrality is conceptually incompatible with spatial organization, I demonstrate how and why spatial organization is relevantly different from language regulation. If it is indeed relevantly different, then even if neutrality can be applied in language regulation, it would not be applicable in spatial organization. In other words, the argument in the first part of the paper is that in both language regulation and spatial organization, establishment of a particular conception of the good is inevitable. However, in the language domain this establishment can be given neutral justification, and therefore neutrality is feasible. In spatial organization, on the other hand, establishment cannot be given neutral justification, and hence neutrality is infeasible. However, there is a lot that can be said in favour of the

second outcome, namely that language regulation and spatial organization are similar, and since neutrality cannot apply for spatial organization we should not expect it to apply to language regulation. I discuss this possibility at the end of the paper. If either the second or third outcomes are convincing, i.e. neutrality is incompatible with (at least) spatial organization, then the first possible outcome (neutrality should be compatible with both domains) is logically impossible, and therefore not in need of further discussion.

The paper is organized as follows: the first section explains why in certain domains such as language regulation, multiculturalism and spatial organization, establishment of certain conceptions of the good is inevitable. The following sections present the relevant distinctions between language regulation and spatial organization: I start by demonstrating that language regulation allows for a greater degree of coexisting options, whereas in spatial organization options are mutually exclusive; I then show that language regulation allows for a greater degree of personal agency; the subsequent section describes why any land-use decision must rest on value judgments about the good life, whereas language regulation can refrain from them. Each of these essential differences provides a distinct reason to challenge the applicability of neutrality in the spatial domain. Taken together, they mount a powerful case against the possibility of neutrality in spatial organization, and by extension – in mutually-exclusive domains more generally. The final section explores the possibility that neutrality may be inapplicable for language regulation as well.

I. NEUTRALITY IN INEVITABLE ESTABLISHMENT DOMAINS

Liberal neutralists regard the principle of state neutrality towards conception of the good as morally compelling because in its absence, the state is forcing persons to adopt or live by values and norms which are foreign to them, and as such fails in its duty to treat all persons with equal concern and respect (Dworkin 2000; Rawls 1985; Nagel 1987). Furthermore, there is no way to universally determine the truth of any of the competing conceptions of the good that are held by reasonable persons in pluralist societies, providing another reason to insist on neutrality (Nagel 1987; Rawls 1996, xxii). Practically speaking, the state is morally committed to disestablish conceptions of the good life: either exercise ‘benign neglect’ or even-handedness towards rival conceptions (Kymlicka 1995, 3; Patten 2012).

However, complete disestablishment is often unavailable. This is so because disestablishment is possible when the state can leave matters that pertain to the good life in the hands of individuals, to be determined according to their own private moralities (Nagel 1987). Religious disestablishment, for example, means that the state does not support any religion, and leaves matters of faith to be pursued individually. In the case of language policy, this sort of disestablishment is impossible. The state cannot replace the use of an official language with no language (Kymlicka 1995, 111). While “the state should not recognize, endorse, or support any particular language or language group any more than it should recognize, endorse, or support a particular church or religion”, there is no way of disengaging language choices from public service provision, courts and legislature

and public education, hence linguistic establishment is a fact (Kymlicka and Patten 2003, 32). Especially in multicultural societies, the state needs to decide between establishing monolingualism or plurilingualism.

What is more, the establishment of an official language(s) is an establishment of a particular conception of the good life. Language matters to persons for a variety of reasons which cannot be reduced to instrumental reasons. Rather, people care about their language because language and culture are interdependent.³ Many people care about the survival and flourishing of their language. People are proud of their first language and of the cultural achievements that have been expressed through it. They may take great pleasure in using their first language and in encountering others who are willing to use it (Patten, forthcoming). To the extent that language and culture are interdependent, language is a normatively-laden system of thought and meaning. Different languages, therefore, embody different systems of thought and meaning. Choosing to conduct the state's official business in one language over another is to impose on citizens a particular system of thought and meaning rather than another. To illustrate that different languages carry different normative meanings, consider the word freedom. Peled and Bonotti argue that "The English concept of 'freedom' cannot be easily translated across linguistic boundaries, since it is rooted not simply in the English language but also in the particular political culture in which it has emerged, which can hardly be described as universal in any empirical sense." (Peled and Bonotti 2016, 801) So for example, a constitution that uses the English word 'freedom' carries a particular normative interpretation of the term. This interpretation becomes the established term, pertaining to all persons who live under that constitution, even if in their native language the term carries a different meaning.

Another way to illustrate that language establishment is an establishment of a conception of the good is to consider the argument that holds that linguistic diversity is a good in itself. Some proponents of language diversity hold that just like biodiversity is good, so is language diversity: it makes for a world that is more colourful, richer and more interesting (Crystal 2000; Maffi 2000). Therefore, if the state establishes plurilingualism, it promotes the good of diversity. The upshot is that by establishing an official language (or languages), the state is promoting a system of norms and values that pertain to the good life, over which individual moralities have little control.

By the same token, the state cannot disestablish culture or spatial organization.⁴ It cannot replace the distribution of, say, a city-suburb land-use organization with no distribution. Further, benign neglect is conceptually incoherent in the domains of language, spatial organization and multiculturalism, because it just obscures the fact that non-decisions are themselves a form of establishment.⁵ However, Alan Patten holds that

3] For an analysis of this interdependence and its implications for justice see Peled and Bonotti (2016).

4] Kymlicka makes a similar observation with respect to policies towards minorities (1995, 108).

5] This is because there are cases where the distinction between the state doing and allowing collapses (Wall 2001), and non-decisions in the domain of spatial organization represent such a case.

neutrality can be maintained in language policy if this inevitable establishment is justified by universal reasons: justifications that do not appeal to the merit or superiority of a controversial conception of the good (2003, 2014, forthcoming). Inevitable establishment, therefore, can be justified by neutral reasons if it leaves an adequate range of options for individuals to exercise autonomy and self-determination about the good life.

But what if inevitable establishment limits the range of options such that it constrains autonomy and self-determination? I argue that within inevitable establishment domains there is a distinction between two types of domains. The first type leaves an adequate range of options for autonomy. Language regulation belongs to this category. In the second type, options are mutually-exclusive and effectively constrain the opportunity for autonomy. Spatial organization belongs to this category.

Spatial organization is different from language policy in the following way: while both are domains in which establishment is inevitable, there is a difference between these domains, which has to do with the degree of personal choice that each domain allows. In language policy, establishment can be justified by neutral reasons, because it allows a decent degree of personal autonomy with regards to the good life. In spatial organization, on the other hand, establishment cannot be justified by universal reasons, because in spatial organization, as I argue below, there is little room for individual autonomy and self-determination. This makes neutrality infeasible in spatial organization, even if it is otherwise morally compelling.

II. 'BOTH/AND' VS. 'EITHER/OR'

What makes neutrality feasible in *disestablishment* domains? Answering this question provides a benchmark from which we can determine if these conditions obtain in inevitable establishment domains as well. Religion is a paradigmatic case of disestablishment. Religious disestablishment is morally required because a state-endorsed religion leads to domination, hierarchy, subordination and disrespect of non-adherents (Nussbaum 2008, 20, 24, 226; 2011, 35). More generally, the 'humanistic freedoms' – freedom of speech, freedom of association, the right to vote according to one's conscience, freedom of sexual conduct, the right to have an abortion, the right to privacy, the right to marry regardless of sexual orientation (Raz 1986, 254-56) – prescribe neutrality for similar reasons that obtain for religion.

Each of the humanistic freedoms contains the potential for individuals to choose between competing, incompatible options: whether to vote for this party or that; whether to have an abortion or have the child; whether to speak out or stay silent; whether to express an opinion in favour or against an issue; whether to join (or remain in) a voluntary association or break with it, and so on. All these possibilities represent a category of choice between 'both/and' options. Importantly, the implicit assumption is that in a liberal state these incompatible options can coexist, and it is therefore the responsibility of the state to ensure that they are indiscriminately available to every citizen. 'Both/and' outcomes are

conducive to liberal neutrality since they enable the possibility for individual choice, for autonomous decision-making and self-determination. This is a crucial point: the state can remain neutral because the alternative options can exist. Disestablishment domains are therefore those in which competing options can coexist.

The distinction within inevitable establishment domains should therefore focus on the degree of coexisting options that they can contain. In other words, when the domain in question enables a significant degree of ‘both/and’ options in that domain, neutrality will be feasible. I will argue throughout the first part of the paper that language regulation is a domain which can maintain a higher degree of competing options and the possibility for autonomous choice making. Therefore, it is relevantly similar to the disestablishment domains, and as such can comply with the requirement for neutrality. In contrast, spatial organization, which is also a domain of inevitable establishment, is different in the relevant sense: it is a domain of ‘either/or’ choices (Harvey 2000, 196).

III. MUTUAL EXCLUSION

Spatial organization is characterized by mutual exclusion of options, meaning that no two options (or more) can be accommodated within a single space, and therefore even-handed treatment (supporting both options) is conceptually impossible. Heather Campbell observes that “‘both/and’ is not an option when either a road, factory, retail ‘experience’, or wind farm is built or is not” (2002, 276-77). Rather, planning decisions are ‘either/or’ decisions. Importantly, ‘either/or’ decisions are substantive; they are the manifestation of a certain conception of the good. The act of zoning – fixing the function and sense of a place – is an inevitable commitment to some value (King 2004; Campbell 2006; Wachs 2013). For example, as soon as the local government issues a zoning ordinance for, say, minimum lot size or minimum parking standards, it inevitably imposes certain values on the area. Issuing zoning ordinances based on minimum lot size invokes the ideal of private homeownership. Allowing two parking spaces per residence promotes the model of an auto-dependent society, which rests on the ideal of separation between home, work and other activities (Williamson 2010, 5-6).

The regulation of languages allows for a greater degree of coexistence of rival options. At the macro-level, empirical observations show that multilingualism is on the rise in the modern world (Edwards 2012). At the individual level, multiple linguistic identities can and do overlap, both intra-personally and collectively (May 2003, 143). This means that persons are able to possess knowledge of two or more languages simultaneously. From a social point of view, this means that societies are accommodating of multiple languages within a single territory. The point is that linguistic reality in liberal conditions admits more coexisting options and therefore offers more choice. For example, immigrant parents can deliberately choose whether to speak to their children in their native language or in the majority language. The choice may be constrained by other considerations, such as the desire that their children be competent in the dominant language in order that they

obtain a better starting position in life, or an opposite desire that their children experience in a meaningful way their native culture. Either way, the absence of state coercion in this private realm means that the parents are making an authentic choice between two readily available – coexisting – options.

To take another example, even if the state establishes an official monolingualism policy, the liberal-neutralist argument is that there still remains a significant degree of personal choice. Alan Patten holds that a such a policy can be morally legitimate if it serves to increase social mobility. In a state which has only one viable “societal culture”⁶ – a culture where minority speakers do not have sufficient opportunities or options to operate in their own language – a common language will ensure that these speakers have sufficient “access to an adequate range of economic, social political, and cultural options and opportunities” (Patten 2003, 381). So even if the common language is formally established (to the detriment of endangered minority languages), persons can still exercise a significant level of choice within this background of opportunities. In this respect, a minority-speaker who is proficient in the common language has more disposable opportunities in the employment market, than a “ghettoized” minority speaker who cannot find adequate work due to insufficient knowledge of the common language. When a minority culture cannot be reconstructed or revived by public policy, proficiency in the common language enables more access to opportunities compared with remaining in a cultural ghetto (Patten 2003, 381).

The fact that individuals have more linguistic choice than spatial choice is closely related to the idea of *agency*. Spatial organization is more restrictive of personal agency than language regulation. When the state institutionalizes a language, it creates a background context within which persons live their lives. As such it obviously determines a lot of what persons will be able to do. Nevertheless, liberal institutionalization of a language does not affect negative liberties directly: it does not tell persons what to think or how to express what they think. Persons retain a significant degree of control over their personal usage of language, they are still free – no one is legally prohibited – to speak whichever language they choose.

Yet the same degree of freedom is not attainable with respect to spatial organization. When institutions zone an area as, say, homogenous-residential, it undermines the agency of those who (fundamentally) prefer another pattern.⁷ They are not free to exercise their preferable spatial organization. While they are not legally prohibited from exercising it, they are nevertheless unfree because the ability to actually do it is simply unavailable or incredibly difficult.

One reason for this is that the degree of personal effort that individuals or groups need to invest with respect to preserving minority language is somewhat lower than the

6] A societal culture is “culture which provides its members with meaningful ways of life across the full range of human activities” (Kymlicka 1995, 76).

7] This type of preference is fundamental in the sense that it pertains to persons’ final aims and goals, not to superficial desires such as ice cream flavours (Scanlon 2006, 6-7).

efforts that individuals need to put into creating spatial alternatives. When institutional support for minority language is absent, minority speakers can pay for tutoring, for cultural activities and so on. These are things that can be done at the personal level or at the community level. Changing spatial patterns requires much more resources – money, organization skills, lobbying abilities, access to decision makers – than individuals or even communities can muster. This point helps strengthen the case that individual agency is somewhat more pronounced in the language domain compared to the spatial domain.

The implication is that it is possible to exercise neutrality in language policy so long as there is a significant degree of individual choice that individuals can exercise in their private lives regarding language. This will be much less feasible in spatial organization. As mentioned above, it is conceptually impossible to accommodate competing land uses in the same place. Persons cannot really exercise the same degree of individual choice regarding spatial organization as they would in the domain of language. The neutrality principle, which rests on the ability of persons to exercise autonomy and self-determination in their private lives, is therefore less applicable in domains such as spatial organization where personal agency and choice making are limited. The implication is that although inevitable establishment is a feature of both language regulation and spatial organization, the degree of coexisting options in language regulation is higher, allowing for neutrality, whereas mutual-exclusion of options in spatial organization precludes neutrality.

IV. INTRINSIC-VALUE JUDGMENTS

The second relevant difference between language regulation and spatial organization is that in language regulation, policy decisions can refrain from intrinsic-value judgments, whereas in spatial organization this is impossible. Since intrinsic-value judgments are inherent to spatial decisions, not only to the outcomes but to the decision-making process as well, they are inevitably non-neutral.⁸

Language regulation can refrain from intrinsic-value judgments: according to the liberal viewpoint, policies that debate whether to prefer a common language or to preserve minority language need to be fair to the speakers, not to the languages they speak (Patten 2003, 372). The assumption is that all languages have similar societal and cultural functions.⁹ What is important for the liberal is not the intrinsic value of a particular language but the role it plays with respect to ensuring political, civic and cultural

8] Intrinsic-value judgments in this context refer to the intrinsic value of the good, but they also apply to conceptions of the *right*. Since there is no reason to assume universality with respect to controversial conceptions of the right, judging between competing conceptions of the right is equally non-neutral (Arneson 2003, 195; Chan 2005, 22; Hurka 1995, 56; Caney 1998, 102-5).

9] Languages endow persons with a sense of identity; they are indispensable for a stable “societal culture”, a culture that provides for its members meaningful ways of life that embrace the full range of human activities, and they enable a ‘shared vocabulary of tradition and convention’ (Kymlicka 1995, 76, 82; Dworkin 1985, 231).

opportunities. Therefore, where there is a clear majority language, it doesn't matter which language it is, what matters is that minorities will be proficient in it so that they can enjoy an adequate 'context of choice' – a variety of options and opportunities that embrace the full range of human activities (Patten 2003, 380). Crucially, the intrinsic value of a language will not serve as justification for choosing it over other languages.

By contrast, debates about spatial policies require assessing the consequences of the suggested policies, and in many cases applying value judgments regarding the preferable option. The reason is that spatial policies, due to mutual exclusion, limit the applicability of universal justifications. This argument requires some explanation, which will be made clearer using a hypothetical metropolitan planning board. Imagine that this planning board is debating the best way to promote mobility (a universal goal), and its members are weighing two options: promoting car travel through car subsidies and generous parking supply (option A) and investment in public transport (option B).

Suppose that car transport (option A) is shown to promote mobility. Nevertheless, there exists an important reason for inquiring into the intrinsic value of this policy, and that is that prioritizing car travel has a tendency to reinforce "automobility" – the culture of the solo-driver individual (Urry 2004; Gartman 2004).¹⁰ This shows that certain aspects of spatial organization go to the core of conflicts over conceptions of the good. Importantly, sprawled settlements are often associated with preferences for privatism and consumerism (Williamson 2010, 4),¹¹ making any policies that favour automobile travel unevenly accommodating of that particular conception of the good. If indeed road infrastructure helps create and reinforce a certain culture, it introduces an institutional bias in favour of this culture, and against others. The outcome is not an innocent by-product of the policy; when policy makers debate what kind of accessibility-policy to promote, they are in effect debating the good life. Intrinsic-value judgments, therefore, are inherent to the debate, even when policy aims are discussed in universal terms.

V. CONFLICTING UNIVERSAL JUSTIFICATIONS

Applying intrinsic-value judgments for spatial policy is inevitable for another reason. Very often, the appeals to universal justifications within the adequate 'context of choice' will pit two or more universal values in direct conflict. When this happens, we need a criterion that will enable us to choose between them. In fact, the very concept of 'context of choice' and its adequacy is value-laden, especially in mutually-exclusive domains. For we do not know what a proper adequate context of choice is until we determine what it contains and what it excludes. Therefore, as Simon Caney notes, a neutral theory will

¹⁰ Sheller and Urry expand: "*automobilization* [...] leads to the extension of human habitats, the dispersal of places across space, the opportunities to escape certain locales and to form new socialities, and the fragmentation of temporal flows, especially through suburbanization" (2000, 742).

¹¹ See also Robert Kirkman (2010) on the genealogy of suburban preferences.

not be able to supply us with such a criterion to determine the content of the context of choice, or the universal values that justify its makeup, since the only criterion available is an appeal to ‘a more specific account of the good’ (1996, 102).

As such, the value of, say, accessibility, will have to be ranked and compared against other values, and the resolution will ultimately have to be grounded on sectarian or comprehensive reasons (Ferdman 2017). I illustrate this by referring once again to the planning board, whose members are now debating an accessibility policy that centers on massive investments in public transport.

The board members have to take into account that implementing public transport, especially mass transit, requires substantially more land in designated areas (along the route itself and around the stations). Suppose that most of the designated land is currently privately held, and can be acquired only involuntarily (by expropriation/taking). Suppose further that property owners oppose the taking, on grounds that it seriously interferes with their comprehensive conception of the good in a way which defies neutral justification.¹² They could offer several universal counter-arguments: that it harms their freedom of occupation; that it harms their autonomy; that it harms their integrity by withholding from them what is considered to be a basic human need – a home; that it is an affront to their personhood (Radin 1982, 1006); that they’re being used as a means and not an end. On the other hand, refusal to consent to the taking on the part of each property owner could strike some as excessively egoistic. The homesteader’s preference that her home is kept intact at the expense of other persons’ resources could be regarded as an expensive taste – a taste (in the broad sense) that requires more resources to satisfy compared to resources that others have (Dworkin 2000, 48-59). We have to make a value judgment with respect to whether losing an hour a day over a work-lifetime is merely an inconvenience or rather a serious harm to one’s welfare¹³ or a reduction in one’s ability to practice their conception of the good.¹⁴ This is something that must include intrinsic-value judgments with respect to what makes things central to one’s welfare and conception of the good.

The different arguments in favour and against the taking help to demonstrate that in questions of justice, reasonable disagreement between citizens on matters of distribution is bound to occur. Cecil Laborde notes that in conflicts over religious establishment “[...] citizens will reasonably disagree about the relative importance of such fundamental

12] Note that these persons cannot accuse the state of being non-neutral in the effects of the policy. Non-neutral effects are a natural result of the relative attraction of different conceptions, that is determined purely (in ideal situations) by the preferences of free and autonomous persons. Recall that liberal policy towards languages does not promise the equal success of every language, but rather the equal background for each to strive for its success. Similarly, therefore, non-neutral effects of transportation policy will not gain the sympathy of the liberal.

13] Empirical evidence suggests that it is not a minor inconvenience: commuting for over 30 minutes a day – especially by non-auto travel modes – significantly reduces welfare (Office for National Statistics 2014).

14] Supposing, arguably, that saving on commuting time could be spent with one’s family, or spent on other intrinsically valuable activities.

values as freedom of religion and (more generally) of conscience, non-discrimination, equal opportunities, parents' and children's rights, 'compelling state interests' and so forth" (2013, 11). In cases of profound disagreement, the liberal logic pulls towards disestablishment, even if no constitutional freedoms are violated (Laborde 2013, 19-20). However, disestablishment is conceptually unavailable in spatial organization, and what's more, in order to reach a spatial decision the merits of each option have to be balanced against each other. There is no way to avoid sectarian, non-neutral reasoning in this decision-making process.

Further, the neutral even-handed approach (i.e. supporting all conceptions evenly) cannot work for spatial organization, precisely because the intrinsic value of the competing options needs to be evaluated prior to the commitment to indiscriminately supporting all of them. The even-handed approach in language policy aims to ensure that persons have a fair opportunity for self-determination, through the preservation of an important part of their personal and collective identity. It offers recognition of minority languages whenever they are a local majority,¹⁵ including offering services in the minority language, and allowing parents to choose that their children be educated in their minority language where such education exists.¹⁶ These services and accommodations cannot be replicated in the spatial domain.

An example will help illustrate the difficulty of applying this approach in the spatial domain. Let's say there are two rival conceptions in the city, one that reflects the desires to self-segregate into fortress-like enclaves (say gated communities),¹⁷ and the other which prizes the values of community and solidarity and requires a more open and civil-oriented spatial setting (along the lines of the idealized "traditional" neighborhood). The state could allocate space equally between these two conceptions, so that a fortress city will reside next to the traditional neighborhood. *Prima facie*, even-handedness is successful.

Nevertheless, there is something potentially problematic about the even-handedness that is awarded to these conceptions, since it does not require of the conceptions to be *reasonable*. We could find (as is in fact the case with respect to many instances of self-segregation), that the desire to retreat rests on an unreasonable desire to exclude (Bickford 2000; Williamson 2010, 171; Kohn 2004; Young 2000, 204-10). One of the possible justifications for ruling out unreasonable conceptions is that they do not uphold principles of justice that treat everyone as equal. In this case, not all instances of self-

15] Michael Blake notes that not all minority languages can claim they have a right to language preservation; such measures should be reserved only to those policies of minority-languages that are vulnerable due to past discrimination (2003, 223-25).

16] This prerogative holds even if the child is completely fluent in the majority language (Patten 2003, 371-72).

17] 'Fortress communities' are separate cities within the city. These urban quarters are differentiated along several dimensions: race, class, occupation and ethnicity, whether residential or commercial enclaves, these fortress-like neighborhood offer complete insulation from other quarters via physical boundaries such as walls, gates and surveillance (Marcuse 2002).

determination will have gained an equal moral status. Those based on “offensive tastes” will be a priori ruled out (Rawls 1999, 27-28). In the gated community case, the exclusion of non-members from the public spaces of the gated community is unreasonable, because it does not treat them as equal moral agents.

Therefore to be reasonable, in the context of self-segregation, is to recognize that privacy, seclusion and exclusion come at a price for others, and to relax the demand for these amenities in the name of equal respect (Bickford 2000, 366). The upshot is that before ‘blindly’ giving institutional support to any conception of the good in an even-handed manner, it is morally required of the state to look into the reasonableness of the competing allocative claims. Note that institutional support does not need to be limited to monetary support. Zoning and regulations which permit gated associations and their restrictive policies are also a case of institutional support. In any case, the need to examine the reasonableness of the allocative claim requires a different sort of moral justification, substantive rather than neutral. In order to decide on spatial policy we need to make value judgments and inquire into the reasonableness of the rival ways of life, before making policy decisions. Again, this would be unnecessary in the case of language, since languages are not categorized according to their reasonableness.

So far I have surveyed the reasons which distinguish spatial organization from language regulation. This comparison shows that language policy allows for a certain degree of coexisting options. Spatial organization, on the other hand, is a domain of mutually-exclusive options. While in both domains establishment is inevitable, in the mutually-exclusive domain (e.g. spatial organization) neutrality is infeasible. This is because neutrality can be maintained if the inevitable establishment is justified by universal reasons, such that do not pertain to the merit or superiority of any conception of the good. While in the domain of language such justifications exist, in the domain of spatial organization, universal justifications are hard to come by. First, because in the mutually-exclusive context there is a minimal degree of opportunity for individual choice-making in the private sphere. Second, because ultimately the justifications for spatial policy rest, implicitly, on ideas about the good life. In the final section I examine whether despite the *prima facie* difference between language policy and spatial regulation, ultimately language policy rests on ideas of the good too.

VI. CAN LANGUAGE POLICY BE NEUTRAL?

Liberal language regulation requires that a language policy be justified by an appeal to a value or values that is universal – should be able to respond to every citizen’s interests, regardless of their particular conception of the good. Alan Patten, for example, regards language regulation as neutral when it is justified by values such as social mobility or self-determination (Patten 2003). David Miller appeals to the value of belonging to a community that has some shared values, like its common language (2004, 138). Will

Kymlicka appeals to the idea of having a meaningful ‘context of choice’, language being one of its basic elements (1995, 83).

What I want to defend in this section is the argument that these justifications can come into direct conflict with other universal justifications. When this happens, as discussed above, the policy resolution will have to rely on non-neutral, sectarian arguments. Tradeoffs between universal arguments are common in all policy areas,¹⁸ and justifying these tradeoffs requires ranking the conflicting universal justifications, in which case the criteria for ranking is inevitably sectarian, as I will briefly illustrate below.

For example, when minority speakers are a local majority Patten proposes a minority language maintenance model – official multilingualism – justified by the value of self-determination (2003, 369-73). Importantly, official multilingualism requires a stable linguistic and cultural background (Kymlicka 1995, 82-84). This background, however, can be interpreted in two ways: one way is to provide an adequately rich and stimulating linguistic and cultural background in the majority language. Another way, proposed by Denise Reaume, is that this background has to include minority languages as well. Reaume holds that persons are entitled not merely to *a* language and *a* culture but to *their* language and *their* culture (2000). Languages have value independently from their instrumental roles, they are ‘an end in itself’, ‘cultural inheritance’ and ‘markers of identity’, and therefore bearers of intrinsic value (Reaume 2000, 250-51). Presumably Patten shares this view, or he wouldn’t propose the language maintenance model for self-determination. The moral implications of the second interpretation, however, may be problematic as Daniel Weinstock notes: if minority languages are intrinsically valuable then “minority languages *themselves* have rights against all others, *including their own speakers*, to have their intrinsic value affirmed” (2003, 255). As such they generate duties, *even against their own speakers*.

This would be a problematic consequence for liberals, because it could interfere with persons’ autonomous preferences to assimilate into the common language (Weinstock 2003, 256; Blake 2003). So, on the one hand we have the value of self-determination, prescribing a multilingual language-preservation model, whereas on the other hand we have the liberal value of ensuring uncoerced choice. Any choice in the matter will have to appeal to a controversial conception of the good, either one that touts the intrinsic value of cultural heritage or one that extols moral individualism.¹⁹

Another point is that linguistic even-handedness may contain an arbitrary bias that cannot be neutrally justified. A language policy that treats minority languages even-handedly entails a per-capita distribution of resources language maintenance, recognition of minority languages whenever they are a local majority, offering services in the minority language, and allowing parents to choose that their children be educated in their minority

18] I am grateful to George Sher for stressing this point.

19] Kymlicka’s ‘context of choice’ is vulnerable to the same challenge: it can be either any combination of meaningful choices, or it can be the particular elements of one’s culture, with similar implications for individual autonomy.

language where such education exists. However, not all minority languages can be encompassed by such a multilingual policy. Certain languages have too little speakers and would tax general resources disproportionately. Therefore, there must be a policy cutoff somewhere, to determine which languages merit support and which require prohibitive costs. This cutoff will inevitably be arbitrary, whether grounded on sheer numbers or on relative power (Weinstock 2003, 261-62), and will not be universally justifiable.

With respect to David Miller's justification – a common language as a shared value that enables the community to function properly – one could claim that minority communities require protection of their shared values precisely because the survival of such values is vulnerable to begin with, and in their absence the minority community might disintegrate. Here we need to make a value judgment with respect to the question: what is more fundamental to persons-as-community-members: belonging to a stable local cultural community or belonging to a stable national community. It looks like the answer to this question can only be given by intrinsic-value non-neutral arguments.

VII. DISAGREEMENT OVER THE RIGHT AND OVER THE GOOD

As Patten himself notes, minority-language rights that are based on fair treatment – ensuring fair background conditions for one to pursue her conception of the good – will very often clash with other values (Patten 2009, 123-24). When this happens, in order to maintain neutrality, the decision has to be taken through some procedural process that is itself impartial: majority vote, a referendum, a lottery or an auction.²⁰

Nevertheless, as certain writers have pointed out, these procedural processes themselves are instances of controversial conceptions of the *right* (Arneson 1998; Chan 2005; Caney 1996).

Disagreement over conceptions of the right is therefore conceptually similar to disagreement over conceptions of the good (Arneson 2003, 195; Chan 2005, 22; Hurka 1995, 56). If neutrality is required for issues of justice then conceptually it is impossible to see how it should not apply to other political controversies as well (Caney 1996, 102-5). Beliefs about the right can be just as controversial as beliefs about the good (Arneson 1998, 77-78). Therefore, conceptions of the right with their respective procedural processes are bound to incite disagreement, since they could not be justified to dissenters. In this sense, institutional decisions on which value to prefer (fairness vs. other considerations), cannot appeal to an 'impartial' procedures, and will not be immune from charges of non-neutrality.

This is a general conceptual point about the legitimacy of neutrality as a political morality and it pertains beyond language and spatial organization. The implication is that if the state operates on a conception of the right that is non-neutral, without needing further justification, then it is equally legitimate for the state to establish a non-universal conception of the good, without needing further neutral justification.

20] I am grateful to Hillel Steiner for raising this possibility.

There are two ways to approach this last point about the similarity between conceptions of the good and conceptions of the right. One way is to accept that disagreements over conceptions of the right are similar to disagreements over conceptions of the good and that since neutrality is impossible for the latter, it follows that it is also impossible for the former. In other words, to reject neutralism completely. Let us call this the 'symmetry approach', as it holds that there is symmetry between disagreement over the right and over the good. According to the symmetry approach, because neutralism is conceptually mistaken in general, then it would also be conceptually mistaken in particular in language and spatial organization. Defending the symmetry approach will require much more space than can be given here, and anyhow it is beyond the purpose of this paper, which is to examine whether neutrality can be exercised, specifically, in inevitable-establishment domains.

Let us therefore consider the 'asymmetry approach', which denies that there is a conceptual similarity over the right and the good. According to the asymmetry approach, neutrality is required for arbitration about the good, but not about the right. This approach aligns with the liberal commitment to exercise neutrality towards (only) the good. This paper shows that even if one favours the asymmetry approach, it nevertheless remains the case that neutrality is inapplicable in mutually-exclusive domains. According to the asymmetry approach, neutrality is regarded as a morally compelling principle, yet one which is not feasible in spatial organization or language policy, because justifications for policy are inevitably grounded in ideas about the good life. Stated more generally, neutrality may be morally compelling, yet in domains of mutual exclusion it is infeasible.

The challenge that this paper raises has to do with the scope of neutrality. The symmetry approach holds that there is a similarity between disagreements over the right and disagreements over the good, and that therefore neutralism should be rejected for both. The argument advanced in this paper is somewhat different. It does not call for a complete rejection of neutralism. Rather, it holds that the scope of neutralism is limited. It may be applicable in disestablishment domains, and in certain inevitable establishment domains, but it is not applicable in mutually-exclusive domains. If one accepts that language policy ultimately rests on non-universal justifications (that is, rests on ideas that pertain to the good life), then language policy cannot accommodate the principle of liberal neutrality, which makes the scope of neutrality narrower.

VIII. CONCLUSION

Neutrality towards conceptions of the good, even if it is morally required, is not achievable in each and every political domain. Certain domains require state establishment of conceptions of the good. Language regulation, policies towards cultural minorities and spatial organization are such domains. Liberal neutralists hold that some instances of this establishment can be neutrally justified. If some universal justification for establishment

exists, then neutrality towards conceptions of the good can be maintained. My aim in this paper was to show that not all inevitable establishment can be justified neutrally, and this requires making distinctions within inevitable-establishment domains, to determine when neutrality is feasible and when it is not. I argue that the scope of neutrality does not cover mutually-exclusive domains like spatial organization, and there are good reasons to argue that neutrality does not extend to language regulation either.

In the first part of the paper I compare spatial organization with language regulation – both inevitable-establishment domains – to show why neutrality may be feasible in language but not in spatial organization. Language regulation, even though it establishes a certain linguistic outcome, still offers a certain non-trivial degree of coexistence of competing options: persons can be proficient in more than one language, and they can collectively invest in language preservation should they choose to do so, at a relatively lower cost compared to spatial organization. In spatial organization, the physical existence of one spatial conception precludes the existence of others. Furthermore, there is less room for agency, since it requires enormous collective efforts to change land-use patterns, markedly more than the efforts required for resisting linguistic assimilation.

In addition, institutional decisions regarding spatial organization require using value judgments about the intrinsic merit of competing options. Where the societal background is one of incompatible, controversial conceptions of the good, as is the case in pluralistic societies, resorting to value judgments is inevitably non-neutral, because competing conceptions have to be ranked according to their intrinsic worth, but this ranking is precisely what persons disagree about to begin with. In order to answer questions such as what is the best transportation policy; what is the best residential arrangement, etc. one has to acknowledge that no straightforward answer can be given without explicitly discussing the merits of sprawled vs. condensed neighbourhoods; without heeding to the implications of contemporary western societies' reliance on the private car vs. the socio-cultural effects of public transport. Language regulation, in comparison, need not appeal to the intrinsic value of the different spoken languages in the society, it only needs to take account of their existence. This way, neutrality towards linguistic-cultural conceptions of the good can be a coherent requirement, whereas it cannot be for spatial conceptions of the good.

However, one can insist that the difference between language regulation and spatial organization is in fact minor, making the establishment of language regulation more like the non-neutral establishment of spatial organization. In the latter part of the paper I considered this possibility and showed that indeed there might be some truth to this claim, especially considering that arbitrating between competing universal justifications for language regulation is ultimately made by appeals to intrinsic value of either controversial conceptions of the good or of the right. Neutrality's scope, therefore, might be even narrower for language regulation than what liberal-neutralists would be content with.

While this paper focused on two specific domains – spatial organization and language regulation – the conceptual conclusions regarding the challenge for neutrality can potentially be applied to other domains that also feature a high degree of mutual exclusion.

Interestingly, this could involve a time dimension. Whenever initial options in a sequence of events generate path-dependence, they will exclude other potential alternatives from their respective futures. Unfortunately, the scope of this paper precludes an elaboration of this idea. Still, as long as this is a consequence of state regulation and not of individual choice, neutralists have to consider this as a potential restriction on neutrality.

As for a normative conclusion, if indeed sectarian or comprehensive reasons ultimately ground spatial policies, then these reasons should be made explicit.²¹ People should be able to deliberate on these matters openly and with informed views, even if at the end of the day neutral justifications will not be available. This points to a higher-order plane of disagreement, about the proper content of public discourse: public reason theorists, for example, view disagreement as a problem to be impartially contained. An opposing view considers this concept of disagreement as a failure to show equal respect to those engaged in the debate. Receding from the disagreement is tantamount to paternalistically treating the reasons that persons bring to the discussion as mere preferences, rather than the principled fundamental beliefs that they really are (Enoch 2015). Therefore, it is necessary to both acknowledge that sectarian reasons ultimately ground (at least) spatial policies, and, as important, to encourage an informed discourse on the right policy, even if neither the policy nor the procedure can ever be justified neutrally.

Finally, this paper has dealt with the question of what to do when there is a conflict regarding two or more mutually exclusive options. These options, at least as represented in this paper, reflect existing preferences or beliefs. The discussion therefore revolved around the impossibility of gaining universal agreement for policies in the face of *existing* competing conceptions. An important question that this paper has not dealt with is the question of *potential* preferences. Potential preferences are those which given the right circumstances could emerge, and they therefore depend heavily on the institutional and cultural background. A rich background will obviously do more for the emergence of potential preferences than an impoverished one.

But do potential conceptions have the same moral force that existing conceptions have? I believe that they do, and that social arrangements should make room for them. Those concerned about the ability of cultures to provide a meaningful background of options might be sympathetic to the necessity to incorporate potential preferences alongside existing ones. Nevertheless, this view is very much a perfectionist, non-neutral, account of the responsibility of the state towards the good life, favouring variety and diversity over ad hoc homogenous tastes. A defense of this proposal, however, will have to await another occasion.

21] Communitarians raise a similar point: people have local commitments that bond them together, without which society cannot function. As such, by distributing goods and resources, the state inevitably promotes certain values over others. Therefore, the state should not be indifferent to different conceptions of the good, but rather recognize them openly and make its decisions explicitly based on them (Pasternak and de-Shalit 2007, 176).

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‘What Might Scheler Say to Rawls?’: A Schelerian Critique of Rawls’s Concept of ‘The Person’

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Abstract: I argue that Rawls’s political philosophy relies on a moral conception of the person which he inherits from Kant’s conception of the person, despite Rawls’s claim that he is doing political philosophy first. Scheler’s critique of Kant contains a critique of his concept of the person and I apply this critique to Rawls’s use of it as a founding part of his political philosophy. This is done not to argue against Rawls’s politics per se, but to argue, in the light of Scheler’s phenomenology, that its theoretical foundations may be unsteady. I claim that Scheler’s concept of the person may be used either for a communitarian critique of Rawls or for a foundation to strengthen Rawls’s political conception of the person.

Key words: Kant, Scheler, Rawls, Political Philosophy, Person, Personhood, Phenomenology.

In contemporary political philosophy, John Rawls is more famous than Max Scheler. Anyone who is familiar with both thinkers may struggle to connect the two but they did hold common concerns. One link can be found in the comparisons of their philosophical anthropologies, by which I mean how they conceive of the person. Rawls and Scheler conceive of the person in different ways and as part of very different projects. Scheler was a phenomenologist, who counted personhood, and the relation of values and ethics among his concerns. Rawls had a concept of person as a part of his political theory. In this paper, I want to look at the two conceptions and compare them for their utility in a Rawlsian political theory.

I use the term ‘conception of the person’ as a catch-all term to underlie the common concerns of philosophical anthropology, normative anthropology, moral psychology, and any other concerns to do with particular visions of people, what they are, and what they are like. A way of understanding the common ground between these two ideas is the notion that political philosophy consists of a “normative anthropology” (White 2012, 8), or at least “must begin in anthropology”, and that political philosophy is, at least in part, “an anthropological debate, or a series of interpretations of human and social anthropology” (Schneck 1987, 76). I, following White, understand a normative anthropology as a conception of human functioning which has normative consequences. It is a way of conceiving of what persons *are* in some sense, which may involve certain empirical or metaphysical claims, and from this saying what they should do, which is what either the personal or social ‘good’ is for them (White 2012, 8).

Rawls attempted to create a political theory which is meant to be neutral with regards to conceptions of the person and the good. I go over some arguments as to why that is not the case, based on what Rawls wrote in various parts of his oeuvre. I argue that because he claims that it is a moral conception, it has certain normative assumptions which are questionable and, as it has these assumptions, it is therefore not neutral.

I then turn my attention to Scheler's conception of the person, explained in the context of his phenomenology. From here, I look at two possible ways that the Schelerian understanding of the person can be applied to Rawls's political theory. One is as a critique of it and the other is as a way to enhance that theory by substituting Rawls's conception for Scheler's. I argue that accepting Scheler's concept still allows us to make arguments for the ends that Rawls wanted to achieve but with the strength of non-moral conception of the person. I argue that we can do this because, as Scheler's is a specifically non-moral conception of the person, we may be able to have a conception of the person which does not make normative assumptions.

As a final note, this is not an attempt to write a political philosophy based on Scheler's personalism.¹ This is instead an attempt to argue that Scheler's conception of the person can be used in place of Rawls's conception of the person. It is probably best described as an attempt to synthesise insights of Scheler's and Rawls's to see if they may be compatible. I wish to argue that, if one accepts Scheler's phenomenology of the person then, while one may use it for a critique of Rawls, one may also use it as a way to strengthen his philosophy by addressing a flaw in its foundation.

I. RAWLS'S CONCEPTION OF THE PERSON

I will begin by taking a closer look at Rawls's concept of the person. In order to do this it will be useful to briefly recap Rawls's overall theory of justice and the aims of his project before looking in greater depth at Rawls's concept of the person. Being aware that details of Rawls's views and arguments changed over time, especially between the two editions of *A Theory of Justice* (1971; revised ed. 1999) and *Political Liberalism* (1993; expanded ed. 2005), I quote from the later editions. For his concept of the person, I start with Rawls's thought from *Justice as Fairness: Political not Metaphysical* (1985) and the works afterwards. I start from here as it is in this paper that Rawls first explicitly addresses criticisms of his notion of the self or person, or in other words his normative anthropology. I want to show here that his background conception of the person, or normative anthropology, was a moral rationalistic conception that does not satisfactorily take into account the role of feelings in the constitution of the everyday conception of person.²

1] For that, see Schneck 1987.

2] I mention two caveats here:

i. Some Rawls scholars may see this as either an incorrect periodising of Rawls which is too neat of a division between the so-called 'early Rawls' and 'later Rawls', or claims too much similarity between the 'early' and 'later' Rawls. I admit that it is possible that I do one or both of those but an extended discussion of it would be a digression. I will say that, in my reading of Rawls, I see nothing in Rawls that shows that he had radically different background conceptions of the person in different works post 1971. My reading, of course, may be mistaken or may overlook some passages.

ii. Others may object that I do not look at the (much earlier written but posthumously published) *Brief Inquiry into the Meaning of Sin & Faith (with "On My Religion")*. 2009. Edited by Rawls, John and Thomas Nagel, Cambridge, Harvard University Press, and the possible religious and personalist ethical roots of

Rawls's concept of the person and the equality of people is one of the main starting premises of his political philosophy. I say this for two reasons. First, this is because Rawls utilises the method known as political constructivism. This is a method for producing and defending principles of justice and legitimacy. For Rawls, the principal "feature of political constructivism is that it uses a rather complex conception of the person and society to give form and structure to its construction" (2005, 93). I will expand on this further down.

Rawls's "political conception of the person, that is, the conception of the person as citizen" was meant for political arguments, and not metaphysical arguments about personhood. Rawls believed that if any metaphysical presuppositions were involved, then they would be "so general that they would not distinguish between the distinctive metaphysical views [...] with which philosophy traditionally has been concerned [...] [and that] they would not appear to be relevant for the structure and content of a political conception of justice one way or the other" (1985, 240). This claim is what I will take issue with.

For Rawls writes that "each person possess an inviolability founded on justice that even the welfare of society as a whole cannot override" and justice is "the first virtue of social institutions". Rawls also took questions of the "liberties of equal citizenship" to be "settled" (1999, 3). Rawls's project was to put forward an "egalitarian form of liberalism" (2005, 6). This understanding of justice has elements of distributive justice and commutative justice. Rawls wrote that all "social values – liberty and opportunity, income and wealth, and social bases of self-respect – are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage" (1999, 54). Rawls also claims that the "existing distribution" of goods or values like "income and wealth" is the "cumulative effect of prior distributions of natural assets" and that this distribution has been "improperly influenced" by "factors so arbitrary from a moral point of view" (1999, 62-3). We see here that egalitarianism was taken as morally fundamental by Rawls and that moral concerns animated and gave character to Rawls's philosophy.

For Rawls, we must have a "moral conception" of the person but this conception is itself preceded by our "everyday conception of persons as the basic units of thoughts, deliberation, and responsibility" (2005, 18). From that everyday conception, we move to a moral conception. A moral conception of the person has nothing to do with how a person acts or whether their acts are moral, immoral, or amoral. It instead means that a person (in the everyday sense of the term) is able to be both 'rational' and 'reasonable', with those two terms having specific definitions here. The term 'rational' means the capacity

Rawls's conception of the person and his later political philosophy. I think this is the more pressing concern as I am making a comparison between Rawls and Scheler, another philosopher who had religious influences and personalist concerns in ethics, so its exclusion may puzzle. That work could be fruitfully read alongside Scheler's philosophy and its absence may be seen by some as a missed opportunity. However, to discuss that work and expound on any potential links between that period of Rawls's philosophy and his later work plus defending the appropriateness of doing so considering how far Rawls's positions shifted, while doing that topic justice, would require an entirely separate paper, if not a whole book, and this would be a digression from what I want to discuss, which is Rawls's political philosophy as he decided to publish it.

a person has for a conception of the good. A person is rational when they are capable of identifying his or her particular ends and interests and the best means to attain or advance them. 'Rational' in Rawls's sense is not a synonym for egoism or self-concern. Rational agents may have affections for persons and attachments to communities. The term 'reasonable' represents the capacity a citizen has for a sense of justice (2005, 48-51). According to Rawls, "we think", that a reasonable person willingly proposes and honours the fair terms of cooperation and acknowledges the burdens of judgment and accepts their consequences. A person who has these qualities, an ability to conceive of the good and has a capacity for a sense of justice, can be a person who can engage in politics. For Rawls, this "complex conception of the person", means that when we say someone is a person for political purposes, we say that they can be a "citizen, that is, a normal and fully cooperating member of society over a complete life" (2005, 18).

Additionally, there are positive parts to the political conception of the person, or the person as the citizen. Political persons, or citizens, are supposed to be free in three ways when put into the original position. The original position is an imaginary position where agents choose principles of justice behind a veil of ignorance in which we are unaware of our identities but do have a general knowledge of society. The original position is meant to be limited to the basic structure of society, the moral relations between an individual and the state and between citizens through state structures, and not to all social relations. First, citizens are free in that they conceive of themselves and others as having "the moral power" to have a conception of the good (1985, 240). Citizens can claim the right to view their persons as not identified with and independent from any one conception of the good or any scheme of ends. They can additionally change or revise their own conception of the good (for example, by changing their belief system or religion) without altering their political citizenship or rights. Second, citizens are regarded as free in so far as they can "regard themselves as self-originating sources of valid claims [...] [which] [...] have weight apart from being derived from duties or obligations specified by the political conception of justice, for example, from duties and obligations owed to society" (1985, 242). That is, a citizen sees themselves as free to make claims which are not based on any other person or state's conception of the good or final ends. Third, citizens are regarded as free if they are capable of taking responsibility for their ends as being legitimate within a just system, "given just background institutions and given for each person a fair index of primary goods [...] citizens are thought to be capable of adjusting their aims and aspirations in the light of what they can reasonably expect to provide for" (1985, 243).

As mentioned above, central to Rawls's moral conception of the person is that they can be both rational and reasonable, that is they can have a conception of the good and a sense of justice. This has an implication for the distribution of goods in society. For the purpose of political structures goods "are seen as answering to their needs as citizens as opposed to their preferences or desires" (1999, xiii). In other words, the distribution of goods is to be done along the lines of what citizens need as opposed to what they would want or desire. However in order to determine what people need one needs to have a

conception of human good, or *telos*, or normative anthropology. Given Rawls's emphasis on the two moral powers of human beings and the moral conception of the person, it is probably fair to characterise Rawls's human good as something like "to develop freely one's own life plan, in conformity with one's own individual and concrete (rational and reasonable) conception of the human good within a social-political context that recognizes the moral equality of all citizens" (White 2012, 389). The primary goods for Rawls are what of value to all citizens, but not things necessarily wanted by them, for determining their own conception of the good. These goods are "rights, liberties, and opportunities, and income and wealth" (Rawls 1999, 54) as well as self-respect or esteem because without that "nothing may seem worth doing, or if some things have value for us, we lack the will to strive for them" (1999, 386). Primary goods are teleological and instrumental for discovering one's own rational and reasonable personal conception of the good. Rawls's conception of the person, his normative anthropology, is as "an autonomous self-maker and (so far as is consistent with respecting the same nature in others) self-legislator" (White 2012, 392).

Rawls has two understandings of how one could argue that being the original position leads to deriving his principles of justice. One is the argument in which principles of justice are derived in the original position on the supposition that envy, and other complications such as feelings of shame, humiliation, or a lack of self-respect or feelings of personal valuelessness, do not exist and that people have mutually disinterested rationality (Rawls 1999, 124-25). This rationality is of "persons in the original position [who] try to acknowledge principles which advance their system of ends as far as possible" and do not aim to disadvantage others or themselves (1999, 125). This assumption is behind the bulk of the arguments that Rawls makes. One could understand Rawls as simply not accounting for the role of feeling or emotion in human beings but it would be dishonest to present him as not considering the role of feeling in human beings. While Rawls believes that things such as self-respect, which is "the main positive good" (1999, 477, 484), and happiness would lead to rational decision making in the original position, envy and other "special psychologies" exist and do "need to be reckoned with" (1999, 465).

In his attempt to reckon with it, Rawls follows a Kant-influenced, rationalist moral psychology. For example, Rawls states that he "pretty much followed" Kant's definition of envy as "one of the vices of hating mankind" (1999, 466). Rawls understood envy as "not a moral feeling", although resentment was and that what "marks off envy from the moral feelings is the different way in which it is accounted for, the sort of perspective from which the situation is viewed" (1999, 467). This distinction is a part of Rawls's moral psychology and his understanding of moral and natural, or non-moral, sentiments. By sentiment Rawls means "permanent ordered families of governing dispositions, such as the sense of justice and the love of mankind, and for lasting attachments to particular individuals or associations that have a central place in a person's life", by attitudes Rawls means "attitudes are ordered families of dispositions either moral or natural, but in their case the tendencies need not be so

regulative or enduring” and by moral feeling and moral emotion Rawls means “the feelings and emotions that we experience on particular occasions” (1999, 420). Rawls assumes a cognitivist understanding of feelings or emotions in which the determinate element of a feeling or emotion is the explanation one has for it rather than the somatic changes one may experience alongside it.³ A necessary feature of moral feelings is that a person’s explanation of them “invokes a moral concept and its associated principles. His account of his feeling makes reference to an acknowledged right or wrong” (1999, 421). There are numerous arguments for or against the cognitivist theory of emotion, but I will not go into them here. All I want to do is bring to light that he holds a particular position on the topic and that it seems that Rawls’s ‘everyday notion of the person’ is itself metaphysically loaded.

The notion of the political person derived, the citizen, is a political one meant to apply only within the context of a democratic society. We can pick out that Rawls’s vision of the citizen is based on the relation between the individual and the state. While Rawls claims that is still meant to be based on our everyday or common sense notion of the person as a being which can think, deliberate, and be responsible, he assumes a rationalist moral psychology and cognitivist theory of emotion. This conception of the person is not metaphysically neutral. It seems to be limited among neutrality between different kinds of rationalist conception, for in *Justice as Fairness: Political not Metaphysical*, Rawls’s claim to metaphysical neutrality among conceptions of the person only specifies rationalist philosophers for which this was the case (1985, 240).⁴ Additionally, Rawls does also assume a normative anthropology of his own. Therefore, I believe that the concept of the person Rawls assumes is not our ‘everyday concept of the person’ as it is a conception with specific philosophical baggage. Rawls’s claim that he uses an ‘everyday conception of the person’ which is metaphysically neutral is a non-starter. If Rawls believes that neutrality is needed for his political philosophy to work then he has a problem. This is where I want to bring in Scheler’s philosophy.

3] I use the terms feeling and emotion as Rawls does, as terms which are either synonymous or close enough to it, while being aware that such usage may not be strictly accurate according to certain views on psychology or emotion.

4] I will put the full quotation here: “If metaphysical presuppositions are involved, perhaps they are so general that they would not distinguish between the distinctive metaphysical views – Cartesian, Leibnizian, or Kantian; realist, idealist, or materialist – with which philosophy traditionally has been concerned” (Rawls 1985, 240).

While Rawls does make a mention of realism, idealism and materialism as other metaphysical conceptions of personhood, he names no names. This is not to say that he was not aware of alternatives. That would be a ridiculously unfair claim to make. The entirety of Rawls, J.; Herman B. (ed) (2000) *Lectures on the History of Moral Philosophy* (Cambridge, Massachusetts: Harvard University Press) alone would be enough to put that to rest. So would Rawls’s numerous references to other philosophers throughout his work. The point is that Rawls skipped around the issue of presupposed conceptions of the person because, I presume, he thought of it as not a pressing concern.

II. SCHELER'S POSSIBLE COMMENTS TO RAWLS

From Rawls's conception of personhood, I believe that Scheler could have made several possible coherent responses to Rawls's claim that the conception of the citizen was neutral of any grounding beyond the everyday. I will now briefly introduce Scheler and then elaborate on Scheler's conception of the person. I will do this so that we can see whether, if it is a more accurate understanding of the everyday person, it could be accommodated into a Rawlsian political philosophy.

To begin with, a bit of background on Scheler and his method which I think may make clearer what I will argue further down. Scheler's thought had various influences from its period, the early twentieth century and three dominant influences "*Lebensphilosophie* (philosophy of life), phenomenology and the so-called 'revival of metaphysics'" can be felt strongly in his work, to varying degrees, at different periods of it (Schneck 1987, 14). The variety of the influences leads to a variety of positions held by him during his career. I want to focus on Scheler's conception of the person as it was written about in *Formalism in Ethics and Non-Formal Ethics of Values*. This conception was a part of Scheler's phenomenology, which was at first spun off from Husserl's early work. However, without getting into many details about the differences between the two, it is important to note that Scheler's phenomenology had many differences. One is a distrust of any preconditions to experiencing, especially ideal or formal a priori.⁵ Scheler's aim, which was not primarily political philosophy, was a phenomenology which sought "an intensely vital and immediate contact with the world itself" (1973b, 138-9). Scheler thought that "epistemological concerns, even a most basic epistemological distinction as the truth-falsity antinomy, are not resolvable prior to experience" and he "seeks the originary experience of things prior to their manipulation in rational reflection" (1987, 34). Scheler's phenomenology is based on being immersed in the world.

Part of Scheler's phenomenological approach was focused on intentionality and our ability to understand objects as having attached meanings which we perceived paying close, almost meditative attention to the phenomena we wish to describe. His starting point was that a formal, logical system itself must be based on the concept of 'being' or 'is' and that this concept derives from intuition. For Scheler, a phenomenon is a fact of consciousness and consciousness is of facts whose foundation is their being in relation to consciousness (1973, 52). The key parts of his approach consisted of the attempt to suspend sensory data for intuition⁶ of essences, the view that consciousness presupposes the being of the person, and the view that emotive intentionality was our primary way of

5] I note here that it is 'formal a priori' or 'idea a priori' that Scheler objects to and specifically in relation to experience. Scheler does not object to the idea of the a priori in general and it is in fact a large part of his theory of ethics and his epistemology.

6] Intuition in "the sense of clear, plain, obvious, evident 'seeing'" (Spader 2002, 56). In other words, Scheler meant a clear, self-evident understanding of something that cannot be broken down any further. An alternate term for essence that Scheler used was "whatness," as in "the whatness of something" (Scheler 1973a, 48).

engaging the world. In other words that we are first emotionally affected by objects, that we *feel* things about them, before we make judgements about them (Frings 2001, 182-83).

In ethics, Scheler's major aversion was to what he called formalism. Formalism, in Scheler's vocabulary, refers to a "denial of the knowledge or conation of the 'right' or 'good' action itself, and an assertion that only the rightness or wrongness of the method or process of choosing any given action can be known" (Schneck 1987, 98). Scheler put forward a large critique of formalism, as he found it in Kantian ethics. I think Scheler's critique can be applied to Rawls's political philosophy in a pair of areas. I think that this point leads into two possible approaches to linking Scheler's and Rawls's philosophy. I will term them the Schelerian-Communitarian response and the Schelerian-Rawlsian response. This is because they fall along those standard lines in arguments over Rawls.

First, Scheler would probably have said that Rawls's everyday conception of the person was an unexamined notion which was of limited or questionable accuracy. Recall that Rawls described this everyday conception as a basic unit of thoughts, deliberation, and responsibility. Scheler would have said, I believe, that this presupposes that a person is first or foremost a rational agent rather than an emotive agent as no mention of feeling is made here. Scheler would probably have identified this as a continuation of Kant's identification of personhood with reason, with reason understood as the faculty of the mind which provides the a priori principles of cognition (Kant 1998, 134; 1999, 79). This is not to say that Rawls would be endorsing Kant's metaphysics but instead what we may call Kant's phenomenology of personhood (setting aside the anachronism of that phrase). Rawls's conception of the person would appear to understand persons without taking their ability to feel into account, let alone accounting the primacy of feeling in the structure of our experiences. Rawls's political person presupposes a kind of rationalist conception of the person, to whom feeling was subordinate or contingent. This conception of the person is not embedded in any particular context and is in fact contextless.

Here I enter into what I call the Schelerian-Communitarian response. I link this to Scheler's critique of formalism. Scheler's critique of formalism was that they draw an impassable gap between formal procedures and material facts. Rawls's formal decision making procedure, the device of the original position, seems to allow for no room for material facts and a specific kind of material fact that Scheler called values. Material facts, as they are in Scheler's philosophy are something that comes out of his phenomenology and epistemology. Without going into too much depth on this, for brevity's sake, this is because for Scheler the formal-material distinction is relative, having to do with the universality of concepts, while the a priori-a posteriori distinction is absolute, having to do with the acute difference in the kinds of contents fulfilling the concepts and propositions concerned. For example, the a priori character of the proposition "A is B" and "A is not B" cannot be simultaneously true" is formal in respect of its universality, as any objects could stand for A and B, but it is material as it based on phenomenological insight into the fact that the being and non-being at the same time and in the same respect of some object are irreconcilable in intuition (Scheler 1973a, 54).

Additionally, Scheler would probably have objected to the basic structure of Rawls's liberal conception of personhood. For Scheler, liberalism in this mould would reduce people to "less-than-human abstractions of themselves [...] radically equal units of political demands and inputs" (Schneck 1987, 99). Even a Kant-inspired liberal politics with the emphasis on treating people as means and not ends, such as Rawls's, still depersonalises. While Scheler agrees that a person "must never be considered a thing or substance", he argues that formalist systems can only regard a person as "the X of certain powers" or "the X of some kind of rational activity" and we depersonalise them because the X, "that 'something' which is the subject of rational activity, must be attributed to concrete persons [...] in the same way and as something identical in all men" (Scheler 1973a, 371-72). The point here is that Rawls assumes a conception of the person which is too thin. It is, to quote Sandel's phrasing, "a pure subject of agency and possession, ultimately thin." (1999, 94). The difference here though is that Sandel's critique is meant to apply to persons in the original position, whereas the Schelerian critique is meant to apply to our everyday conception of the person which precedes that kind of deliberation. This is like Sandel's point on Rawls's citizen, that it is "[...] shorn of all its contingently-given attributes [...] [and] assumes a kind of supra-empirical status" (Sandel 1999, 94). The difference here is that, for Scheler, the underlying conception of the person which Rawls holds is essentially wrong about what a person is and does whereas Sandel is more concerned with Rawls's idea of the citizen than the person underlying it. Nevertheless from this position, one could make the standard argument that Rawls had "an incoherent conception of personhood [...] [as] essentially devoid of constitutive attachments" (Mulhall & Swift 2003, 465). More importantly though, Scheler's conception of the person provides a firmer foundation for the critique of "the desirability or feasibility of the kind of distancing of oneself from one's values" that Rawls's philosophy may require of some people (Mulhall & Swift 2003, 476). These include the presupposition of the value of autonomy and the idea that, in politics, some persons may have to set aside their commitment to conceptions of the good (Mulhall & Swift 2003, 476-77).

There is a parallel here to Scheler's critique of Kant's formal ethics. That was partly on the grounds that Kant's conception of the person was mistaken but more so on the grounds that Kant was unable to account for the need for lawfulness in ethics without recourse to feeling that lawfulness is valuable or a value itself, which lay beyond the scope of his epistemology (Spader 2002, 37-40). Likewise, undertaking what Rawls's political liberalism may require of us cannot be justified except by reference to the ability to feel the values of political liberalism. However, as his conception of the person as an isolated unit of thought, deliberation, and responsibility, not existing in a context of essential meaning or significance, it excludes a priori feeling then Rawls himself is unable to ultimately justify the values of his project. However, I believe that adopting a Schelerian conception of the person allows a way out for Rawls and his project. I wish to go into this below.

III. SCHELER'S CONCEPTION OF THE PERSON AND ITS LINK TO RAWLS

I believe that an alternate use of Scheler's critique can be made. This is what I call the Schelerian-Rawlsian response. This is a synthesis of the two positions, in which Rawls's everyday conception of the person is replaced by Scheler's phenomenological conception of the person but in which Rawls's later political philosophy may be kept intact. Rawls's conception of this citizen fits in well with Scheler's description of persons. Rawls's conception of rationality as having a capacity for a conception of the good is an essential part of the structure of experience for a person in Scheler's account. If one's conception of what one intuitively as good changes then neither their political personhood nor essential personhood is changed. One remains a person, and therefore a citizen, as long as they can have a feeling of the good. One can also understand feeling and essential intuition as the grounds of individuals' capacity to be self-validating sources of claims without endorsing any one conception of the good. Using Scheler's account of the person allows us to have a thicker conception of the person within the epistemological and moral constraints of the original position. Scheler's conception of the person is meant to describe our people as they actually are in everyday life, how they are before we try to understand them via theoretical apparatus.

For Scheler, "the person is the concrete and essential unity of being of acts of different essences [...]" which precedes all acts and is their foundation (1973, 382-83). Without understanding what an act is, in Scheler's sense then this is a cryptic definition of what a person is, especially in comparison to Rawls's political definition. An act is an occurrence of bestowing meaning by the person that can have as its object both the real and the ideal. The being of an act consists in its performance. Every act is individual and different to all other acts as acts are always towards some object, things which require acts to "bridge together their monad-like separateness" (Schneck 1987, 50). For Scheler, an intentional act is a process where *A* grasps an essence of *B*. When we intend some object, we bestow a meaning on it and this meaning is the essence that we have grasped from it (Scheler 1973a, 390).⁷ For Scheler, consciousness was conscious of something, a relation between one being (the subject) and another being where the subject bestows a meaning (or a significance) on to whatever it is that they are conscious of. A relation between beings presupposes that there are beings to have a relation. One of those beings, if the relation is a conscious relation, must be a person. For Scheler, persons have non-substantial and non-cognitive status as they have being only in the performance of acts. They are concrete centres of experience. To be a person, for Scheler, is to do.

Additionally, in our experience, our primary way of encountering objects is through the emotional feeling we have of it. For example, empirical objects such as a human body, or a work of art, or a room, could seem to us to be pleasant or unpleasant, agreeable or

⁷ Meanings for Scheler are meant to be non-temporal and ideal in a phenomenological sense, not a metaphysical one. Again, some of this presupposes his earlier phenomenology and epistemology as well as parts of Husserl's *Logical Investigations*.

disagreeable without our being able to demonstrate why this is the case without using ad hoc reasoning (1973a, 12-17). In these situations, we do not know which properties may have prompted this reaction. He wrote that “it is as if the *axiological nuance* of an object [...] were the *first* factor that came upon us” so that even if what is encountered is unclear to us, the value that we feel it embodies is not (1973, 18). This emotional perception is the initial act we perform upon encountering something; it is the first significant thing we recognise about it. It is done before we recognise the essence of the other being, which is to recognise it as what it is and nothing else. However, this does not preclude later thought, reflection, and reasoning about what we encounter in our experience. This kind of perception is of material facts, noted above, and specifically of values.

In sum, a person is a being of acts. That is, they are a subject which bestows significance to the other beings they encounter. This initial significance bestowal is the feeling which it gives to that subject, and then the subject intuits the other being’s essence (be it an object or another person). The subject who experiences consists of being in a context in which persons and objects have an emotional significance to them which determines their value to the subject. In Scheler’s ethics, this allows individuals to have different intuitions of the values of other ideals and beings, their worth and so understand themselves as being willing to realise different a priori conceptions of the good. Individuals may intuit different values as being attached to different objects and actions but all must have some conception of the good as a part of the structure of their experience. This conception of the good is based on their intuition of values and their own a priori individual ranking of values.

So, one may ask, how does this relate to Rawls’s views or why can they be accommodated around for it? I think there are several issues in which it may be. First, there is the issue of neutrality. Rawls wanted to claim that his conception of the person was neutral with regard to metaphysical and normative claims and sufficient to use for moral and political thought, as I have gone over above. It, however, fails at this. I think that Scheler’s conception may be more useful for this for two reasons. One, it does not assume any particular moral psychology or moral end for people but it still acknowledges that different people may value different goods (both abstract and material) for reasons we cannot understand (if they have any reason at all). It also does not regard people as abstract entities which must have certain rational powers but instead only as concrete centres of experience engaged in a situation. No particular powers are presumed and the person is also seen only as existing within a context of some kind. The immediate advantage is that Scheler’s account of the person allows us to cut off the communitarian critique of Rawls’s conception of the person at the pass, by replacing it with a conception of the person that accounts for the role of feeling in experience. In addition, it allows us to dismiss the idea that putting ourselves as citizens in the original position requires us to think of ourselves as beings of pure agency or possession in which our contingently given attributes are ignored. Why? This is because feeling and attachments between subjects and other beings and ideals becomes an essential part of the conception of person, from

which start our political philosophy and so it can become a part of a Rawlsian conception of a political person, a citizen.

This combination of Scheler's and Rawls's philosophies allows us to correct a problem in Rawls's work and make clearer the other features of his moral conception of the person. If one believes that Scheler's account of the person is correct, then one may reasonably argue for Rawlsian politics.

However, as a final note, there are still problems to be worked out. For example, adopting this conception of the person would require a reworking of the original position thought experiment into a form which is radically different – if it remains possible at all. If one's political philosophy could be called Rawlsian after that is another question. Also, more work would need to be done to actually figure out the fine details of Scheler's person. As it may have become somewhat clear above, Scheler's presentation of his concept of the person is not a neat and tidy systematic thesis and it often does lack attention to detail. In his original work in German, there are a number of inadequately defended arguments and inconsistent terminology. It is indeed, despite Scheler's protests, easy to read his conception of the person as disembodied or abstract seeming. However, I feel that if such work is done then, at worst, we have a conception of the person that has the same flaws, just like Rawls's does and, at best, we may have a better one.

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Context Dependence in Gaus's Evolutionary Account of Public Reason

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Abstract: One of the distinctive features of Gerald Gaus's public justification theory is his extensive use of the empirical data from the social sciences to support his normative claims. One such claim which stands out for its importance, within the context of Gaus's theory, is the evolution of *strong reciprocity*: over time, members of large societies develop a tendency to follow social rules and punish defectors. This claim, in turn, is supported by several studies in experimental economics involving mixed motive games, which show how subjects are inclined to punish, even at a net cost for themselves, any perceived violation of social norms such as fairness. While critics of Gaus's theory focused mainly on whether the use of empirical evidence in a normative theory is *prima facie* admissible, in this paper I address two different issues. The first concerns the accuracy of the empirical evidence used by Gaus's theory, and whether the conclusions advanced by the social scientists on the grounds of this evidence are actually sound. The second issue, on the other hand, concerns the consistency between the empirical assumptions underlying these experiments and the claims of Gaus's theory. I argue that both concerns are warranted. On the one hand, there is empirical evidence that the rule-following behavior observed in experiments involving mixed motive games is *context dependent*: the tendency of subjects to follow rules and punish defectors is strongly correlated to the epistemic constraints, such as anonymity, commonly imposed during the experiments. On the other hand, these constraints hardly reflect the circumstances of life in modern societies, which is the context assumed by Gaus's justificatory theory. I conclude that Gaus's account of rule-following punishers is not altogether invalidated, but the empirical evidence from experimental economics is insufficient to support it.

Key words: experimental economics, Gerald Gaus, naturalistic fallacy, public justification, social morality, ultimatum games.

Interest in the contributions of social sciences has been all but a recurring feature in the contemporary debate on public reason. For example, John Rawls's *Political Liberalism* (1996) based his theory of public reason on a conception of citizens as reasonable and rational, which is described as a philosophical scheme rather than an accurate account of humans' moral psychology (1996, 81-87); and this choice, in turn, is motivated by a sceptical stance towards social sciences, which are claimed to be incapable of providing useful insight beyond what historical knowledge and common sense would already suggest (1996, 88). In other words, social sciences are unable to accurately specify facts about human nature, which could shed light on what limits there are to the viability of a philosophical conception of citizens.

However, social sciences have recently known an unprecedented development. Different research fields, such as evolutionary psychology (Barkow et al. 1992), gene-culture coevolution theories (Richerson and Boyd 2005), and sociology (Bicchieri 2006) have produced an impressive bulk of data about humans' biological and social nature, undermining the grounds for Rawls's scepticism.

Among the first ones to understand the relevance of these results for political philosophy¹, Gerald Gaus did not follow Rawls in his distrust. Rather, one of the most important arguments of the first part of his *The Order of Public Reason* (Gaus 2011) is that recent studies in the fields of experimental economy, evolutionary psychology, and game theory provide a significant support for the evolution of *strong reciprocity* – i.e. the claim that individuals have a tendency to cooperate when enough others show a cooperative behaviour, and to punish those who violate social norms and rules (2011, 105). This argument represents a two-fold novelty in the contemporary debate on public reason. On the one hand, it defends the claim that recent experimental data from the social sciences can actually have a role in a theory of public reason. On the other hand, it draws the attention of political philosophy on insofar neglected fields of research whose subjects of interest are relevant for normative political theory, as well.

However, an appeal to empirical data, in order to support normative claims, can raise several suspicions. Even if one were to find out that, for example, individuals actually cooperate and punish defectors, as the hypothesis of strong reciprocity predicts, how would this tell us anything in regards to how they *ought* to act? In other words, how could the descriptive claim that people act in a certain way hold any normative weight? Any serious attempt to ground a normative theory on an empirical account will first need to dispel these doubts.

The relation between descriptive and normative levels is not the only issue at stake, either. It might be the case, in fact, that even if the logical step from one level to another is overall sound, the descriptive data this step relies on are inadequate. On the one hand, these data may simply be incorrect, underdetermined, or seen as controversial by the contemporary scientific community. On the other hand, even if these data were substantially correct, they could nonetheless rely on theoretical premises (regarding the properties of the subject of study) which are at odds with the ones assumed by Gaus's empirical account.

Before I address these points, however, I will first provide a brief overview of Gaus's empirical account: its theoretical background, its basic factual claims, its role within Gaus's normative framework. This will be the subject of the first section of this paper. In the second section, I will examine the data referenced by Gaus in support of his empirical account. In the third section, I will address the aforementioned concerns about the relation between empirical data and normative claims. Then, in the fourth and fifth sections, I will explore these empirical data in further detail, in an attempt to assess their plausibility within the context of Gaus's theory. I will conclude with an assessment of Gaus's evolutionary approach, in the light of the criticism advanced in this paper.

1] On the other hand, interest of social sciences in political philosophy and political consequences in a wider sense has been mixed. While sociobiologists have defended the role of social sciences in normative thought (Ruse and Wilson 1986), evolutionary psychologists have more or less explicitly refused any involvement in the political side (Thornhill and Thornhill 1992), out of fear of the "naturalistic fallacy" (Moore 1903). For a critical review of the latter position, as well as a more detailed account of this debate, see Dupré (2001).

I. MORALITY AND EVOLUTION

I mentioned above that one of the central arguments of Gaus's work is that there is significant empirical evidence for the evolution of strong reciprocity. But the reader might still feel unconvinced. Why is it so important to actually rely on empirical evidence, rather than a more intuitive or idealized account? And what does evolution have to do with public justification? In this overview of Gaus's evolutionary account, I will seek to address both questions.

In order to answer the first issue, concerning the relevance of empirical evidence, one must first turn to Gaus's approach to morality. Gaus is not interested in morality and ethics in general, but only in that subset of moral rules which require, allow, or prohibit certain courses of action when members of society interact with each other: this subset is what Gaus calls *social morality* (2011: 2-3). Gaus's view of morality – and, specifically, of social morality – is *functional*: according to Gaus, social morality is of value to us (and we consider its claims to be authoritative) because of its essential function in allowing cooperation among human beings in a large-scale society (2011, 2-6, 145-47, 191-93; 2015a, 1081-82).²

For social morality to perform this function, however, it is crucial that members of society actually endorse it, and see its imperatives as binding: a social morality which nobody conforms to is no social morality at all (Gaus 2011, 163-64). This does not necessarily require actual acceptance of the rules of social morality, as people can withhold their acceptance due to ignorance, confusion, or stubbornness (1996, 123). At the same time, though, social morality cannot be justified by something like a hypothetical agreement between highly idealized counterparts of members of society (like in Rawls 1999), as actual people cannot be bound by an agreement struck between strongly idealized versions of themselves (Dworkin 1973). Therefore, Gaus opts for a moderate idealization of members of society in the deliberative process, which gives them a few cognitive restraints (such as the impossibility to lie about their own preferences), but otherwise lets them retain all the psychological and social features of their actual counterparts (Gaus 2011, 276).³

Within such a perspective, empirical data about human nature assume renewed relevance. In order to build a moderate idealization of actual members of society, in

2] The focus on this subset of the moral sphere, as well as the functional approach to morality, is by no means unique to Gaus's theory, though. It dates at least back to the work of John Stuart Mill (1963), and can be found in more recent philosophers, as well (Strawson 1961; Gauthier 1986; Baier 1995; Kitcher 2011).

3] It is important to note here that Gaus is not claiming that all and only the pre-existing rules of social morality (what he calls *positive morality*) should be justified. To the contrary, the content of a justified social morality (what he calls *true morality*) can be quite different from the one of positive morality. But, at the same time, due to the function social morality needs to perform in society, the content of true morality cannot stray too far from the one of positive morality (Gaus 2011, 56). For a more articulated motivation behind this stance, see his argument about the *path-dependency* of morality (2011, 242-43).

fact, it is important to be aware of what these actual members of society look like; their different approaches to morality; their attitudes towards social rules; and so on. I will say more about this point in the following, but first, I need to address the second issue this section started with: what is the point of evolution?

As I mentioned before, Gaus endorses a functional view of morality, according to which the practice of social morality has a point – allowing cooperation among members of society. But there is also another approach to public justification which shared such a view of morality: the instrumentalist approach, pioneered by the seminal work of David Gauthier (1986). This is why Gaus dedicates a significant part of his own book to evaluate the merits and the limits of this approach (2011, 53-100), and why it is useful to briefly review the main points of Gaus's criticism here.

According to Gauthier, the justification of social morality is grounded in the rationality of persons: if they follow the rules of social morality, rather than solely trying to maximize their respective utilities, everyone can do better: it is thus rational to show restraint in one's own selfish motivations and comply with the demands of morality, because doing so is the best way for everyone to advance his or her own ends (1991, 22-23).

Consider for example a typical Prisoner's Dilemma scenario: two instrumentally rational people, Alf and Betty, are faced with a situation where they have to decide whether to cooperate or not. For each person, not cooperating is always the best ("dominant") choice. If the other party cooperates, not cooperating allows to "free-ride" and reap the benefits of cooperation without suffering the costs. And if the other party does not cooperate, not cooperating at least allows each person not to suffer the costs of cooperation without getting its benefits. The best choice for both parties is thus not to cooperate, to avoid being free-ridden. But Alf and Betty will get a lower payoff, by acting in this way, than what they would have got if they cooperated.

Following moral rules poses a similar dilemma. Members of society who only try to maximize their own utilities will always choose to "not cooperate" – which in this case means that they will defect from the demands of social morality. But if everyone defects, the result is that everyone is worse off than if each of them opted to comply with moral rules instead. So, how can Alf and Betty reason themselves out of this dilemma?

According to Gauthier, the mistake in this scenario is to assume that both parties ought to endorse a *modular* form of rationality. A rational course of action is considered to be modularly rational if, at any time t_i between the beginning and the end of the action, complying with the course of action decided at t_0 is still a better choice than defecting from it. So, in a Prisoner's Dilemma scenario, if Alf and Betty are modularly rational, they will never manage to agree to not defect, even if they promise each other to do so: once the promise is done, in fact, the best course of action (the one yielding the highest pay off) for each of them is still to defect.

Gauthier argues that it is wrong to assume that rationality requires modularity. Instead, he embraces a notion of rationality as *effectiveness*, according to which a course of action is rational if employing it is conducive to one's life going as well as possible, even

if at some point of the performance of that action it might appear that doing so is not in the agent's best interest (1994, 701).

Can past really hold such a sway over the present, though? Even assuming both parties are in good faith when they promise to cooperate, their information about what makes their courses of action good or bad may change through time. Is it really rational – in any intuitive, commonly shared sense of the term – to ignore such information and stick with the original course of action because, at the time the agent formed it, it was “conducive to his or her life going as well as possible”? And at the same time, is it really rational to assume good faith such easily in the first place? In the aforementioned Prisoner's Dilemma scenario, for example, unless we assume Alf and Betty know each other well enough to have good reason to believe in each other's promises, they are taking a risk which may well not pay off at all. This is why Gaus argues that, ultimately, the instrumentalist approach failed. In his attempt to implement it, in fact, Gauthier ended up revising the concept of rationality in a way that undermined the plausibility of his solutions (Gaus 2011, 100).

How can members of society reason themselves out of this Prisoner's Dilemma, then? It might seem that, after all, an independent motivation such as reasonableness is required – a motivation that cannot be derived from mere instrumental rationality (Rawls 1996, 50-51). Gaus opts for a similar solution, but he appeals to evolutionary forces, rather than reasonableness, to solve the dilemma. Following a proposal originally advanced by Bryan Skyrms (1996), Gaus claims that, unlike rationality, evolution is not bound by constraints such as modularity: evolutionary forces can select a strategy *T* on the grounds that those employing *T* outperform those who employ different strategies, even if *T* sometimes instructs people to act in ways that do not best promote their own goals (Gaus 2011, 104-05).

Following the rules of social morality is one such strategy (2011, 105-12). Members of society who adopt this strategy sustain a cost, based on how complying with rules limits their ability to pursue their own ends. In return, however, they get a reward for their troubles: cooperating with other rule followers allows them to reap benefits they would not have been able to achieve on their own. And these benefits may improve each member's ability to pursue his chosen end. If the benefits outweigh the costs, we can say that each member has a *payoff* from adopting the rule following strategy, based on the difference between costs and rewards. We can call this strategy *simple rule following*.

Simple rule following, as a strategy, has the advantage of a positive payoff through the benefits of cooperation. However, it has a crucial weakness: it can be *invaded*. An instrumentally rational agent who only follows rules when doing so does not thwart his own ends, for example, may be able to reap the benefits of cooperation from simple rule followers; but he does not sustain the same costs, because he follows rules only when it is contingently convenient for him to do so. In a society of simple rule followers, therefore, the instrumentally rational agent who defects rule following

would have a higher payoff than other simple rule followers. Over time, more and more defectors would successfully invade that society, until the majority of its members are all rule defectors.

However, suppose that, in a different society, its members not only follow rules, but also punish all members who does not comply with rules. We can call these members *rule-following punishers*. The presence of rule-following punishers suddenly makes defecting a less advantageous strategy, because the former's punishment imposes a cost on the latter which reduces the latter's overall payoff. Of course, the cost of punishing also reduces the payoff of rule-following punishers, compared to simple rule followers. However, if defectors are not present in significant numbers (which is likely, given their reduced payoff), the additional cost incurred by rule-following punishers may be low enough to allow this strategy to thrive alongside simple rule followers.⁴ Rule-following punishers would thus be an evolutionarily stable strategy (ESS) under these conditions.⁵

Unlike instrumental explanations, Gaus's evolutionary account does not thus explain how can agents reason themselves into following rules. Rather, it aims to show that rule followers can be more "fit" than agents devoted only to their own ends (2011, 112). But this still leaves a crucial question unanswered: what role does this evolutionary account play in Gaus's normative theory of public justification?

Gaus's proposed model of public justification is a convergent process that selects and implements a subset of moral rules out of a morally eligible set (2011, 321-25), under the assumption that members of society (or, more precisely, their moderately idealized counterparts) will recognize there is no other way to secure the benefits of social cooperation. This convergence of a single option from the eligible set is neither foreseen nor constructed in advance by any of the members, but nevertheless each of them has sufficient reason to accept the outcome of this process (2011, ch. 19).

What makes this process plausible, though, is the hypothesis that people are actually capable of internalizing and following rules, rather than acting as narrowly instrumental agents. The eligible set, in fact, includes several options that, while still superior – in the eyes of some members of society – to not having any social rule at all (that is the basic condition for them to belong to the eligible set, in the first place), are still far from optimal for those members. If members of society were not capable of developing a motivation to comply with rules, even when this hinders their chosen goals, convergence on any social rule would be actually impossible.

4] The advantage of simple rule followers over rule-following punishers may be further reduced by "second-order" forms of punishment, which punish members who follow rules but do not punish defectors (Boyd and Richerson 2005, 166-79).

5] An ESS is a strategy S if there is no other strategy T which can get a better payoff by playing against S. For a classical study on ESS, see Smith (1978).

II. EXPERIMENTAL DATA

However, is this a realistic scenario? Do we have a reason to think that we, or at least the majority of us, are indeed rule-following punishers? As I noted in the previous section, the plausibility of this evolutionary account rests on the assumption that a sufficient number of rule followers arose in the population. For this reason, Gaus shows recent experiments that, he argues, provide a strong case for the existence of rule-following punishers (2011, 119).

The large majority of these studies are experiments involving several variants of the *Ultimatum Bargaining Game*. In its simplest form, it is a one-shot game played by two subjects – a *Proposer* and a *Responder* – who have to bargain over a certain amount X of some good (usually money). The Proposer moves first and has to offer a share n of X to the Responder, where the offer can range between X and zero. The Responder has two choices: to accept the offer, or to reject it. If the offer is accepted, the Responder receives n while the Proposer receives $X - n$. If the offer is rejected, each player receives nothing.

If the Responder were an instrumentally rational agent, and since instrumentally rational agents are assumed to always choose more over less of anything they value, he or she would accept any offer higher than zero. Likewise, if the Proposer were an instrumentally rational agent – and if he or she expected the Responder to act like an instrumentally rational agent, as well – he would make an offer higher than zero, but as small (as close to zero) as possible. So, if we suppose that $X = 100$ and that n must be a natural number, the instrumentally rational Proposer would always offer 1, and the instrumentally rational Responder would always accept.

This is not the observed outcome, though. Studies of one-shot Ultimatum Games involving university students from the United States and other countries showed that median offers of proposers to responders are significantly more common than mean offers (40-50% against 30-40%, respectively), and mean offers (below 20% of the share) are refused roughly half the time.⁶ The divergence from the scenario predicted by the hypothesis of instrumentally rational agents is thus significant: not only proposers tend to offer more than expected, but responders do not accept all offers either (in fact, they refuse mean offers with surprising frequency). Many social scientists thus interpreted these results as an evidence of an aversion to unfair results from the subjects (Fehr and Schmidt 1999; Bolton and Ockenfels 2000).

However, further experiments challenged this explanation. In another study (Falk et al., 2000), a variant of the ultimatum game has been tested, where proposers

⁶ These data come from the following studies: (Bolton and Zwick 1995; Cameron 1999; Croson 1996; Eckel and Grossman 2001; Hoffman et al. 1994, 1996; Güth et al. 1982; Roth et al. 1991; Forsythe et al. 1991; Harrison and McCabe 1996; Larrick and Blount 1997; List and Cherry 2000; Rapoport et al. 1996; Schotter et al. 1996; Slonim and Roth 1998. A review of these studies can be found in Camerer 2003).

could only choose one of two possible offers (and the responders were aware of the choices available to their proposers). When the proposers' alternatives were between a mean offer and a fair offer (80-20 vs 50-50), the rejection rates of the mean offer were on par with the previous experiments (44.4% rejected the 80-20 offer). However, when the proposer was forced to choose between a mean and an altruistic offer (80-20 vs 20-80), the rejection rates of the mean offer were significantly lower (18% rejected the 80-20 offer). When the only choice available to the proposer was to either make a mean offer or an unreasonably altruistic one (80-20 vs 0-100), the rejection rates of the mean offer were extremely low (8.9% rejected the 80-20 offer). It would seem, therefore, that responders change their behaviour according to the options available to the proposer, and show different acceptance rates of equally unfair shares.

A study which does not involve ultimatum games arguably produced similar results (Falk et al. 2005). In the first stage of this experiment, subjects engaged in a 3-player Prisoner's Dilemma, where they had to decide simultaneously whether to cooperate or defect. If both other players defected, cooperating yielded a payoff of 12 while defecting yielded 20. If one of the other two players cooperated, defecting yielded 32 while cooperating yielded 24. If both other players cooperated, defecting yielded 44 while cooperating yielded 36. In all three scenarios, defecting was the dominant strategy, but if all people cooperated they yielded higher payoffs than if they all defected.

In the second stage, each player was informed about the other players' individual decisions for stage 1, and could choose to punish them by reducing the payoff of either or both of the other players, by a maximum of 25. However, the cost of the punishment greatly differed in the two treatments of second stage. In the *low-sanction* treatment, punishing was equally costly for the punisher and the punished. For example, if a player decided to spend 6 to punish another, the other player would have seen his payoff reduced by 6. To the contrary, in the *high-sanction* treatment, punishment was more effective against defectors and even more effective against cooperators. So, in this treatment, a player who decided to spend 6 to punish another would reduce the other player's payoff by 15 (2.5 factor) if he were a defector, or by 19 (3 1/3 factor) if he were a cooperator. The results showed that, even in the *low-sanction* treatment, the majority of cooperators (59.6%) decided to punish defectors, even if doing so would not reduce the inequality of the outcome (as the cooperator's payoff would be reduced as much as the defector's).

While studies evidence a tendency, from subjects, to cooperate and punish defectors, it seems therefore that they do not do so because they are motivated by a distaste for unequal outcomes. The best explanation, Gaus argues, is that the subjects "endorse norms about fairness in certain sorts of interactions and are willing to forgo material benefits to punish those who do not comply" (Gaus 2011, 122).

III. THE PROBLEM OF FACT SENSITIVITY

As noted at the end of the first section, the role of this empirical account in Gaus's public justification model is permissive.⁷ It does not dictate which normative claims one must adopt; rather, it limits the range of admissible normative models, by making some more or less plausible than others. Nevertheless, it may still draw criticism, insofar as it draws normative conclusions from descriptive premises. In this section, I will thus consider two different arguments against the use of descriptive evidence in normative theory, and how Gaus's model fares against them.

First, the contribution of empirical data may be accused of being redundant. According to this line of criticism, the issue is not that the normative claim is false, *per se*. Rather, its validity does not actually rest on the empirical evidence, as assumed by the criticized argument, but on a third, different (and often hidden or implicit) normative premise, which explains why the empirical evidence supports the normative claim, in the first place.⁸

Suppose, for example, that a person claimed that we have a standing duty to respect promises (we shall call this normative claim *P*); and that we have this duty because there is empirical evidence that respecting promises improves the promisees' chances to pursue their own conceptions of the good (we shall call this descriptive claim *F*). In other words, the claim is that *F* is sufficient to support *P* – i.e. *P* has moral authority because *F* is true. However, this still does not clarify why the person should believe that *F* actually supports *P*, unless she adds an additional premise *P'* along the lines of “we have a standing duty to improve people's chance to pursue their own conceptions of the good”. It is thus *P'* which causes *F* to “matter”, and that causes *F* to support *P*. But *P'* itself is not supported by *F*: even if the person were to believe that *F* is false, she would still believe that *P'* is true. In the end, therefore, it would seem that it is the normative framework (the principles *P* and *P'*) that are “doing the work”, and the appeal to *F* would be largely redundant. This line of criticism is not especially problematic for Gaus's argument. In fact, consider his aforementioned functional view of morality. Is it a descriptive or a normative claim? Were it to be a descriptive claim, we would have made no progress, as one could still press the question of why this mere fact, that social morality exercised an essential function in large-scale societies, supports Gaus's justificatory model. And it seems apparent that Gaus's functional view of morality is definitely stating something about the empirical world. However, it would be a mistake to conclude that Gaus's stance is merely a descriptive one. The claim that “*of course* social morality has a point – providing the foundations for social life – and this fact must shape our understanding of it” (Gaus 2011, 56) does not just state that social morality provides the foundations for social life, but that our understanding of

7] This definition of the permissive character of accounts of human nature follows closely Rawls (1996, 87).

8] This line of criticism draws primarily from G. A. Cohen's analysis of normative principles and their sensitivity to empirical facts (Cohen 2003).

social morality should be shaped by how it provided such foundations. This latter part is a normative claim. Not only is it not itself supported by any fact, but it may very well be the case that one could believe the fact that social morality provided the foundations of social life, while denying that this should shape our understanding of it (Enoch 2013).

Does this mean, then, that empirical evidence does not play any relevant role, because it is only the truth of this added normative claim (the functional view of morality) which makes them support Gaus's justificatory model? Again, such a conclusion would be arguably mistaken. Suppose, in fact, that the empirical evidence Gaus appeals to in support of his theory is somehow flawed, or otherwise wrong. Even if this had no weight on whether or not the functional view of morality is valid, it still could have significant consequences in regards to the validity of Gaus's other normative claims – consequences which would be likewise supported by his very view of morality. To say that Gaus's empirical evidence is redundant, simply because some of his normative claims are not supported by them, would underestimate the extent to which his other, not any less important, normative claims depend on them for their validity.⁹

According to a second line of criticism, though, the issue is not just that there is a third premise which is required to show that the empirical evidence actually supports the normative claim. Rather, the charge is that this third premise is false, or otherwise implausible. In other words, this line of criticism rejects Gaus's functional view of morality as a valid normative claim. David Enoch, for example, objects that morality itself is hardly the kind of thing which can have a function – in the same sense in which we do not see physics (rather than the study of physics) as having a function (Enoch 2013, 149).

Gaus's reply to this objection is that taking physics as a fitting model for morality is itself questionable, and law would make for a more appropriate comparison (2015a, 1081). If we were to truly believe that morality has no function at all, Gaus argues, all the costs moral life imposes on us – such as guilt, blame, and rebuke – would look more like a neurosis than something rationally justifiable. Furthermore, a functional view of morality has the added benefit of making sense of all the work of ethnographers and social scientists, who commonly assume morality to be an essential form of social adaptation (2015a, 1082).

This answer is hardly conclusive. It could still be replied, in fact, that a realist view of morals could be just as capable of explaining the purported role social morality played in the evolution of large-scale societies (Enoch 2013, 149); and that furthermore, such a view would make sense of our actual moral attitudes and responses in a better way than Gaus's functional perspective (2011, ch. 1). However, it should be noted that this debate, while crucial, does not bear specifically on the use of empirical evidence we are concerned with, at this point. When Enoch says that the functional view of social morality cannot vindicate Gaus's appeal to studies in the social sciences (2013, 148), he is right in saying

9] And in fact, to be fair, the purpose of Cohen's argument was not to claim that there cannot be principles (normative claims) which depend on the support of facts for their validity, but simply that «a principle can reflect or respond to a fact only because it is also a response to a principle that is not a response to a fact» (2003, 214). And this more modest claim is, as I have argued, fully compatible with Gaus's use of empirical evidence.

so from the point of view of a moral realist. However, unless further reasons for why one should dismiss a functional view of morality are presented, this does not show that Gaus incurs in the naturalistic fallacy as Enoch claims (2013, 150), but merely that the normative principle which justifies the support of empirical evidence for Gaus's theory is incompatible with a certain metaethical stance.

IV. CONTEXTUAL ISSUES WITH THE EXPERIMENTAL EVIDENCE: THE IDENTITY OF SUBJECTS

The conclusion of the last section is somewhat promising for Gaus's argument. While it does rely on a controversial view of morality, the criticisms about fact sensitivity that I discussed do not undermine its internal consistency. As long as Gaus's normative premises about the nature and role of social morality are accepted as valid, the use of empirical evidence within the context of his framework seems, at least in principle, admissible.

However, as noted before, there is another possible source of concern that we ought to consider: is Gaus's empirical evidence actually sound? And most importantly, does this evidence actually support the conclusions Gaus draws from them? The objective of this section, as well as the next one, will thus be to assess this concern – with particular attention to the evidence supporting the existence of rule-following punishers. I will thus begin with a discussion regarding the nature of the subjects involved in the experiments I presented in section two.

Who are these subjects? In each and every of the aforementioned studies, they are always graduate or (most commonly) undergraduate students from universities, generally from economics and MBA classes, that are invited to participate in exchange for a fee (such as in Harrison and McCabe 1996; Forsythe et al. 1991; Schotter et al. 1996), or to get credits for their final exams (such as in Güth et al. 1982).

It is hardly obvious that university students as experimental subjects can be representative of humanity as a whole. After all, there are billions of humans who never attended a university, in the first place. So, how can we be sure that the latter would display the same kind of behaviour we observed in the former? How can we be sure, in other words, that the former's behaviour is not a result of the unique social environment they are part of?

In order to verify this hypothesis, a group of anthropologists went on to test Ultimatum Games and other mixed motive games in several small societies located in Asia, Africa, and South America (Heinrich et al. 2001). The results were surprising. Group differences were significantly larger here than in the previous studies involving university students, both on account of the proposers and of the responders. In some groups, rejection rates of mean offers were significantly lower than the ones observed in industrial societies. In other groups, on the other hand, rejection rates were significantly higher, and included frequent rejections of offers above 50% (2011, 75). As a consequence, it becomes significantly harder to claim, as some social scientists suggested, that cooperation evolved

in the environment of ancestral hunter-gathering societies (Fehr and Gächter 2002), when these very ancestral hunter-gathering societies show such an abysmal cooperative record, compared to their Western counterparts.

At the same time, though, the data from this cross-cultural study suggested a different hypothesis, based on a significant correlation between the differences in offers among groups and their respective degrees of market integration (Camerer 2003, 72-74; see also Chibnik 2005). In particular, the data show that societies with a higher degree of market integration show acceptance and rejection patterns which more closely resemble the ones typically observed in large-scale societies, such as the USA. This observation is arguably in line with Gaus's own analysis, as he describes the societies, which he based his justificatory model on, as large-scale societies where people frequently confront each other as strangers (Gaus 2011, 268); and these anonymous relations primarily take the form of market relations (2011, 474).

While there are certainly sensible reasons for restricting the scope of a public justification theory to large-scale societies, though, there are still some criticisms which are left unanswered. On the one hand, while the data from Heinrich et al. (2001) may not clash with Gaus's empirical account *per se*, it might be at odds with some of the other empirical sources Gaus relies on for his theory.¹⁰ On the other hand, there is evidence for differences in people's behaviour even among market societies (Roth et al. 1991), so market integration is probably not the only variable involved in these differences.

V. CONTEXTUAL ISSUES WITH THE EXPERIMENTAL EVIDENCE: KNOWLEDGE AND ANONIMITY

There is another set of issues, which does not have to do with the identity of the subjects. Instead, it concerns the contexts in which the experiments are performed. The main contribution to Gaus's account which comes from experimental economics is, in fact, the evidence that actual people behave like rule-following punishers. In light of this conclusion, one may thus expect these studies to try and simulate an environment as close to real life as possible, to make sure that the results observed in the experiment make sense of the behaviour we are familiar with in actual social experience.

This is though not the case, at least as far as the experimental evidence considered by Gaus goes. In these experiments, the subjects perform under severe cognitive constraints, which have very little to do with anything resembling real life experience. For example, in these experiments, subjects are generally prevented from engaging in any sort of verbal communication with each other (Güth et al. 1982; Hoffman et al. 1996), and are restricted to one-shot interactions, never meeting the same player twice (Cameron 1999).

This is generally done to reduce the confounding effect of irrelevant variables which are not the focus of the study, and is necessary to understand the influence of a specific

[10] See, in particular, Gaus's account of *deontic reasoning* (2011, 122-30).

factor over the focus of the study. For example, if the study is focused on testing whether the motivation behind informal sanctions is aversion to unfair results or retaliation against norm violators (such as in Falk et al. 2005), it is important to control for any other variable which could influence a person's tendency to inflict an informal sanction – such as previous experience, the other person's outlook, specific features of the environment, and so on. However, it has the disadvantage of reducing the study's ability to predict actual behaviour: even if a certain behaviour is observed in the experiment, there is no assurance that the same behaviour will be observed in an actual, real life scenario, which includes all those variables the experiment controlled for. And even if, in such a scenario, the same behaviour witnessed in the experiment were to occur, one could not tell (on the grounds of that study alone, at least) whether the basic explanation of the observed behaviour is the same as the one tested in the experiment.

Unlike the previous set of issues, this criticism is arguably less of a worry from the point of view of experimental economics. This is not because the discipline has no interest in predicting actual behaviour, but because no single study expects to test *all* the possible variables which could influence a certain behaviour. Even if a study ends up eliminating a possibly relevant variable from the context of the experiment, the impact of that variable can always be checked for in another study. The criticism does call for special care in circumscribing the scope of the outcome of a study, but it does not, all things considered, undermine the discipline as a whole, or its methodology.

Conversely, though, this very criticism poses a bigger challenge to Gaus's empirical account of social morality, and to the role played by these studies in his account. According to Gaus, the outcome of these studies applies not just under the artificial constraints of the experiments, but to actual social environments as well. However, real life includes a myriad of variables, which could either affect the behaviour of rule-following punishers or provide an alternative, stronger explanation for them than the one proposed in the studies. This worry would be somewhat lessened, if one had reason to believe that the circumstances of real life do not change significantly the behaviour of people who would otherwise behave like rule-following punishers. However, evidence from experimental economics suggests a different picture.

A study by Eckel and Grossman (2001), for example, arguably shows that gender has an influence on behaviour in ultimatum games. In this study, while other conditions of anonymity were present – such as random pairing of subjects – the subjects of the experiments were aware of the gender of the other player (even if they were unaware of the specific identity of said player). The results showed that women's offers are, on an average, slightly more generous than the ones advanced by men. Furthermore, women's offers were much less likely to be rejected than men's: even for a given offer amount, the given offered size coming from a woman was more likely to be accepted than the same size offered by a man. Women were also more likely to accept a given offer than men. Conversely, in the control group with mixed genders (so that proposers and responders

could not determine each other's gender), there were no appreciable differences between the rejection rates of the two genders.

Now, the fact that social variables may influence people's behaviour is still not exceedingly problematic for Gaus's account. As long as people are still shown to reason like rule-following punishers – that is to say, as long as they show a tendency to follow rules and punish defectors, even at a net cost for themselves – it is not too much of an issue that external factors may affect the likelihood and intensity of such punishments.

However, even this assumption is put into question by Zamir (2001). More precisely, the assumption Zamir questions here is the interpretation of Ultimatum Games and their results as a case of irrational behaviour. According to Zamir, subjects in the experiments do not tend towards fair offers because they endorse rules of fairness, even when doing so may end up thwarting their own ends. Quite the contrary, in fact, they act so because it best advances their interests, and they change their behaviour whenever this is no longer true. More specifically, what causes players to advance fair offers (around 50% of the share) is because “they pay well; *i.e.* they respond best to the rejection patterns of the responders” (2001, 19).

To put this claim to test, an experiment was conducted, where players were randomly paired for several rounds of Ultimatum Bargaining either with real players, or with virtual players – that is to say, computer programs employing fixed strategies decided at the beginning of the games.¹¹ Some of these programs acted like “fair players”, making offers in the vicinity of 50% and rejecting any offer below that threshold. Other programs, though, acted like “tough players”, more willing to accept mean offers but also more likely to offer low shares to the responders. The result was that, even when virtual players constituted a minority (around 40%) of the overall number of players, the rest of (real) players quickly adapted their behaviour within the first ten rounds of play. In environments populated by “tough” virtual players, even real players began acting “tough”, as they learned that they could get away with meaner offers and they had more reason to also accept such mean shares; vice versa, the presence of “fair” virtual players strongly stabilized the average offer around the fair, 50:50 split. This goes to show, Zamir argues, that real players – far from being “irrational” or “endorsing rules of fairness” – act according to the basic rational behaviour of maximizing their income: their tendency to fairness is merely “*context dependent*” (2001, 20).

Are these results an issue, for Gaus's account? At first sight, it may appear that they are not. Indeed, one could be even tempted to see Zamir's study as the confirmation of Gaus's claim that, from the point of view of a functional approach to social morality, it is important that members of society actually endorse its rules. However, if members of society were merely rational agents, who endorse rules only when doing so maximizes

11] In some cases, participants were informed that they could be matched against virtual players, but they were unaware of how likely this match-up was, and of the nature of the computer programs. In other cases, participants did not know about the presence of virtual players altogether. Neither scenario showed significant differences from each other in its outcome (Zamir 2001, 9).

their interests, defecting to them whenever they can get away with it, they would not be the sort of members of society who could look up to rules as binding, in the sense intended by Gaus. What allows his evolutionary model to escape the Prisoner's Dilemma introduced in section one, in fact, was the assumption that members of society would endorse rules, even when doing so hinders their ability to pursue their chosen ends.

What is needed, thus, is a background theory which gives us an independent reason to believe that the actual, real life context (both in its biological and in its social dimension) actually support robust, internalized rule following. Without such a background, the results of these studies are too underdetermined to successfully support, alone, Gaus's empirical account of social morality.

VI. CONCLUSION

The use of empirical evidence in a normative argument has generally been met by political philosophy with either scepticism (Cohen 2003; Enoch 2013) or approval (D'Agostino 2013). However, both the criticism and the approval focused primarily on the logical admissibility of empirical evidence in normative discourse, in principle. This left out two important questions. First, the data Gaus presents might be insufficient to support his specific normative claims – not because of an *a priori* impossibility of employing empirical evidence to validate normative statements, but because the specific assumptions behind the data employed by Gaus are incompatible with his justificatory model. And second, it could be the case that these empirical data are flawed in the first place, and the conclusions researchers drew from them are themselves unsubstantiated.¹²

In this paper, I argued that this both concerns are warranted. On the one hand, the general scope of the claims that researchers have drawn from the aforementioned experiments is somewhat undermined by the contextual features of their experiments, such as the identity of the subjects involved. While this does not necessarily invalidate such claims, it still leaves them significantly undermined: as compelling as the hypothesis of strong reciprocity is, other explanations might be compatible with the results of these studies. On the other hand, the epistemic constraints commonly imposed to subjects in experiments make it difficult to draw conclusions that can apply to an empirical account to social morality, as Gaus assumes.

It should be noted, though, that Gaus does not rely solely on these studies, in order to defend his empirical account of social morality. A large part of his empirical evidence, in fact, depends on other disciplines, such as evolutionary psychology (Barkow et al. 1992; Cummins 1996a, 1996b) and theories of gene-culture coevolution (Boyd and Richerson 1985, 2005; Richerson and Boyd 2005), which offer an articulate explanation

¹²] Enoch (2013, 149) actually showed scepticism towards Gaus's claim, that there is extensive empirical evidence about the role social morality would have played in the evolution of large-scale cooperation. However, Enoch himself does not give any reference in support of his own claim, whereas Gaus's hypothesis is, indeed, supported by a significant number of sources (as noted in Gaus 2015b).

that can provide independent support for the claims advanced by experimental economics. However, on the one hand, these research fields have not been immune to criticism, either.¹³ On the other hand, evolutionary psychology relies on empirical assumptions that are partially contested by theories of gene-culture coevolution (Richerson and Boyd 2005, 44-48), but the ramifications of this fact are not given any consideration within Gaus's work. Most importantly, though, other theories which could offer a plausible explanation for the evolution of culture and morality exist (Jablonka and Lamb 2005; Sterelny 2003, 2012).

The evolutionary approach to public reason developed by Gaus offers a valuable model of explanation for the justification of morality and social norms. As I have argued in §1, it is based on a moderately idealized account of members of society, which arguably constitutes a preferable alternative to the highly idealized model advanced by Rawls (1996). Moreover, unlike the instrumentalist approach developed by Gauthier, Gaus does not rely on a controversial notion of rationality, but rather on an appeal to evolutionary forces that can find support in extensive empirical evidence. However, for this evolutionary approach to overcome its weaknesses and flaws, a more comprehensive and critical assessment of its empirical account may be required.

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13] For a criticism of the inheritance mechanisms assumed by theories of gene-culture coevolution, see Jablonka and Lamb (2005, ch. 6). For a criticism of evolutionary psychology, with particular attention to its massive modularity hypothesis, see Sterelny and Griffiths (1999), Sterelny (2003), Buller (2005). For a more general criticism of evolutionary psychology, see also Dupré (2001).

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Deafness as Disability: Countering Aspects of the Medical View

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Abstract: This article argues that deafness as disability from a medical view does not rest on the scientific aspect of medicine. Rather there are ideological biases and prejudices that are masked under the medical view of deafness as disability. The article reveals these and counters them.

Key words: Deafness, disability, political philosophy, Audism, Ableism, deaf studies.

Deafness is a condition that is considered *prima facie* a disability. A harmful one. Deafness is perceived to have far fetching negative effects (Cho Lieu 2004, 524-30). Thus “hearing loss may impair cognitive and language development that can hamper the education and communication abilities in developing children” (Leifer 2015, 527). Such a detrimental effect requires a swift and effective response, which in the modern state means medical, bureaucratic, educational, rehabilitative and vocational applications toward preventing and treating the disability of deafness.

The medical aspects of prevention and treatment of deafness as harmful disability are pervasively omnipresent in every deaf person’s life. Not only throughout the deaf person’s life, but also preceding it via genetic screening: “a procedure where diseases such as deafness can be screened in or out prior to the implementation of an embryo in a woman” (Goggin et al. 2005, 99). The medical view that justifies such pervasiveness is questioned here; it will be argued that such a view is based on ideology, instead of science. More specifically, it is argued that this medical view of deafness is based on a particular ideological view of the human body, one that is founded upon a naturalistic argument of the human body. From this point of view it can be understood why deafness is seen as a medical disability.

Simply put, the naturalistic argument claims that deafness is a disability since it is unnatural. The natural being is a hearing human being. This conclusion of the natural hearing human is based on mapping of the physical makeup of the human body. Mapping the body induces that it natively possesses a hearing ability; naturally there is a sense of hearing in the human body. The hearing sense consists of hearing organs. These hearing organs are facilitated toward the ability to hear. From the pinna through the eardrum and onward the inner ear and the cochlear and so forth, the main function of these universally-existing parts in the human body is to hear. Such form and formation indicates that hearing is natural to the human being. For as a sentient being, the human being experiences the external world through the senses; therefore, the sense of hearing is established as a core sense that belongs to the essence that defines what is the human being: a *hearing being*.

Using physical evidence, the naturalistic argument of deafness as disability posits that since to hear is the natural form of being human, being able to hear is the *desirable* mode of being. Concluding ought from is, the opposite condition – the lack of hearing – is therefore the resultant antonym. The logical outcome from this view is that deafness is a flaw in the human form. Hence, being deaf is being unnatural and deafness is a defect of the natural human body.

Framed as a defect in the human form, deafness is then spatially located. A physical defect, deafness is located in one or more parts of the body that comprise the sense of hearing. Hearing impairment, the popular term used by professionals, is positioned in the physiological organs that channel traveling sounds which the brain interprets (Seikel et al. 2010, 514-15). The systematic aggregation of data on the location and effects of the various hearing impairments is the onset of the medicalization of the naturalistic view of deafness as disability. The medical argument continues to do what the naturalistic view of deafness as disability did, but adds another layer of meaning. While the naturalistic view enforces the idea of the natural vis-à-vis the unnatural, the medical supplements to this view the addition of health. Deafness is then unnatural and unhealthy.

Such view reflects, however, the way hearing persons evaluate deafness: “Science and literacy education have, by and large, rhetorically constructed deafness (primarily in the lower case sense of ‘disability’ and ‘pathology’ and sometimes, although rarely, in the uppercase sense of ‘culture’). What is odd is that science and literacy education have interpreted and constructed without much attention to, communication with, or regard for d/Deaf persons themselves; they have tended not to listen, not to lend their ears, to those they are speaking for and about” (Brueggemann 1999, 6). Ignoring what deafness is to those who are deaf puts the question of natural and healthy in doubt. Research “that will improve the understanding of the epidemiology of hearing impairment worldwide can inform public health policy and is critical to the development of effective preventive interventions and should therefore be a global health priority” (Curhan et al. 2016, 49) makes sense not as an altruistic concern for the health of the deaf person, but rather as a measure catering to the vision of the natural and healthy hearing person everywhere – the happy person. *The good life is a hearing one* is the underlying motif and motive that runs deep through the medical view of deafness as disability. The bias of ignoring the deaf is the tip of the shadow casted upon the scientific cogency of the medical argument. Thus, countering the medical claim of deafness as disability is based on the assertion that the medical argument promotes the beliefs and biases of its proponents instead of disinterested conclusions from evidence. In other words, the medical argument of deafness as disability is not a conclusion of scientific endeavor divorced from interposition, but, rather a partisan outcome pertinent to the medical and social ideology of its proponents. It is argued to be partisan for two reasons.

The first reason is a philosophical one. The medical argument assumes a *certain* human body. This imagined natural body is claimed to be the universal or normal body, but it is neither universal nor normal. It is a particular body: “To understand the disabled

body, one must return to the concept of the norm, the normal body [...] A common assumption would be that some concept of the norm must have always existed. After all, people seem to have an inherent desire to compare themselves to others. But the idea of the norm is less a condition of human nature than it is a feature of a certain kind of society” (Davis 2013, 1). In the case of deafness it is certain and particular in being a *hearing* body. As such, deafness is indeed a feature of the abnormal human body; only if we accept the conclusion to be derivative from the inference that the universal and normal body is *exclusively* a hearing one. Such conclusion is unfounded.

After all, this universal, normal hearing body the medical view imagines, is the product of many inspirations. Among which is the godly creation of Adam, the perfect body da Vincian's Vitruvian man elicited, the statistical median body or some sort of algorithm of a biophysical makeup – ancient or modern. The earliest modern account of this imagined universal body discusses it in the context of art: “Baltasar Castiglione (writing as Count Lodovico) constructs the body of the courtier by explaining what is should *not* be like. The courtier ‘should be neither too small nor too big, since either of these two conditions causes a certain contemptuous wonder and men built in this way are stared at as if they were monsters [...] So I wish our courtier to be well built, with finely proportioned members’” (Ravescroft 2006, 30). Designating the desirable body is thus persistently apparent in modern thought. The earlier historical question of origins is besides the point here, as it does not affect the core issue of concern, which is the modern status of deafness. The crux of the matter is then that the medical argument of deafness as disability employs a particular bar for all humans, in which deafness is subpar. But it does so under the pretense that such bar is unquestionably and truthfully universal. This idea of standardization of the body, as the philosophical reason can be summarized, is relying on the assumption that a human physical standard exists. Furthermore, even if such standardization is viable, it is an instrument of comparison in which proponents of the medical argument have chosen a specific human standard that excludes deafness among other variations.

Choosing a particular standard suggests that standards exist as we wish them, and can be raised or lowered as seen fit. This is one fundamental concern for the claim of objectivity or validity of universality that the medical view espouses. However, the central problem here is not the dubious use of some standard for the claim of universality, but, rather the use of the standard for exclusion. That is, instead of using the standard as a scientific instrument to merely describe empirical evidence, the standard is being used as a political tool promoting exclusion. This casts doubt on the justification for pervasiveness of medical applications, among others, upon deafness.

While the causes of belief in a human standard are too broad for this article, the least that can be said is that an epistemological certainty is a major cause. Be it religious, economic, psychological, social or political (Hakak et al. 2010). Hence, some turn to a godly standard as humans are meant to be in its image; some turn to mathematics and statistics to quantify and measure humans as the “political arithmetic” (McCormick et

al. 2009, 259-85) attempted; and others have taken to evolutionary psychology in order to explain why humans need to form a classification of the external world (Murphy et al. 2000, 62-92). Whatever is the source for the quest of standardization, the need for quantification of humans is a matter of social fact. Yet in the case of the medical argument of deafness as disability the quest for standardization as applied to deafness is both unnecessary and erroneous.

It is unnecessary since classification does not require hierarchical standardization; categories can be differentiated without creating hierarchy. In certain areas hierarchy in classification is necessary: “Most of the researches on hierarchical classification show that the hierarchical methods are superior to the flat methods which have no hierarchy between categories in text classification” (Yoon et al. 2005, 616). What is good for texts does not apply for people, at least from an egalitarian view. It is argued that hierarchy might be ingrained in us: “Given the universality ranking systems, it is exceedingly strange that so many contemporary social scientists deny their validity. Indeed, many regard hierarchy as an anomaly. They insist that it is not a fundamental aspect of our humanity. Far from our being hierarchical animals, they regard us as innately egalitarian. Consequently, where inequalities in status exist, they attribute these to corrupting elements. Either self-seeking individuals are distorting social relationships for their own benefit or superfluous social institutions are interfering with normal human impulses” (Fein 2002, 2). Thus, “moralizing” medicine toward an egalitarian position is perhaps the wrong argument to make?

Human hierarchies might be a fact of social life, but there are two points to consider. First, a political order, namely democracy, is presumed to be the one relevant to the discussion. Democracy gained legitimacy and support through its promise to ensure that people will enjoy freedom, security and equality. The political arrangement of democracy is exactly the one under which people no longer have to recourse to violence and other forms of self-preserving means in order to battle discriminatory hierarchies. Structural or circular mobility, for example (Beeghley 2007, 121) are more accessible than any other large-scale existing political order, such as the Chinese claim for “*xiaokang* society” (a prosperous society) in the CCP-party controlled state (Yingjie 2016, 7). Even when the democratic ideal is far from being achieved: “We are taught that democracy provides a positive way for power to be exercised. But our everyday experiences, and other things we learn, lead us to believe that this ideal norm of power rarely functions in real life” (Ewen 1998, 104). Even then, battling prejudice and discrimination is a commitment that runs deep through democracy’s values, with and without the international commitment expressed in treaties such as the Convention on the Rights of Persons with Disabilities (United Nations, 2008).

The second point is that medicine itself adopted an egalitarian approach in its ethical commitments with or without democracy. “And I will use regimens for the benefit of the ill in accordance with my ability and my judgment, but from (what is) to their harm or injustice I will keep (them) [...] Into as many houses as I may enter, I will go for the benefit of the ill, while being far from all voluntary and destructive injustice [...]” (Miles 2004,

xiii-xiv). These words from the Hippocratic Oath express the ethical commitment of medical practice that continue to reverberate in modern medical ethics. Thus the WMA international code of medical ethics reads that a physician shall “always exercise his/her independent professional judgment and maintain the highest standards of professional conduct” and shall “not allow his/her judgment to be influenced by personal profit or unfair discrimination” (World Medical Association, 1949).

It is argued then that the hierarchical order of hearing and deafness is violating this medical and ethical commitment. For the hierarchical order means political ranking and prioritizing one category as superior over the other. In other words, differentiating between the profoundly deaf and the diverse hearing levels, does not require stratification of who is better and who is worst. Instead there should be recognition of needs. Otherwise, there is no value-ranking necessity arising from classification; it arises only when we attach to the classification a *political necessity*. Judging forms of being – such as deafness – to be baneful requires a set of values that are external of the classification to facilitate the separation between the valued from the ones we don't value. External values such as those present in the thorny subject of sex selection: “sex selection may reinforce stereotypes and place males and females into a preferred order of birth; this would unbalance power relationships between genders” (Reich 1995a, 1654). This is then the point why medical ethics should be exercised – to prevent medical “paternalism” toward the deaf among others (Honderich 1995, 544). For if medical ethics “sought to understand how human beings should act and what kind of life is best for people,” (Reich 1995b, 720) then medical assessment of such life should not commence in error.

Error is the second reason. The reason hierarchical application of classification of hearing is erroneous is because it is founded upon an ontological fallacy of being. The ontological fallacy can be separated into a several fallacies in the constellation of this argument. The known ontological fallacy is the one associated with the ontological argument furthered by Anselm, who argues that since something exists in our minds and language, it must also exist in reality (Davis et al. 2004, 159-160). In our context, in relation to disabilities and deafness the fallacy of ontological being is an amalgam of aspects of several fallacies: (a) ontological fallacy, (b) the fallacy of appeal to tradition, (c) the Bandwagon Fallacy, (d) the fallacy of appealing to nature, (e) the Argumentum ad Baculum, (f) the fallacy of the Pollyanna principle, and the (g) Procrustean fallacy. In respect to the lettered fallacies the medical argument of deafness as disability promotes the following arguments under the claim that since a certain body exists – a hearing one – it denotes a moral, social and political superiority because (a) it exists, (b) it “always” existed, (c) it is of the absolute majority of existing bodies, (d) it is natural, (e) it is the more powerful mode of being, (f) it is what everyone desires for, (g) it is the standard. All of these are reasons for discriminating, but none of them is justified.

The countering of such arguments is that: (a) There can be no justification that a certain body exists, the hearing body, as existence can not lend it any more legitimacy per se than the fact that the deaf body exists as well. That a certain body exists can provide

some insight on what a body should be, but it does not justify negating other bodies, definitely not by arguing by existence. To the contrary: existence – life – is a justification to appreciate metaphysical temporality. Respect diversity through dignity: “impairment is not to be regarded as a deficit or as a factor that can be detrimental to human dignity” (Degener 2017, 40). (b) The hearing body did not always exist, for the human is a recent phenomenon, and even if it did this premise does not warrant an obligation for its future existence, as such it is impossible. Until human cloning is available, it is impossible to guarantee physical similarity, which is in fact not what is aimed at, but, rather similar behavior. For the claim is not toward having the same exact ears or hearing, but, instead, of being able to replicate the same communicational behavior. Thus the “insignificance of intergroup variations in genetic endowment” (Cartwright 2000, 23) as the standard social science model of human nature has been known. (c) Be it tyranny of the majority or overwhelming consensus, it does not justify negating others, especially when the human right of the deaf to pursue life and happiness in their way is present “to prevent dominant groups from violating fundamental human rights” (Wojciechowski 2014, 63). (d) Beyond arguing that whatever that exists is natural (Crumley II 2009) or that the general idea of natural form of being is non-existent having instead “different cultural choices from a huge range of options,” (Harari 2011, 53) or that the particular idea of the natural excluding the disabled is a myth: “Lacanian discourse allows seeing the first misrecognition – the purported stability of the self – as a myth and encourages us to disrupt this social mythology [...] the myth of the ‘natural/able body’ and its converse” (Goodley 2011, 135). (e) This reduces the capability of a person to hearing, whereas “an individual’s capabilities are best understood as a ‘joint product of her internal endowments, her external resources, and the social and physical environment in which she lives’” (Riddle 2014, 66). Oversimplifying hearing to be the primary qualification of capability is a fundamental error, as the case of the bi-lingual community on Martha’s vineyard has shown that the Deaf lacked no capacity if and when social environment was inclusive and not excluding (Groce 1985). (f) However passionate is the desire, it is no more a valid desire as the racist desires its own perpetuation: “Whiteness puts itself in the very place of being” (Seshadri-Crooks 2000, 43) and thus hearing puts itself in the very place of being. The desire of the hearing to impinge their own image is no justification for negating the essence and choice of others. (g) Before and after the audiological hearing ISO 7029 standard, which defines “threshold of hearing by air conduction as a function of age and gender for ontologically normal persons” (Cremes and Smith 2002, 61) the belief that the body has a standard has different meanings. Sometimes it is the average “model humans assuming numerical values for mass, height, etc. of a ‘standard human’” (Herman 2016, 17). Sometimes it is the practical as a “realistic standard that is not ‘ideal’ but is ‘acceptable’” (Hoeger et al. 2016, 157). But it is also the perfect: “A body may grow to the standard of its species, perfect of its kind” (Blood 1860, 31). For all its varieties, the hearing body as standard is politicization of the body by distinguishing itself: for the normal body “in effect create the concept of

the disabled body” (Davis 2017, 4). There is no standard, only imagined silhouettes of stereotypes. This is then the error: medicalizing stereotypes (Bell, 1984, 169).

Those stereotypes are the reason deafness and sign language face claims for annihilation, which are the conclusion of the application of hierarchical valuation upon the general classification of hearing. Here is one blatant example: “The only cochlear implant surgeon in this province says deafness is a disability which is being eradicated in Newfoundland and Labrador. Dr. Tony Batten, an ear, nose and throat surgeon, who has helped many hearing impaired and deaf people get their hearing back, says the technology available now, as well as at-birth screening for every child is resulting in incredibly low rates of deafness. One of the results of such advances though may be the closure of the Newfoundland School for the Deaf on Topsail Road in St. John’s. ‘We don’t have any children now going to the school for the deaf’, Batten says, explaining that children who are born deaf have a good chance at hearing if they get an implant early in life. ‘The school for the deaf is being phased out’, he says. ‘Children (with implants) they get better incomes when they graduate, they get higher levels of learning, they integrate into society’. So sign language is a dying language. It’s only for the older people who are beyond the cochlear implant years now. ‘It’s interesting because it’s a dying culture and it’s kind of part of our past now” (Morrisey 2009). This is not eugenics resurrected, but the politicized rhetoric and stereotypes wrapped in medical objectivity raise serious doubts on the integrity of the medical view’s subscribers (Lane et al. 2001). Once again, not for the first or last time: the science of craniometry was one such screwy and clear example, in which the superiority of Caucasians was supposed to be evident in the measurement of brain volume compared with other races (Gould 1996).

Medicalized stereotypes are used by those who seek to impinge their own image on others. Others who differ from the standard-makers’ vision of what is the proper form of being human. Desiring to impose a godly vision – “Let us make man in our image, in our likeness [...]” written in Genesis – one is left to wonder when the shift occurred. From god being the physician, “I am thy Physician” (Watson 2001, 39) through physicians deriving authority from god (Katz 2002, 8), toward physicians playing god (Verhey 2012, 134). Hence conceiving health as a political requisite defines who is the unhealthy and the question of political ranking becomes an acute one. All the more acute since it is argued here that from a scientific point of view identifying those who are unhealthy has no inherent political value: “Neutrality, in short, was to provide protection against those wanting to pass off political opinion as established science” (Proctor 1991, 150). The kind of protection is the purpose of the concept of privacy of medical records, a practical aspect. To protect from prejudice based on your health: “Disclosure of sensitive medical information [...] can cause embarrassment, acute distress, or social stigmatization” (Humber et al. 2001, 8). The kind of politicization medical professionalism is meant to counter (Crellin 2005, 75-85).

Medical classification provides the legitimacy for political selection. Consider the example of fibromyalgia. Since it is a phenomena that does not have scientific verification,

the decision to recognize those who endure the syndrome as disabled or not is not medical. However, in order to be treated requires medical classification. Note the irony as one study notes: “The recognition of fibromyalgia can lead to effective treatment with significant improvement in functioning. Unfortunately, because of the chronic nature of the pain condition and associated counterproductive behaviors and disability, patients and physicians may rapidly become frustrated with each other and abandon the pursuit of adequate diagnosis and treatment” (Acton 2012, 83). So for a long time medicine refused to recognize the plight of those who suffer from fibromyalgia, as doctors refused to recognize the condition of fibromyalgia itself as existing and is merely in the person’s mind (Goldenberg 2002, 21). The pressure from the patients prevailed, however. Fibromyalgia is now recognized, although recognition is often political not medical. As one physician put it: “At least everyone pretty much agrees the pain is real now?” (Scott 2015, 166).

This illuminates the political underpinnings of the socio-political processes which people with various conditions undergo. Political considerations and interests such as budgeting, electoral gains, religious, social beliefs and fantasies determine how the political recognition of some conditions goes toward being awarded certain benefits and privileges, while other conditions are awarded with none. The claim for the scientific validity is the heart of medical scientific objectivity: “the physio-pathology-based classifications of diseases are not conventions of labelling [sic.] based on subjective decisions but they are the results of the discovery of real properties concerning the alterations of biological entities and events” (Azzone 1998, 49). Yet this science of medicine is not pure. And this can be seen with the variations of disagreements. Sometime the variation is in the medical classification and sometimes it is a matter of political systems; that is, sometimes there is a “universal” disagreement regarding a condition, and sometimes there is “local” disagreement that changes from one country to the other. Learning disabilities is an example of the former: “As reading researcher Marion Monroe observed in 1932, psychology and education had two primary explanations for children who did not learn under typical instructional circumstances. They were ‘either lazy or stupid’” (Danforth 2009, 3). Contact dermatitis at the workplace is an example of the latter: “In many cases an occupational cause is suspected and proven after careful diagnostic procedures. There then arise a number of questions that are handled in different ways in the different European countries [...] In the years to come it will probably be necessary to create more uniform joint legislation in this area, so as to avoid socially unjust decisions” (Rycroft et al. 2001, 997).

The science of medicine is fluctuating and evolving, which is what to expect from any scientific discipline. So there is insolence taken to the way deafness and other disabilities are marked and treated with cocksureness. The apparition that disabilities are measured and are scientifically ascertained in accordance to the needs of the disability or the disabled is no less a fiction than they are part of the general political games people take part in, like poverty, education and so on. Thus disability benefits were awarded based on political considerations, as this US soldiers example demonstrates: “The 1873 Consolidation Act revised pension legislation, basing payment on the degree of disability rather than on

service rank". This change, however, did not come about because of betterment of science and medicine, but due to politics. "The act came about because the laws had become so complex and conflicting, leading to the need for codification" (McGeary et al. 2007, 96).

The politics of medicine do not discredit medicine. Scientific improvement and success are constantly bettering people's lives. However, the reverse is untrue. Medicine is not perfect. Thus, as part of the dialogue with the science of medicine, if the goal of achieving neutrality is possible, is a philosophical argument that is indeed still under process. However, that the field of medicine claimed to be such is a different point: "The rise of Positivism in academia [...] demanded that scholars strip their observations of personal bias with the goal of absolute objectivity [...] it is difficult to characterize the new medical rhetoric as devoid of the same long-established institutional bias against people with disabilities. In their attempt to construct a value-free vocabulary, they created one that was also, at the least, compassion-free" (Davis 2017, 15). Masking rhetoric as neutral, however, does not mask the motives.

The experience of the deaf and the disabled is that divergence from the so-called healthy ideal is undesirable and renders who is the invalid person. That's where the imperfection of medicine and its politicization are revealed. Beliefs regarding the legitimacy of the normal beget Ableism: the idea that able-bodied (healthy) persons are preferable and superior to those who are considered non-abled (the disabled) (Campbell 2009, 3-16). As noted above the experience of ableism from a medical perspective is one that included sterilization (Albrecht et al. 2001, 498) as well as other medically proscribing practices aimed at the deaf among other classes of those termed as diseased beings (Greenwald 2007, 136-52).

As the medical imagination asserts that the normal, healthy and desirable body is a hearing one, deafness is oppositely defined as abnormal, sick and illegitimate mode of being. It is further argued here that such a position must be ruled out by principle. That is, its political validity is argued to be unacceptable. No dehumanization should ensue from a medical outlook. Especially since the medical position lends so much scientific weight to political protagonists. This way German doctors and the German public accepted the sterilization and "mercy-killing" of various disabled persons (Lifton 1986). Thus, no deaf person should be reduced to being a mere defective hearing being. In other words, the scientific-philosophical rationale of desiring to investigate, compare, classify, and rank humans is unjustified in embittering the lives of the subjects it explores. There is no acceptable political justification in a democracy for a means promoting greater human knowledge to become a political end in itself, promoting poorer quality of human lives: "The practice of scientific research and the use of knowledge from that research should always aim at the welfare of humankind, including the reduction of poverty, be respectful of the dignity and rights of human beings, and of the global environment, and take fully into account our responsibility towards present and future generations. There should be a new commitment to these important principles by all parties concerned" (UNESCO, 1949). This is then the first theoretical or principled claim of the error argument.

The second claim of the principled error argument is that it violates bio-political neutrality. A claim based on the principle of neutrality, medicine is committed to as a scientific approach. “Physicians tend to see themselves as bioscientists. Their self-image as practitioners reflects a view of medicine as a discipline that has adopted not only the rationality of the scientific method but the concomitant values of the scientist, namely, objectivity and neutrality [...] Although the scientific values of rationality, objectivity, and neutrality may be difficult to achieve in practice, nevertheless they retain their force as the basis for assessing the quality of clinical work. Further, these values are used to justify the particular ways in which clinical work is done” (Mishler et al. 1981, 15-16).

So whereas the first objection to deafness as disability is on grounds of violation of a moral and philosophical principle of equality medicine is committed to, the second one claims for a political partiality violating the scientific principle of impartiality. The first violation allows for the method of discriminatory practice to materialize on paramount scale; the second violation validates the discriminatory practice by masking its biased view as impartial. The argument of bio-political neutrality is based on two premises. The first is that the study of the human biophysical makeup is improper since it is carried in a fragmented way. That this study is historical (e.g., evolutionary changes), current (e.g., public health) futuristic (e.g., genetic), social (e.g., public budget) and political (e.g. gendered) can be counted among the main aspects. And so care must be taken as to the verity of the research and the integrity of the researchers. Something that is amiss, not only within the framework of deafness or disabilities but also in other ways: “According to the Institute of Medicine, every cell in our bodies has a sex, which means men and women are different at a cellular level. That also means that diseases, treatments, and chemicals might affect the sexes differently. And yet there’s a long and storied tradition of ignoring gender when it comes to health research” (Westervelt 2015). Lest it be said that it is only a matter of informational aggregation and is therefore a technical issue, direct actions are directly associated with scientific ignorance: “Spermicides were distributed by population experts who often failed to notice the sex/gender of their ‘targets’” (Lowy 2014, 107). The results of such actions have repercussions that affect people’s lives and can not be discounted as mere technicalities or as insignificant data.

From the deaf point of view there are many aspects that can be skewed toward legitimization of discriminatory practice against deafness. Actions against the deaf under medical pretense are past, present and futuristic. Hence, from a futuristic view the abortion of deaf fetuses is already a desirable goal: “According to a survey conducted by Delhi’s Sir Ganga Ram hospital, a majority of would-be parents would opt for an abortion if knew they are going to have a hearing-impaired child. The study was published in a recent issue of American Journal of Medical Genetics. The research-based study was conducted for four years – 2005 to 2009 – on at least 51 families with a history of congenital hearing loss. ‘Around 93 per cent of the couples expressed high interest in prenatal diagnosis, while 73 per cent considered termination if the foetus was affected’ Dr Ishwar C. Verma, chairman, department of genetics, Sir Ganga Ram hospital, said” (Neetu 2013). The

practice of genetic prevention is readily available: “The science of genetics has gotten so sophisticated so quickly that it can be used to not only treat serious diseases but prevent thousands of them well before pregnancy even begins. Diseases that have stalked families for generations – like breast cancer – are being literally stopped in their tracks. Scientists can do that by creating and testing embryos in a lab, then implanting into a mother’s womb only the ones which appear healthy. While the whole field is loaded with controversy, those who are worried about passing on defective and potentially dangerous genes see the opportunity to breed out disease” (O’Donnell 2014). Bridging between the desire of those who see deafness as a harmful disability and the preventive genetics is the next logical step and the future – or the lack of it – of deafness.

In light of this view, in which deafness should be eradicated and the deaf fetus prevented from materializing, there is a strong case for the argument that a certain view of a human biophysical makeup as the *preferred* one is blatantly a bio-political one and serves not science but, rather, politics. In other words, claiming that a certain form or organ should fulfill a certain function in a particular way and in accordance with certain social expectations is a political argument that promotes a parochial and interested vision of what it means to be human: an ableist view.

The coccyx and the vermiform appendix are examples of latent or hidden biophysical features that demonstrate such political manipulation of the concept of the body and its role in furthering ideologies and interests – without relation to ableism. The coccyx is utilized in arguments on evolution: “The tailbone derived its name because some people believe it is a ‘leftover’ part from human evolution, though the notion that the tailbone serves no purpose is wrong” (Comfort 2013). Whereas the appendix is used in arguments on veganism: “Compare the carnivore digestive system to the herbivore digestive system and to the human digestive system. Here is the unmistakable answer to whether humans are herbivore, carnivore, or omnivore” (Rex 2014).

Reference to these organs is made in particular not only because they have little if any relevance to deafness and disabilities, but also because it has no effect on human flourishing. In other words, the biological purposes of these physiological parts are of no relevance to our general makeup as humans in contemporary times. However, they carry profound political importance in supporting or opposing beliefs and practices among their protagonists. That is, whether one thinks the coccyx proves we have evolved or not, can affect one’s religious beliefs and religious attachment, for example. And whether one believes the appendix is a proof of vegetarian past or carnivore one, can affect the dietary choices people make for themselves and their families. On a moral level, the arguments on the meaning of the tailbone and the appendix can determine whether one is going to hell or not or is secularly morally right or wrong; as evolution might contradict religious choices and eating animals might prove to be against our “ancestral heritage”, for example. However, scientifically and medically, whether the tailbone and the appendix signify anything on our history as carnivores or herbivores and our relation to some aping

relatives, has no political meaning. Science is bio-neutral toward the two regardless of the heated and passionate debate they elicit in embittered battles people wage.

Hair is an example of salient or manifest physical feature with political ramifications: from White-supremacy skinheads, through toupee-wielding politicians, to big afros or dreadlocks. Its size, color, shape, form and location are far more important politically than any biophysical relevance the human hair carries per se. “As part of our modes of appearance in the everyday world, the ways we shape and style hair may be seen as both individual expressions of the self and as embodiments of society’s norms, conventions and expectations” (Kobena 1987, 34). Take baldness or hairiness for example. Science is bio-neutral toward having hair or the lack of it anywhere on the body. Even though the status of whether one is bald or has a certain type of hair carries a sociopolitical weight. For it is a social fact that distribution and placement of hair on the head, face or body is valuable in the search for mating partners: “It is generally observed that a person’s hair-style and clothing attracts the most, particularly females by males. The important factors which have been included in the grooming factor are hair-style – short hair; long hair and particular hair style [...]” (Husain 1993, 28). Whatever the social preferences for hair, styled or not, this does not serve as justification for medically preferring one hair condition over the other.

In practice, however, physicians pick a condition: “Indeed, some physicians cite the negative psychological correlates of baldness as the justification for medical treatment of hair loss. Emanuel Marritt, a hair restoration surgeon, sees this as his medical responsibility [...] The exaggerated significance Marritt attaches to hair loss treatment reflects his awareness that as a surgeon he performs procedures more risky and invasive than what a dermatologist does when prescribing Propecia, but the viewpoint he expresses is an increasingly common one: hair loss is a serious problem worthy of medical intervention” (Conrad 2007, 40). And such medical intervention is “localized” not only in its appearance but also in its care: “There is no set standard of care which is universally applicable or acceptable. One of the yardsticks useful in this regard is the standards established by a professional body of similarly qualified aesthetic surgeons in a country or region” (Venkatarm 2016, 423). So in practice physicians engage in the politics of the human form.

While political causes render problems and solutions around hair, be it people straightening their hair, cutting, removing, coloring, or shaping it in various forms, science and medicine have an inherent commitment toward neutrality. So are physicians meddling with the politics of hair, in this instance, running afoul? In other words, the neutrality commitment is breached by physicians who appropriate and promote preferences for certain hair – with or without the mediation of the treatment targets’ choice? The question of physicians as salespersons is still open in some places, as they are being paid to promote medicines (Brodwin 2015). But the consequences of having physicians declare baldness an unhealthy and a defect in humans are the result of politicization of the human physique, which goes beyond providing service and encroaches on playing god.

This is then the counter-claim to the socio-medical argument of deafness as disability: it is bias against deafness – marking deafness as a human defect on the grounds of political conviction, not science.

What would a non-political view of deafness be? An example of a non-biased view of deafness should start with a neutral view of the human hearing system. It is argued that audition is purposeless without speech, for it is the only sensory system that has no other function: “The auditory system is the only system that has no other function besides communication. One might argue that our distant ancestors were more interested in the sounds that supported survival than those that arose from society, but nonetheless audition (the process associated with hearing) is an essential element of verbal communication” (Seikel et al. 2010, 447). In other words, hearing in general is a sense that allows the human to engage with sounds of the surrounding environment as well the internal one (e.g., borborygmic sounds), but is argued to exclusively geared toward particular behavior: verbal communication – speech.

However, speech is processed through an evolved structure which has functions that predate and are primary over speech: “The bodily components of the speech production apparatus are hundreds of millions of years old, and therefore none of them initially evolved for speech purposes” (Macneilage 2008, 7-8). That is, breathing and consuming food take precedence over speech, which renders speech an auxiliary of the oro-facial anatomy. Hence, from a bio-neutral scientific perspective, both audition and speech are qualities that have evolved that provided humans verbal communication *some* of the time in history. So from a “tradition” aspect, these newcomers should be cautiously and closely supervised; you never know what these physical tweens are up to. Humor aside, there were and are other forms of communication. Neglecting or negating the other biophysical modes of communication is therefore a political step that corresponds with parochial views and beliefs regarding what the human body should *be*, instead of the disinterested observation of what the human body *is*.

Furthermore, the diversity of the biophysical system is disregarded and bio-neutrality is violated as audition, in this instance, is being propagated in an over-simplified view to be an ever-present presence. That is, the view that verbal communication is and will always be part of our essence as humans is lacking scientific credence. Take cybernetics for example. For all we know, cybernetics may usher communication into a non-verbal age: “it should be pointed out that in real life both the encoding and decoding of nonverbal communication are dynamic processes with continuous feedback and readjustments between the communicants. It is only very recently that our experimental paradigms have begun to take this cybernetic dimensions of nonverbal communication into consideration” (Siegman et al. 1987, 17). This was written before the Baja Beach Club’s members in Barcelona paid money in order to be implanted with a chip that “allows them to bypass lengthy club queues” (Michael et al. 2014, xix), a paralyzed man moved his arm with the help of “two tiny recording chips implanted in his motor cortex and another 36 electrodes embedded in his right arm” (Mullin 2017). Not to mention that

the cochlear implant itself is cybernetics per excellence: “cochlear implants give rise to an ‘artificial’ sense of hearing which is inferior to natural hearing but yet sufficient for social functioning” (Tzafestas 2017, 426). So keeping neutrality or an open mind is at least what one should expect from those who “*must* incorporate conceptions of the ‘good’ and ‘ideal’ doctor” (Cruess et al., 2016, 229).

Thus elevating speech and hearing to the status of superiority and even sacredness is quite disturbing. When religious fables tell us that the voice is holy, as with god talking through the burning bush, we take it as miracle, which means this is exception to the general rule. And this interpretation remains to this very day, in which believers note that holy voice is carried in “unusual circumstances: how God spoke in some undeniably supernatural way” (Tirabassi, 2009, 73). This applies to other experiences outside of Western framework, such as when natives recount experience of sound as sacred so we can appreciate it as a unique cultural revelation. “When he was about four years old, Black Elk began to hear voices [...] The next year, after his grandfather had given him a gift of bow and arrows, Black Elk was riding horseback alongside a creek in the forest, when he saw a kingbird sitting in a tree. He was about to shoot the bird, when it spoke to him. ‘Listen! A voice is calling you!’ Then I looked up at the clouds, and two men were coming there, headfirst like arrows slanting down; and as they came, they sang a sacred song [...] ‘Behold, a sacred voice is calling you. All over the sky a sacred voice is calling’” (Moon 2010, 29). But for the laymen sound is instrumental. For the lot of humanity there is nothing sacred in the voice or sound; humans attach such meaning to what they please to be worthy of veneration. That is the central point the countering-argument to the socio-medical one argues. Narrating the voice as sacred does not signify anything more than the value of the voice in certain human culture; it is the narrative and no more. But validating this narrative by scientific means is to allow the desire for a certain narrative to regulate diverse realities under one Audist conscription. Audism is the view that deafness is inferior to hearing: “discriminatory treatment of deaf individuals through history had no name until 1975 when Tom Humphries coined the term *Audism*, based on the Latin *audire*, meaning to ‘hear’. In his original article, Humphries defined Audism as ‘the notion that one is superior based on one’s ability to hear or behave in the manner of one who hears’” (Bauman 2008, 13).

The Audist narrative ultimately provides the justifications to particular definitions of what being human is and is supposed to be, as discussed above. But it also creates what is arguably a false dichotomy. What is disputed is also the opposition of deafness to hearing. Wrongly and narrowly perceived as deafness, it should be considered that deafness is not the opposite of hearing, but, rather juxtaposed next to it on the continuum of sound. Perhaps because the poverty of thought has aligned deafness with diverse forms of soundless being, deafness has become a catchall phrase. After all, there is an essential difference between an organism that has a hearing organ that relies on temporal hearing (Oxenham 2013), an organism that has a frequency hearing (Au et al. 2000, 55), and an organism that does not have a hearing organ at all (Bailey 1987, 266).

Deaf persons are able to process sound in some form as the hearing organs generally exist in the absolute majority of deaf persons. Since sound sensed by humans is reliant on vibrations and thus the lack of sound is not possible unless one has no hearing organs. So any person, even deaf, with the otolith organs, for example, will experience some dimension of sound. So if science distinguishes the four grades of microtia (external ear deformities), of which anotia is the term indicating the fourth grade in which the absence of the entire ear is diagnosed, why positing deafness in dichotomous opposition to and of hearing is a consensus?

There seems to be no good reason that some changes are documented and differentiated when they correspond to the notion of deafness as a disorder, but carelessly groups under deafness a whole range of variegation in conceiving sound. Additional vocabulary to describe the more intricate conditions of hearing and its opposite such as the terms *svanahless* (Sanskrit) or *sonarless* (Latin), can denote the various physical conditions with deafness being additional (Collin et al, 2003, 3-39). Compare with *typhlosis*, *amblyopia* and *amaurosis* in relation to vision and blindness.

However, there is at least one reason to group deafness under blanket terms and espouse uniform policies toward the deaf. It makes it easier to define and regulate a political reality – through political over-generalization. Just as with cultural uniformity, political over-generalization is utilized toward regulating a “part of a political culture which all citizens may be expected to share” (Habermas 2015, 313-25). Thus, deafness conceived as antithetical, profane and harmful is easier to demarcate: “deliberately creating a deaf child counts as a moral harm, because it so dramatically curtails the child’s right to an open future [...] Davis maintains that selecting for deafness similarly violate a child’s right to an open future” (Fahmy 2011, 129). If we view deafness as threat, being the opposite of the open-future of the hearing child, *then* we can regulate and administer deafness as a universal harm: “Many deaf people do not realize the risks of marriage with another deaf person. They seek medical advice only after one, or even two, deaf children have been born. They should be better informed but best of all is to integrate the deaf as far as possible in normal hearing society. This will reduce the change of intermarriage and is additional advantage of early auditory training of deaf children and of the auditory approach in all their training and management” (Fry et al. 1970, 91).

Revealing these prejudices, particular ones toward deafness, and general ones toward other disabilities and differences, should reframe the way medical applications are evaluated. The ethical integrity of the current and past medical practice toward the prevention and treatment of the human variety is in question in general, and in particular in relation to deafness. To the Deaf the good life and happiness is too often nongermane to the medical rationale; *au contraire* to the very purpose of medicine and its relevance to human life.

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In Defense of Liberal Equality

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Abstract: In *A Theory of Justice*, Rawls concludes that individuals in the original position would choose to adopt a system of democratic equality governed by his two principles of justice. However, Rawls mistakenly defines the possibility space within which individuals in his original position must make their choice. An alternative account of the possibility space created by Rawls's original position reveals that a system of liberal equality, according to which distributive shares would be determined by market processes, would be preferred by risk-averse individuals. However, such individuals would guard against the erosion of the social bases of self-respect by including a social safety net among the basic equal liberties secured by Rawls's first principle of justice.

Key words: Rawls, *A Theory of Justice*, liberal equality, the difference principle, rational choice.

Early in *A Theory of Justice*, John Rawls (1971, 1999) considers and rejects an interpretation of his two principles of justice called “liberal equality” in favor of an alternative interpretation that he styles “democratic equality” – an otherwise similar system that substitutes his famous “difference principle” of distributive justice for distribution according to market processes. Rawls has been criticized for supposedly claiming that a person's relationship to her own attributes is morally arbitrary, and that the attributes of individuals are therefore properly considered a social resource. I argue that this is an uncharitable interpretation of the text. It is an individual's relationship to the distribution of natural attributes in her society that Rawls considers arbitrary, not her relationship to her own natural attributes. I then show that what I will call the “libertarian objection” nonetheless has some purchase as a criticism of Rawls's analysis, which misapprehends the possibility space created by the original position. I offer an alternative account of the uncertainties faced by an individual in the original position, called the Unknown Society Model. The Unknown Society Model indicates that risk-averse individuals in Rawls's original position will unanimously prefer distribution according to market processes to the difference principle and will therefore adopt a system of liberal equality rather than a system of democratic equality. Nonetheless, the Unknown Society Model implies that individuals in the original position are also likely to include a social safety net on their list of basic liberties in order to preserve the social bases of self-respect.

I. LIBERAL EQUALITY VS. THE DIFFERENCE PRINCIPLE

John Rawls's theory of justice is anchored by two fundamental principles, which apply to the “basic structure”¹ of society:

[1] The basic structure of a society is the scheme by which “the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation” (Rawls 1999, 6).

First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all. (Rawls 1999, 53)

Rawls's first principle secures an equal right to a set of basic liberties for every member of society, and these rights are given priority over all other considerations of justice (1999, 55). Once the equal basic liberties are secure, the institutions comprising the basic structure should seek to implement the second principle. Rawls suggests that both clauses of his second principle are ambiguous, and he disambiguates them in a short discussion near the beginning of his analysis (1999, 57).

The principle that positions and offices should be "open to all" could be read simply to prohibit employment discrimination on the basis of irrelevant characteristics, an interpretation that Rawls calls "careers open to talents" (1999, 57). Rawls certainly endorses the requirement of non-discrimination, but he concludes that his second principle of justice must go further to ensure that individuals have genuine, as opposed to merely formal, opportunities to pursue social positions for which their natural attributes make them well-suited. He therefore settles on a broader interpretation of this part of his second principle, called "fair equality of opportunity" (Rawls 1999, 63). Fair equality of opportunity requires, in addition to non-discrimination, the provision of talent development opportunities to less privileged members of society that enable them to compete on equal terms for offices and positions in which they have the natural capacity to succeed.²

Rawls then considers two possible interpretations of his requirement that social and economic inequalities will be "reasonably expected to be to everyone's advantage" (1999, 53). One interpretation of this clause is what Rawls calls "efficiency", according to which the principle is satisfied by a competitive market economy that maximizes the total wealth in society, and in which an individual's distributive share of wealth and income will correspond to the relative productive value of her natural attributes (as developed in accordance with fair equality of opportunity), subject to her "willingness to use them" in the workplace (1999, 62-63). A system combining equal basic liberties, fair equality of opportunity, and distribution according to market processes is called "liberal equality" (Rawls 1999, 57).

Rawls characterizes the system of liberal equality as an "unstable" stopping place in his search for the best principles of justice, because "there is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune" (1999, 64). Once we see the distribution of natural assets in society as "morally arbitrary", Rawls thinks we will be moved to prefer an alternative interpretation of this clause according to which the principle is satisfied by institutional

2] Rawls explains, "those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system" (1999, 63).

arrangements that maximize the wealth and income available to “the representative unskilled worker” whom he supposes will be among the least well-endowed “full and active participants” in an otherwise just society (Rawls 1999, 68, 84). Rawls refers to this interpretation as the “difference principle”, and he refers to the system combining equal basic liberty, fair equality of opportunity, and the difference principle as “democratic equality” (1999, 57).

II. THE LIBERTARIAN OBJECTION

Rawls’s treatment of what he refers to as “natural assets” or “natural attributes” (1999, 11, 87, 172) – “intelligence, strength, and the like” (1999, 11) – in his design and analysis of the original position is perhaps the most enduringly controversial aspect of his theory. Some critics have objected to the difference principle on the basis that Rawls has inappropriately ignored the moral significance of a person’s relationship to her own natural attributes. Such critics complain that an individual’s natural attributes are constitutive of her and therefore cannot be arbitrary from a moral point of view.³

Some language in *A Theory of Justice* can be interpreted in ways that seem to bolster this case. For example, Rawls refers to “the outcome of natural chance” and to “the outcome of the natural lottery” as morally arbitrary (1999, 11, 64). If Rawls meant to say that a person’s relationship to her own attributes is a matter of chance, then perhaps his theory presupposes an implausible metaphysical account of the nature of persons. At times, Rawls also uses language that could be interpreted to mean that the natural attributes of persons should be considered a common resource. For example, Rawls writes that in a society governed by his principles of justice, the less naturally well-endowed “view the greater abilities of others as a social asset to be used for the common advantage” (1999, 92).

However, there is at least as much textual evidence to suggest that Rawls held neither an implausible metaphysical view of the nature of persons nor so controversial a view of the moral irrelevance of an individual’s relationship to her own natural characteristics as some have suggested. Rawls’s words in context more often indicate that *an individual’s place in the distribution of natural attributes within the population* can be regarded as arbitrary. For example, he writes that “we do not deserve our place in the distribution of native endowments”, and he wishes to design a system in which “no one gains or loses from his arbitrary place in the distribution of natural assets” (Rawls 1999, 87-89). By contrast, natural attributes themselves, as part and parcel of a person, can be considered no one else’s: “To be sure, the more advantaged have a right to their natural assets, as does everyone else; this right is covered [...] under the basic liberty protecting the integrity of the person.” (Rawls 1999, 89). Rawls also writes, “The difference principle represents, in effect, an agreement to regard *the distribution of natural talents* as in some respects a

3] See for example (Nozick 1974, 215-16).

common asset and to share in the greater social and economic benefits *made possible by the complementarities of this distribution.*" (1999, 87).⁴

If this latter reading of Rawls is the correct one, then the purpose of the veil of ignorance is to eliminate the influence of an individual's arbitrary place in the social distribution of natural attributes on the selection of principles of justice. Shielding an individual from knowledge of her own attributes (which Rawls agrees are determinate⁵) is simply his means of accomplishing this goal: if a person does not know what her natural attributes are, then she cannot know what place she occupies in the larger social distribution of those attributes.

But if this is Rawls's goal, he makes a key mistake in his analysis of the choice faced in the original position, and this mistake gives the libertarian objection some purchase as a criticism of his results despite its inaccuracy as a criticism of his premises. When Rawls argues that a risk-averse person in the original position will choose principles of justice that maximize the wealth and income of the representative least-skilled worker in society, he inadvertently holds the social distribution of natural attributes constant and treats the individual chooser's attributes as variable. The difference principle is the risk-averse choice if the total wealth in society (and therefore the distribution of attributes that generate this wealth) is fixed, but the individual selecting principles of justice does not know what her own attributes are. In this situation, it is risk-averse to maximize the smallest slice of the fixed pie in case one's own attributes place one at the lowest "level of talent and ability" in this fixed distribution (Rawls 1999, 63). The possibility space presupposed by this analysis of the choice faced in the original position is inconsistent with Rawls's stipulation that an individual is supposed to know that she *has* determinate natural attributes, even if she does not know what they are (1999, 127, 152).

An individual in the original position does not need to know what her attributes are, and she must not know where these attributes place her in the larger social distribution of such attributes, since this is the arbitrary relationship we wish to eliminate from consideration. However, she is supposed to know that she *has* determinate natural attributes. Other members of her society have determinate attributes as well, but she has no way of knowing whether the attributes of others will translate into higher or lower levels of talent and ability in society relative to her own. A person in the original position therefore ought to experience the social distribution of talent and ability around her as the variable feature in the analysis, which will, after she chooses principles of justice, be settled by a "natural lottery". I will propose an "Unknown Society Model" that more accurately reflects the possibility space that remains after the original position eliminates the arbitrary influence of an individual's place in the social distribution of natural assets from consideration when principles of justice are chosen.

4] Emphasis added.

5] Rawls writes, "we must keep in mind that the parties in the original position are theoretically defined individuals." (1999, 127)

Like Rawls, I assume that individuals in the original position are non-enviously seeking to maximize the value of an index of social primary goods including wealth, income, and positions of authority and responsibility that they can expect to receive, and that positions of authority and responsibility are sufficiently correlated with wealth and income that they need not be considered separately (Rawls 1999, 83). Also like Rawls, I assume that given the conditions of deep uncertainty and high stakes that prevail in the original position, individuals will appropriately have a “high level of risk aversion” when they choose principles of justice (Rawls 1999, 144), leading them to “adopt the alternative the worst outcome of which is superior to the worst outcomes of the others” (Rawls 1999, 133).

III. THE UNKNOWN SOCIETY MODEL

The Unknown Society Model does not change the features of the original position itself. Rather, it is an alternative account of the possibility space created by the original position. It treats an individual’s natural endowments as an unknown constant rather than as a variable, reflecting the fact that individuals in the initial situation are “determinate persons” – they do not know what their specific attributes are, but they do know that they have specific attributes (Rawls 1999, 151-52). Second, the social distribution of “level[s] of talent and ability” (by which I understand Rawls to be referring to the market value of the constellation of natural traits that are useful for generating income) of members of society is treated as variable, since an individual in the original position has no idea what levels of talent and ability others in her society will have relative to herself (Rawls 1999, 63).

In the Unknown Society Model, a randomly selected individual – whom I will call Xenia from now on – must choose principles of justice knowing that her society might be comprised entirely of individuals with lower levels of talent and ability than hers, or higher. Alternatively, her level of talent and ability might fall somewhere in the middle of the distribution. Xenia also has no idea how large her society is, nor how wide the distribution of talent and ability might be. Her society might contain huge differences in levels of talent and ability, or everyone might be endowed with attributes that enable them to be roughly equally productive.⁶ Therefore, Xenia cannot choose principles of justice based on her arbitrary place in the social distribution of natural assets.

Xenia chooses principles of justice by considering the risks of the “natural lottery” that she faces: various places she might wind up occupying in the unknown social distribution of natural assets. To demonstrate the robust superiority of liberal equality to the difference principle in the face of this uncertainty, I will model Xenia’s relative expectations in terms of wealth and income in three possible worlds in which she occupies three very different places in this social distribution:

⁶ Rawls envisioned a possible future society in which its members enjoy “the greatest equal talent”, although he does not suggest that this is very likely (1999, 93).

Spartanville: In Spartanville, every other fully-participating member of society has a lower level of talent and ability than Xenia, who therefore finds herself at the very top of the social distribution of such attributes after she chooses principles of justice.

Equalitania: In Equalitania, all fully-participating members of society have equal “levels” of talent and ability (in the Rawlsian sense of market value), although those attributes may differ qualitatively.

Talentopia: In Talentopia, every other fully-participating member of society has a higher level of talent and ability than Xenia, who therefore finds herself at the very bottom of the social distribution of such attributes after she makes her decision.

Like Rawls, I assume that a system of social cooperation yields more wealth and income than the sum of what every participant might generate on her own (i.e. there are gains from trade within a society). I also adopt Rawls’s assumption that the system of liberal equality will generate shares of wealth and income that are roughly proportional to individuals’ relative levels of talent and ability in the social distribution thereof.⁷ Additionally, I suppose along with Rawls that a redistributive policy “pushed beyond a certain point weakens incentives and thereby lowers production” although there is no need to decide where, empirically, that point might be (Rawls 1999, 142).

Finally, in accordance with Rawls’s stipulation that “there is no objection to resting the choice of first principles upon the general facts of economics and psychology”, I account for the possibility of what economists call “human capital externalities” (Rawls 1999, 137). A human capital externality is the effect that a change in one person’s level of talent and ability has on the (inflation-adjusted) wealth and income of other members of her society.⁸ Economists attempting to measure human capital externalities have arrived at estimates that range from statistically insignificant to strongly positive.⁹ Xenia will deal with this uncertainty by considering her relative expectations in different possible states of the world under either assumption, and she will choose the principles of justice that maximize her expectations in terms of income and wealth in the worst possible state of the world.

In a system of liberal equality, Xenia will expect to have roughly equal amounts of wealth and income in Spartanville, Equalitania, and Talentopia if human capital externalities turn out to be insignificant. If they turn out to be significant, she will have more wealth and income in Equalitania than she will in Spartanville, and she will have more wealth and income in Talentopia than she will have anywhere else. If Xenia chooses a system of democratic equality instead of a system of liberal equality, the difference principle will increase what Xenia will expect to have in Talentopia (relative

7] That is, shares will be equal to those Rawls describes in a system of natural liberty except that they will no longer reflect inherited wealth and income due to the implementation of the principle of fair equality of opportunity (1999, 62-64).

8] Daron Acemoglu explains, “Human capital externalities arise when the investment of an individual in his skills creates benefits for other agents in the economy.” (1996, 779).

9] See for example Lucas Jr (1988), Moretti (2004), and Thönnessen et al (2013).

to her expectation under liberal equality), will decrease what Xenia will expect to have in Spartanville, and will leave her expectation in Equalitania unchanged. See Figure 1.

Figure 1: Xenia’s Expectations in Terms of Wealth and Income

	Talentopia	Equalitania	Spartanville
Liberal Equality (no human capital externalities)	a	a	a
Liberal Equality (positive human capital externalities)	a+b+c+d	a+b+c	a+b
Democratic Equality (no human capital externalities)	a+f	a	a-e
Democratic Equality (positive human capital externalities)	a+b+c+d+h	a+b+c	a+b-g

Key to Figure 1 (all values are positive)

a	Xenia’s expectation under liberal equality with no human capital externalities
b	the value to Xenia of positive human capital externalities in Spartanville
c	the additional value to Xenia of human capital externalities in Equalitania (compared to Spartanville)
d	the additional value to Xenia of positive human capital externalities in Talentopia (compared to Equalitania)
e	the value of the reduction in Xenia’s expectation in Spartanville with no human capital externalities under democratic equality (relative to liberal equality)
f	the value of the increase in Xenia’s expectation in Talentopia with no human capital externalities under democratic equality (relative to liberal equality)
g	the value of the reduction in Xenia’s expectation in Spartanville with positive human capital externalities under democratic equality (relative to liberal equality)
h	the value of the increase in Xenia’s expectation in Talentopia with no human capital externalities under democratic equality (relative to liberal equality)

For Xenia, the worst possible state of the world is Spartanville with no human capital externalities. To paraphrase Rawls, this is the world in which her enemy would place her (1999, 133). In this worst possible situation, Xenia will have more wealth and income if she has chosen to adopt the system of liberal equality (an expectation of a) than she will in the system of democratic equality (an expectation of a-e). By contrast, Talentopia with human capital externalities is the best of all possible worlds for Xenia. In this system, she

will fare even better under democratic equality ($a+b+c+d+h$) than she will under liberal equality ($a+b+c+d$).

In other words, when Xenia regards her own attributes as constant, though unknown, and the distribution around her as variable, the difference principle is a risk-loving principle – it further boosts Xenia’s already good expectations in Talentopia with human capital externalities, and it worsens her already poor expectations if she loses the “natural lottery” and is consigned to Spartanville without human capital externalities. Because Xenia is risk averse, she will choose to adopt the system of liberal equality and its principle of distribution according to market processes instead.¹⁰

IV. THE SOCIAL BASES OF SELF-RESPECT

I have shown that when the possibility space created by the original position is properly defined, individuals in the original position will maximize the share of wealth and income they can expect to receive in the worst-case scenario by choosing the system of liberal equality. However, this outcome raises a possibility that Rawls did not have to address given that his own analysis yielded a system of democratic equality instead: the possibility that very high levels of income inequality might effectively deprive individuals near the bottom of the income distribution of the social bases of self-respect. While fair equality of opportunity would certainly limit the inequalities that arise in a system of liberal equality, it cannot entirely rule out the possibility of an extreme stratification of income and wealth among mature citizens that could potentially undermine the self-respect of the relatively poor.

Rawls refers to self-respect as “perhaps the most important primary good” because “without it nothing may seem worth doing” (1999, 386). The social bases of self-respect include the resources necessary to carry out a rational plan of life in accordance with one’s conception of the good, and the ability to find a community inside the larger society “within which the activities that are rational for [the individual] are publicly affirmed by others” (Rawls 1999, 387). Rawls gestures at the lexical priority of self-respect over ordinary distributive concerns when he suggests that its importance “limits the forms of hierarchy and the degrees of inequality that justice permits” (1999, 92). I therefore believe that individuals in the original position would include a social safety net adequate to safeguard the social bases of self-respect among the basic equal liberties protected by Rawls’s first principle of justice.

10] To be sure, different natural attributes will have different market values in different societies. For example, a person whose talents would make them a particularly good hair stylist, flower arranger, or cake decorator might find her skills relatively more valuable in a rich, post-industrial society, while a person whose talents lend themselves to physical combat and wilderness survival may find themselves more marketable, on average at least, in a poorer, pre-industrial society. But these uncertainties are bi-directional, exist at all points in the distribution of natural assets, and exist to an equal degree in Spartanville and Talentopia, so they cannot change the outcome of the analysis.

V. CONCLUSION

Rawls himself never evaluates liberal equality from the perspective of the original position, having considered and rejected this interpretation of his principles before undertaking his primary analysis. Given his understanding of the possibility space created by the features of the original position, he was right not to waste any time on the analysis: if the proper methodology is to compare the expectation in terms of wealth and income of the least skilled worker in a given society under liberal equality and under democratic equality, the difference principle yields an expectation equal to or better than market processes by definition, so democratic equality will be preferred.¹¹

However, if I am correct in my account of the possibility space created by the original position, then Rawls rejected liberal equality prematurely. If the correct principles of justice are those that free and equal individuals would choose in a situation cleansed of the arbitrary influence of individuals' relative positions in larger social distributions of income and wealth as well as natural assets, then liberal equality, cushioned by the inclusion of a social safety net among the basic equal liberties, appears to be the most just available system.

Of course, those currently committed to democratic equality are not rationally required to embrace my proposed version of liberal equality even if my analysis is correct. In the process of reflective equilibrium, there is no privileged starting place. A person confronted with a discrepancy between the widely shared and highly general principles incorporated into the initial situation and her considered convictions about the requirements of justice is free to revise either the general principles or the considered convictions (Rawls 1999, 17-19). Rawlsians convinced by my analysis but likewise convinced of the unacceptability of liberal equality might prefer to respond to my critique by revising the general principles that determine the features of the original position. For example, some might decide on reflection that a system of social cooperation should literally "draw forth the willing cooperation of everyone taking part in it" rather than merely constructively doing so (Rawls 1999, 13). In that case, it might follow that a universal basic income should be adopted in preference to the more modest social safety net that I have suggested for inclusion among the basic equal liberties.

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[11] Even if it happens to be the case that market processes generate the best expectation possible for the least-skilled worker in a given society, then adopting the difference principle will result in a policy of distribution via market processes. The least-skilled worker in a given society therefore might do better, and can by definition do no worse, under democratic equality than she would under liberal equality.

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Book Review

Bernard Harcourt, *Exposed. Desire and Disobedience in the Digital Age*, Harvard University Press, Cambridge, Massachusetts, 2015, Pp. 1+790, ISBN: 0674504577, E-pub format.

At almost 20 years after John Perry Barlow declared the independence of cyberspace through a very persuasive manifesto, Bernard Harcourt published *Exposed* to analyze not only how much the internet has changed over time, but also how a digital kind of self emerged. Barlow's manifesto speaks to us exactly because that kind of a digital universe is now pure fantasy and, if one reads Harcourt's book, dwelling on that ideal is no longer possible. From the simplest forms of our digital life, like social networks and numerous mobile apps, to advanced recommendation algorithms and methods of tracking online activity, the internet became the greatest data collector of individual preferences, political options, desires, location at all time, etc. The author clears the conceptual ground for a new kind of metaphor, the expository society, that can encompass both the perils we are aware of when we immerse in the digital dimension, and our readiness to let ourselves seduced by social media connections who round up exposing us as subjects of surveillance, data mining, monitoring and profiling.

The book aims to achieve three main goals: firstly, "to trace the emergence of a new architecture of power relations throughout society, to excavate its antecedents, to explore what it is constructing" (63) through a thoughtful analysis of the most controversial disclosures regarding the digital environment, like those concerning the PRISM program; secondly, "to document its effects on our political relations, on our conception of self, and on our way of life" (64); last, but not least, "to explore how to resist and disobey" (65).

The book is organized in four parts, each providing a useful framework in analyzing the implications of all kind of interactions on the internet that involves giving up a part of your analog self's private information and letting the digital self expose it. Part I, *Clearing the Ground*, parts ways with some unfitting metaphors like Orwell's Big Brother and Jeremy Bentham's Panopticon. Harcourt supports the idea that metaphors play a constitutive role in how we understand and interpret certain features of reality and therefore we can draw the right conclusions and analyze the implications of an action only if we operate with the most appropriate and far-reaching concept/metaphor. Orwell did a great job in describing the mechanisms of oppression, but he could not foresee the one ingredient that Harcourt thinks to be the core of the digital, namely "the role that desire would play in enabling digital exposure today" (81). If in Oceania the authorities were concerned with spreading hatred and distrust among citizens, in the distinct world of social networks desire is preserved as the core drive of our digital activity. The author of *Exposed* invokes Facebook's refusal to introduce a dislike button, exactly because this gesture would go against what we all settled for when we befriended the internet. Adding desire to the old pile of ingredients associated with oppressive societies is drastically reshaping the paradigm of discourse regarding surveillance. Harcourt's work is, even from this point of view, an attempt to draw attention on the fact that we can no longer talk only about the surveillance state in this equation, but also about private actors like corporations driven by economic stimuli and individuals craving for public confirmation. This is why he considers that the metaphor of a surveillance state must also be abandoned.

By invoking Zygmunt Bauman's concept of "liquid modernity" (165), Harcourt argues in favor of the thesis that modern institutions no longer have time to solidify and therefore we live in a world where the structure of power is more fluid than ever. Lastly, however complex and terrifying Foucault and Bentham's Panopticon would be, it is unfit for the age of spectacle that goes hand in hand with surveillance, like two dialectical forces that shape behaviors, attitudes, desires, institutions and governments. The prisoners of a panoptic structure internalize the disciplinary practices to the point that the actual act of surveillance is no longer required. While it was a useful metaphor for catching something about the distinctive nature of power and knowledge in the eighteenth and nineteenth centuries, maybe even more recently- Harcourt is never questioning this particular idea- he believes that perpetuating it would convey an inexact message. It would be more appropriate to talk about a *cryptopticon*, a term that could capture more than one attitude toward surveillance- ignorance, fear, even delight.

The second part of the book, *The Birth of the Expository Society*, provides the readers with a more appropriate metaphor – a mirrored glass pavilion – that can capture the true dimension of our expository society. He takes the work of Dan Graham, "Hedge Two-Way Mirror Walkabout", to be the archetype of generic glass structures that he calls into question: "part crystal palace, part high-tech construction, partly aesthetic and partly efficient, these glass and steel constructs allow us to see ourselves and others through mirrored surfaces and virtual reflections" (236). Harcourt's proposal seems to capture many, if not every dimension of our digital rendition: the desire for participation, the need for appreciation, the ease with which individuals subject to questionable terms and conditions for a greater, digital advantage, all with the promise that everyone else's showcase is also available in this hazy environment. The author thinks that the reason why we immerse with ignorance in the digital life is that we abandoned the *humanist mind-set* that valued and preserved privacy and autonomy and, in turn, transitioned to a *rational choice framework*, associated with the commodification of privacy and the like. When people started to perceive privacy and autonomy as commodities, they lost their value: "In the digital age, we are more likely to hear about the cost of privacy, not its virtues or even its value. We are far more likely to hear about trade-offs and opportunity costs." (382). Here Harcourt makes a dangerous and partly unconvincing move trying to correlate the rise of the neoliberal approach with the creation of submissive individuals in the digital sphere. If the basic tenets of economic neoliberalism are truly internalized, this would not lead to a devaluation of the idea of privacy, but quite the opposite. If individuals perceive privacy and autonomy as commodities, then this would be the strongest case in favor of the privatization of data. Nonetheless, little reaction was registered after a chain of revelations about personal data being sold, misused and instrumentalized in the most illegitimate ways, as the author himself admits. If the logic deployed in this chapter would be bulletproof, then a massive stir was in order. The neoliberal doctrine does not shape passive and compliant citizens, at least not properly understood.

The third section of the book, *The Perils of Digital Exposure*, is an attempt to illustrate how multinational technology companies, like Apple, took over the function of censorship that not so long ago was associated entirely with the state. The author uses the example of Josh Begley, who created a mobile app called 'Drones+' and submitted it to Apple, but got rejected on the grounds that it was not useful enough and that the content provided by the application could be found largely objectionable by the audi-

ence. The fact that we live in a world where so many private actors are willing to oversee our every move, to influence our preferences through recommendation algorithms, to buy private information or to sell it for the sake of profit, leads Harcourt to deploy Goffman's *mortification of the self* as a key concept that can capture the way in which our daily digital practices detach the self "from its former identity" (484). These structures of power, specific for the digital era, produce moral experiences or, even more accurate, „a phenomenology of the analog carceral experience that may shed light on our digital condition" (482). It is a new way of perceiving ourselves, a fundamental dimension of the human existence that loops back and forth from real to virtual dimensions. This is not in itself a very troubling fact. What counts as problematic is the impossibility of telling them apart at times and the abusiveness of the digital environment combined with the interests of private actors. Harcourt subscribes to Foucault's attempt to conceive a genealogy of the perpetual game of reconfiguration that various relations of power entail. He finds the general foucauldian conceptual framework useful in the respect that all digital practices are in themselves a *dispositif* which enhances the amassment of knowledge and power over individuals and particular events and decisions with percussive effects over the social body. If those digital practices, often undemocratic and dishonest, produce moral experiences, they have a transformative role. This reconfiguration of subjectivity implies a major shift in attitude towards algorithms at the expense of one's sense of self-reliance. Anxiety, depression and an overwhelming sense of lack of control are tolerated foes, an uneasy and corrosive consequence of giving up control over one's extended self. In this section, the mirrored glass pavilion turns into an asylum where humiliation and degradation go hand in hand with a pervasive satisfaction. It is, as Harcourt puts it, a new world that emerges from under Kafka's literary metaphor – the bureaucratic behavior of abuse and indifference that we inhabit, a genuine *cryptopticon*.

In the last part of the book, Harcourt succeeds in doing a *tour de force* starting from those philosophical ideas that resiliently support the idea of resistance, even though they do not entail with necessity a realistic commitment, but rather a pragmatic one. This is the most philosophically substantial part of the book and also the most intriguing, because it highlights the perks of making sense of a new conceptual grounding regarding the exhibitionist self as a product of scanty democratic practices. Just as Tocqueville forewarned in „*Democracy in America*," paternalistic tendencies who materialize end up having the most dramatic consequences- citizens are infantilized to the point that they become unable to access all forms of resistance. For these reasons, a philosophy of resistance must be aware of the way in which the expository society is redefining the democratic practices, including electoral campaigns, the voting process and the making of truth standards for information.

Virtual democracy is a cyber-utopia. Only by stepping outside of it one can see the dangers that surround our democratic regimes. Harcourt uses Deleuze's concept of *societies of control*. He maintains that any society of control has some associated machines, from rudimentary forms – levers, pulleys, clocks-to infinitely more advanced forms, with a much more subtle *modus operandi* – a network of computers and an army of two-faced algorithms. Just as Deleuze, Harcourt is an optimist; he believes that any society of control has its cure. He analyzes possible forms of resistance, from minor gestures like the use of proxy websites, to the whole phenomena of whistle-blowing. Assange's WikiLeaks is a form of institutionalized resistance that is given as example of complex and efficient counteraction. Nonetheless, there are more subtle and acces-

sible forms of coping with the mechanisms of a virtual democracy, like designing and implementing educational programs in schools in order to raise awareness of the lesser known sides of the digital trade-offs, the use of sophisticated encryption software and the like. Furthermore, he points to the fact that political philosophers had neglected to talk about some policy proposals that could be just the answer we are looking for: digital taxation and the privatization of data. By privatizing the data we would give the owners the ability to cash in on whatever information they choose to disseminate.

Harcourt's book, *Exposed*, is definitely a thought-provoking work, providing its readers with a conceptual framework that goes from various transformations of the self, the rise of a new political and economical paradigm in which the state is no longer the only agent who is posing a threat to the individual freedom and a thorough deconstruction of the metaphors that help us shaping and making sense of the present. With an inciting empirical background, this book is an excellent reference for anyone concerned with the philosophy of the internet, ethics, philosophy of law, or simply searching for further lectures on digital and surveillance studies. Harcourt aims at establishing the main research directions concerning privacy and means of resistance, and he succeeds in doing just that. *Exposed* is not just the work of a legal theorist, but also the philosophical product of a man who teaches and writes about spectacle and surveillance, techniques of torture and confessions – they all play a part in making this book one of the most comprehensive and well written works on this subject.

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M. E. Newhouse

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Bernard Harcourt, *Exposed. Desire and Disobedience in the Digital Age*
Reviewed by Anda Zahiu